

## **The complaint**

Miss R is unhappy with the way Amtrust Europe Limited handled her claim on her legal expenses insurance (LEI) policy.

My references to Amtrust include its agent.

## **What happened**

Miss R approached Amtrust on 15 December 2020. She wanted to pursue a claim for racial discrimination, disability discrimination and constructive dismissal against her employer and was looking to make a claim on her LEI policy to facilitate this. She explained at this time that she had post-traumatic stress disorder, depression, and anxiety and that she had had a recent serious mental health breakdown. She believes that from the word 'go' her claim should have been flagged as a vulnerable case and appropriate support should have been put in place.

Miss R had already decided which lawyer she wanted to use to pursue her claim. Her lawyer wasn't one of Amtrust's panel solicitors - and wanted to charge a rate of £300 per hour which was more than Amtrust's standard rate.

When Amtrust declined to pay £300 per hour, Miss R's lawyers shared with her and Amtrust that Amtrust had agreed a rate of £300 per hour for other clients.

Miss R was concerned that Amtrust may be hoping that by ignoring her pleas for help that she would drop her claim. Her solicitors also had concerns about discrimination.

Amtrust agreed to pay the £300 per hour rate on 22 February 2021 after discovering – it says in error - that it had agreed to pay the same firm that rate in other cases.

On 1 March 2021 it authorised the initial tranche of funding. Up until 1 March 2021 Miss R continued to chase Amtrust and continued to advise it of the detrimental effects she was suffering to her mental, physical, and emotional health.

Miss R complained to Amtrust about its handling of her claim. Miss R said Amtrust deliberately ignored her disability and her numerous pleas for help. She said that she was subjected to severe mental, emotional, and physical detriment and financial detriment. She further said Amtrust took significantly longer to resolve her claim than usual. She thought that Amtrust's five days to answer emails policy puts customers at risk of detriment (particularly vulnerable customers). She observed that Amtrust only seem to respond quickly to emails if there is a suggestion of its wrongdoing. She said no assistance or understanding was offered, despite her disability. She said that her emails were ignored despite the huge amount of energy, effort and time taken to write and research them. She felt that the advice provided by Amtrust between 27 January and 1 March was in no way in her best interests, and some of the advice would have put her to further detriment had she accepted it.

Amtrust issued a final response letter. It accepted that it hadn't always met its own standards for replying and that the delay caused by the protracted fee negotiations would have caused

Miss R additional anxiety. It also accepted that given the severity of Miss R's disability it should have considered how any potential delays could exacerbate her condition and it should have acknowledged her condition when interacting with her. Amtrust offered to pay her £300 for the distress and inconvenience caused.

Miss R felt that Amtrust's response was design to 'fob her off;' she didn't feel like it was sorry at all. She explained that Amtrust's response to her begging for help left her feeling that she was of absolutely no consequence, she said she felt completely alone and that the people who could help literally didn't care if she lived or died. She felt that Amtrust was able to respond when any form of discrimination was alleged but not when she was begging for help because of her disabilities.

The investigator issued a view in which he said he didn't uphold the complaint. He did think that communication with Miss R could have been better, but he felt the compensation Amtrust had offered to pay was fair.

Miss R was unhappy with this view. She said the view was not focussed on her primary point of complaint, which was Amtrust's complete lack of regard for, and acknowledgement of, her mental health disabilities and the awful effect the dealings and delays with Amtrust were having on her mental and physical health in real time. She said Amtrust's treatment of her made her feel completely ignored, unheard, desperate and completely unable to cope - because it wouldn't even acknowledge her emails regarding the appalling state of her mental health at that point, she felt completely bereft and felt that she was just crying into a void.

### **My provisional decision**

I issued a provisional decision on 20 January 2022. In it I said:

*Miss R has provided very detailed information both to this service and to Amtrust. We are an informal dispute resolution service and so I will not be responding to every point she has made but I have carefully considered everything she has said.*

*Looking at the timeliness of Amtrust's responses and the points it has taken over fee negotiation I think generally they would have been acceptable. But I need to consider whether they were good enough in the circumstances of this case with a vulnerable consumer; I have considered that below.*

*Before I get to that I just want to look at the fee rate Amtrust is currently paying and Miss R's comments about possible discrimination being behind the fee rate that it previously said it would pay. I can understand why Miss R feels that there may have been discrimination because a higher fee had been agreed for other consumers using her solicitors than was being offered to her. I haven't seen anything which leads me to believe that there was racial or disability discrimination in this case.*

*I think it is most likely there was a previous error as Amtrust has said. I am pleased to see that Amtrust did agree to pay her solicitor at the rate of £300 per hour after it had been made aware that it had done this in the past.*

*Turning now to how Amtrust handled the case given Miss R's vulnerability, first I want to say, I am very sorry to hear of the distress Miss R has suffered both over the long-term and more recently. She has been very open about the challenges she has faced and about the impact on her well-being of recent events and I want to thank her for that. The impact has included her feeling suicidal, being unable to sleep, persistent fever and cold sweats, stress induced hypoglycaemia, Meniere's symptoms, and a range of other problem.*

*I have looked carefully at Amtrust's responses to Miss R when she sets out with increasing desperation how things are affecting her. An insurer is required to deal with claims promptly and fairly. I do not think Amtrust's responses meet this requirement, given Miss R's circumstances, or the standards set out in the Financial Conduct Authority's Guidance for the fair treatment of vulnerable customers. In particular, I haven't seen evidence that frontline staff exercised additional care to adapt to the consumer's needs and to exercise judgement on when it is necessary to do so. I think it would be reasonable to expect that Amtrust should have put in place a mechanism – perhaps by referring her to a specialist team or colleague - to allow it to handle Miss R's communication promptly so that action was taken to ensure harm does not occur or become more severe. My impression of Amtrust's response to Miss R was that it failed to take even basic steps to make her feel that the sensitive information she was sharing was going to be acted upon. I think if Amtrust had for example thanked her for sharing the information and explained how it would use this information to help it manage her case then Miss R would have felt supported at this difficult time. Some of its later responses to Miss R's increasingly desperate emails seem extremely cold and unfeeling.*

*Amtrust offered Miss R £300 compensation. She has pointed out this equates to one hour of her solicitor's time. She is, of course, right. But when we look at compensation for distress and inconvenience, we don't compare things in that way instead we look at the awards we've made in the past and consider the impact on Miss R. I am satisfied that Miss R found Amtrust's failures – as outlined in the above paragraph – extremely distressing. But I don't think I can fairly say that all that Miss R suffered after contacting Amtrust is because of Amtrust's actions. This was a very stressful time for Miss R; two months prior to contacting Amtrust her doctors noted she was extremely distressed and in the months that followed she experienced several very challenging issues. I think instead that it is fair to characterise Amtrust's failures as making a very bad situation even worse. And this seems to be reflected in her medical notes where, for example, it was noted shortly after Amtrust authorised the initial tranche of funding that her sleep had improved. Taking all of this into account I think it would be fair for Amtrust to pay Miss R 600.*

## **Responses to my provisional decision**

Both Miss R and Amtrust provided lengthy responses to my provisional decision and both did not accept it.

I have focused on what I consider to be the central issues and summarised them below.

Miss R says she doesn't feel the compensation set out in the provisional decision is a fair level of compensation, given what happened and the effects on her mental and physical short and longer-term health. She has explained two of the symptoms that arose at this point - the frequent low blood sugar episodes and the intermittent fevers - are still ongoing issues. She has had to have extensive physical investigations into these factors in May 2021 and further neurological investigation in November 2021. Her GP is now looking into referring her for neurological investigations to try to understand what's going on.

She feels Amtrust:

- provided appalling customer service
- failed to flag her in its system as a vulnerable customer from the word 'go'
- failed again and again to acknowledge her health disclosures as a vulnerable customer or to do anything to mitigate the risk to her of its actions and communications despite knowing the effect on her in real time
- ignored emails and sent unbelievably cold responses
- left her open to the behaviours of her employer for 11 weeks

- failed to provide advice that was in her best interest.

She thinks for the complete hell Amtrust put her through and the long-term effects of this only £600 seems hugely inadequate. She thinks that the equivalent of two months of her wages would be a more appropriate level of award, given all the circumstances.

Amtrust feels the compensation set out in its final response is fair. It feels it is important to note that most claims on legal expenses arise from stressful situations, which impacts the day to day life of the claimants. It also recognises that consideration should be given to the existing mental health and wellbeing of the claimant. However, whilst it recognises that consideration, it cannot act in a manner which would show an advantage to that customer over others. It would like me to highlight correspondence which is extremely cold and unfeeling.

It says it deals with all correspondence in the order it is received and it is its understanding that if it began to seek customer correspondence to respond to sooner simply because they have a disability this would not be either a treating customers fairly approach or a reasonable adjustment. It says it understands a reasonable adjustment should be made to place someone with a disability/protected characteristic at a point of equality, not at an advantage over those who do not have a disability/protected characteristic.

It notes I have referred to Miss R's comments about the investigator's view not being focussed on the crux of her complaint. It feels its final response letter did deal with Miss R's complaint and thinks it is unfair that I have increased the compensation because Miss R thinks the investigator didn't focus on her complaint.

It would like more guidance on assessing the level of compensation and dealing with vulnerable consumers.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think it would be helpful to explain that this decision is a consideration of the specific factors of this complaint. It isn't appropriate for me to give general guidance on our approach here, such guidance is available on our website and on the Financial Conduct Authority's website.

I also think it would be helpful to explain that our awards are not meant to punish businesses they are intended to put consumers in as close a position as possible as if the errors hadn't occurred. Because of this what caused or motivated the error isn't necessarily the most important factor; we are more concerned about the effect on the consumer.

Both sides agree that errors were made. Both sides agree these errors had a detrimental effect on Miss R. Where there is disagreement is on what the errors were – Amtrust thinking they were limited and Miss R that they were extensive - and what is fair compensation.

For my part I think Amtrust's biggest failure was that when it learnt at an early stage that Miss R was vulnerable it does not appear to have considered what that meant for handling the complaint. There is no one way to deal with a vulnerable consumer; the appropriate response will depend on the type of business and the specific needs of the consumer. But as a bare minimum Miss R's vulnerability should have been acknowledged and there should have been consideration of what steps could be taken to support her. Miss R made clear to Amtrust that delays were having a very great adverse effect on her. I appreciate that many people claiming on LEI feel this is a very stressful process and find delays stressful. But

Miss R – with her existing vulnerability – was clearly more greatly affected. This means for example that when some of the points in her emails went unaddressed, she was more badly affected. Amtrust therefore needed to be more careful that all her points were addressed. They could have handled this by, for example, ensuring her claim was handled by someone who was allocated extra time to handle her claim.

Amtrust has asked for examples of cold and unfeeling responses. On 3 February 2021 Miss R emailed Amtrust and explained how much her mental health had deteriorated. She told Amtrust about her very upsetting symptoms and that one of her health care professionals was calling for an urgent review across all members of her mental health support team to try and ensure that she didn't get any worse. When Amtrust responded it did not mention Miss R's health. No sympathy was expressed by Amtrust nor did there appear to be any consideration of how delays could make Miss R's symptoms worse. I think this was cold and unfeeling.

As I said in my provisional decision: *'it is fair to characterise Amtrust's failures as making a very bad situation even worse.'* Subsequently Miss R's medical notes make clear that she has faced additional challenges unrelated to Amtrust's errors. I therefore don't think I can say with any certainty that the medical issues she is facing now were caused by Amtrust's actions. And therefore, I remain of the view that £600 compensation is fair.

Finally, I want to make it clear that when I mentioned Miss R's objection to the investigator's view not being focused on the crux of her complaint I did so to acknowledge her concern. Miss R isn't being awarded more compensation because the investigator didn't look at the whole of her complaint. She is being awarded more compensation because having looked at the whole of the complaint I think a fair and reasonable outcome is that she receives more compensation.

### **Putting things right**

To put things right I think Amtrust should pay Miss R £600.

### **My final decision**

I uphold this complaint and order Amtrust Europe Limited to pay Miss R £600.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 23 March 2022.

Nicola Wood  
**Ombudsman**