

The complaint

Mrs A complains about Amtrust Europe Limited's handling of her legal expenses insurance claim.

Where I refer to Amtrust, this includes their agents and claims handlers.

What happened

The detailed and lengthy background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs A had previously sought support from Amtrust to take legal action against her former employer and her claim had been declined. In 2019 Amtrust said that the claim didn't have reasonable prospects of success (which was a requirement for cover under the policy).

Mrs A later began the employment tribunal process and initially represented herself. In January 2020 Mrs A instructed a firm of solicitors - who I'll refer to as 'L' - to represent her. On 6 February 2020 L wrote to Amtrust to inform them that they believed Mrs A's claim had the required prospects of success.

Amtrust initially disputed this but in June 2020 following on from a supportive barrister's opinion they accepted the claim had the required prospects and agreed to backdate cover to 6 February 2020.

There was then a dispute between Amtrust and L as to the hourly rate that ought to be used. Amtrust wouldn't pay more than £140 per hour. As a result of the dispute over the hourly rate, L didn't sign Amtrust's terms of appointment for non-panel solicitors.

Mrs A complained, she had been self-funding L and wanted Amtrust to meet her costs. The matter was referred to our service and one of our Investigators thought the complaint should be upheld. In broad summary she thought that Amtrust should compensate Mrs A with £500 for having to attend a tribunal unrepresented. She also thought that they should consider the costs she'd incurred using the county court guideline rates.

Amtrust said they agreed in principle, but they wanted the right to ensure the costs they were paying were in line with the policy terms. They also pointed out that the policy had a limit of indemnity of £50,000. Mrs A said that she was being personally pursued by L for an outstanding amount and that she wanted an Ombudsman to make a decision. In July 2022 I issued a provisional decision in which I said:

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

Having done so, I've reached a different outcome to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment.

I'm aware that there have been some further developments whilst this complaint has been with our service. These include Mrs A being advised to accept a settlement offer. Amtrust provided Mrs A with their final response to her complaint on 4 May 2021. As such, I won't be considering anything after that date. Our service can only become involved once a business has had a chance to consider a complaint first. If Mrs A remains unhappy with the actions of Amtrust after that date, this is something she'll need to take up with them in the first instance.

I think Amtrust backdating cover to 6 February 2020 is fair in the circumstances of this complaint. The policy requires that any claim has 'reasonable prospects of success'. It's right that this is based on suitably qualified legal advice. And I've not seen any evidence to support that, prior to this date, Mrs A had shared a supportive legal opinion on the prospects of her claim with Amtrust.

Mrs A's policy says that she will be covered for 'Professional Costs and Expenses'. This is specifically defined in the policy as: "Reasonable unrecovered fees, costs and disbursements properly and necessarily incurred by the Professional Adviser and any costs incurred by a third party, on the standard basis of any civil Proceedings, for which you may be made liable by order of a court or by agreement."

The policy also allows (when proceedings are to be issued or as a result of a conflict of interests arising) for a non-panel solicitor to be used. But it doesn't state a maximum hourly rate that will be used. I agree with our Investigator that it's fair for Amtrust to have some input into the hourly rate they will agree. But I'm not persuaded Amtrust has fairly exercised that discretion here.

Mrs A has a reasonable expectation that her legal costs will be met by the policy for an accepted claim. It appears Amtrust too accept this to an extent as they've agreed in principle to consider Mrs A's costs based on the county court guideline amounts. I agree that this is a fair way to resolve this matter. But it is also fair that the policy doesn't automatically cover absolutely every legal cost that is billed. It covers professional costs and expenses in line with the definition above. So it's fair that Amtrust are able to assess costs to ensure the policy terms are met. The policy also has a limit of indemnity of £50,000. That means I wouldn't expect Amtrust to meet costs in excess of that amount.

I'm aware that the policy doesn't usually offer payment until the conclusion of legal proceedings. But I don't think it would be fair to apply that term in the circumstances here. I don't think Mrs A acted unreasonably when instructing L to help protect her legal position. Had Amtrust promptly offered a fair hourly rate it's most likely that terms would have been agreed with L and Mrs A wouldn't have had to self-fund in the meantime. In light of this, where Mrs A has already paid L (and is to be reimbursed by Amtrust under the policy) that 8% (yearly) simple interest be added. This is to be calculated between the date of each payment from Mrs A to L until the date of reimbursement from Amtrust.

I also think this failure by Amtrust would have caused Mrs A avoidable distress, inconvenience and uncertainty at what was already a difficult time. In light of this, I'm minded to conclude that Amtrust should also pay £250 compensation for the impact of this. I'm aware our Investigator originally awarded £500. But much of this was based on Mrs A being unrepresented at a tribunal hearing (something I'm not persuaded is Amtrust's fault). And I think £250 is fair in the circumstances here..."

Mrs A responded to my provisional decision and asked our Investigator some questions about it which have been responded to. Amtrust responded to say they accepted my provisional decision. Now both parties have had an opportunity to respond, I can go ahead with my final decision.

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.

As neither party had any further information or evidence for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

Putting things right

- Amtrust must consider and pay the 'professional costs and expenses' (as defined in the policy) that Mrs A incurred with L in relation to her Employment Tribunal Dispute between 6 February 2020 and 4 May 2021 (inclusive).
- In that consideration Amtrust must use the applicable published county court guideline rates that were in place at the time the work took place and for the grade of the fee earner who undertook the work. I understand that for L's location, this will primarily be within the National Band Two area. (I'm aware these rates have relatively recently changed, but the applicable rate in place at the time of the work should be used.)
- Amtrust can assess the costs and Mrs A should provide all reasonable assistance to share information with Amtrust to enable their assessment to take place.
- Where L's costs have already been paid by Mrs A, Amtrust must add 8% simple interest (yearly) to any payments they make. This is to be calculated between the date Mrs A paid the relevant cost and the date of settlement. Any added interest should not be counted towards the limit of indemnity.
- Amtrust may take into account any payments they've already made (either to L or directly to Mrs A) when calculating the remaining limit of indemnity.
- In the event that the limit of indemnity is reached (interest payments aside), Amtrust need not pay over that amount.
- Amtrust must pay Mrs A £250 compensation for the trouble and upset caused. This payment should not count towards the limit of indemnity.

My final decision

My final decision is that I uphold this complaint. I direct Amtrust Europe Limited to take the steps that are set out in the 'putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 26 August 2022.

Richard Annandale
Ombudsman