

The complaint

Mrs C complains that Amtrust Europe Limited unfairly handled a claim under her legal expenses insurance policy.

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

What happened

In February 2021, Mrs C submitted a claim under her legal expenses insurance policy to pursue legal action against her former employer. Amtrust subsequently declined the claim on the basis that its panel solicitors weren't satisfied it enjoyed reasonable prospects of success – which is a requirement for cover under the policy.

Mrs C has raised a complaint, the main points of which are as follows:

- Amtrust didn't deal with her claim in accordance with its timescales, which caused delays at a time when she was subjected to court deadlines.
- Amtrust refused to provide details of who conducted the legal assessment of the claim, failing to operate with openness and transparency.
- Amtrust hadn't used its usual panel solicitors to complete this assessment. Mrs C believes this is because that firm of solicitors are acting for the other side and Amtrust has failed to disclose this conflict of interest.
- The cost of the legal assessment indicates the lawyer didn't have time to conduct a proper and thorough assessment of the case.
- The legal assessment makes assumptions and the wording is ambiguous. It indicates some elements of the claim are strong, but prospects are assessed at below 51%. Mrs C believes the report has been constructed to work in the best interests of Amtrust and she's of the opinion that she has a strong case.
- Amtrust failed to send all the evidence Mrs C submitted in support of her claim to the legal advisors, and the assessment makes reference to not seeing information that Mrs C believes she has already provided.

Our investigator didn't uphold the complaint. She was satisfied that Amtrust had dealt with the claim in line with the policy terms and it hadn't acted unfairly. As Mrs C didn't agree, the complaint was passed to me. And in June 2022, I issued a provisional decision which said:

"I recognise Mrs C's strength of feeling regarding this complaint and I appreciate the circumstances giving rise to her claim have been upsetting and stressful. I also understand that she's suffered some close bereavements during this time, and I send my condolences.

I want to assure Mrs C that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything she's told us. If there's something I've not mentioned, it isn't because I've ignored anything – I haven't. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail she would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

Claim handling

Mrs C complains about the time taken for Amtrust to deal with her claim. The Financial Conduct Authority's "Insurance: Conduct of Business Sourcebook" ("ICOBS") requires insurers to handle claims promptly and fairly. So I've looked at the timeline of events to ensure Amtrust did all it could to progress the claim.

I understand Mrs C resigned from her employment on 6 December 2020. According to her chronology of events, she started ACAS' early conciliation process on 15 December 2020 which completed on 26 January 2021. She submitted her claim to Amtrust on 1 February 2021.

On 8 February 2021, Amtrust reviewed the claim and asked Mrs C to provide further information. Following a call, it was established that Amtrust hadn't received all the documents emailed over due to the size. So Mrs C resent them separately on the same day. But her case wasn't looked at again until 15 February 2021 when Amtrust instructed solicitors to assess prospects.

At that time, Mrs C informed Amtrust that she needed to issue her claim in the Employment Tribunal by 25 February 2021. And she chased again on 1 March 2021 when she hadn't received a response.

Amtrust contacted Mrs C on 8 March 2021 to say it hadn't received the legal assessment back yet, but it had chased the solicitors. I can see that the assessment was subsequently received, and it was dated 8 March 2021, but Mrs C wasn't informed of the outcome until 15 March 2021.

On 23 March 2021, Mrs C submitted further information which Amtrust passed onto the solicitors for a reassessment on 30 March 2021. I can see that the reassessment is dated 12 April 2021, but the outcome wasn't passed on to Mrs C until 20 April 2021.

From the timeline above, I'm not persuaded that Amtrust dealt with the claim as promptly as it could've done. I say this for the following reasons:

- Amtrust assessed the claim on 8 February 2021 and was on notice – following a call with Mrs C that day – that its email server had failed to receive all supporting documents due to size limitations.*

Mrs C informed Amtrust that she'd be resending them again that day. So I don't think it was necessary or appropriate to wait a further week before the claim was looked at again, especially given the short timescales involved with employment claims in general.

- Amtrust chased the solicitors for the legal assessment on 8 March 2021, highlighting the urgency. And it appears this was received back the same day. Despite the urgency, that Amtrust was clearly aware of, the assessment wasn't passed on for a*

further week.

- Amtrust took over a week to pass on the outcome of the reassessment in April.

The terms and conditions of Mrs C's legal expenses insurance policy, under the heading "how to make a claim", says the following: "As soon as you have a legal problem that you may require assistance with under this insurance you should telephone the Legal Helpline."

So I've thought about whether Mrs C did enough to notify her claim as soon as possible to avoid any delays. Mrs C was aware of her legal problem when she resigned on 6 December 2020. Whilst she didn't raise her claim until almost two months later, this was because she was completing ACAS' early conciliation process. She submitted her claim within a few days after receiving the certificate.

I'm mindful that Amtrust may not have been able to progress Mrs C's claim without the completion of this process, so I don't think notifying the claim any earlier would've resulted in Mrs C receiving the claims decision sooner.

So although I'm mindful that Amtrust was against the clock from the outset and it has a duty to assess the claim correctly despite the time pressures, as a legal expenses insurer it's aware of the short timescales involved with employment cases and I'm persuaded it could've done more to progress this case.

For these reasons, I intend to uphold this part of Mrs C's complaint and award compensation of £200, as I'm persuaded these delays would've caused her additional stress at an already difficult time. I'm satisfied this is a fair amount on the basis that the delays weren't lengthy and made no difference to the overall outcome of the claim, which I'll come onto below.

Panel solicitor arrangement

I understand Mrs C is concerned about Amtrust's choice of solicitor. She says she's aware that Amtrust normally uses a solicitor that I'll refer to as Firm A. But in her case, it has used Firm B. She believes that Amtrust sent her case to Firm A but that they were conflicted due to acting for the other side. She says Amtrust should've declared the conflict of interest.

Like all other legal expenses insurers, Amtrust has arrangements with a panel of different solicitors' firms. Both Firm A and Firm B are on its panel, and it's Amtrust's decision what firm it instructs based on the circumstances of the case and the agreements it has in place.

I've not seen anything to suggest that Firm A were instructed on this case. But even if they were, I don't think Amtrust are required to declare the conflict of interest if it didn't go on to use them for the assessment.

Mrs C has also raised concerns that Amtrust didn't disclose the details of Firm B or the lawyer that conducted the assessment. She found their details following a SAR request. I appreciate Mrs C's comments that Amtrust hasn't acted with openness or transparency here.

But there's no requirement for Amtrust to provide this information, and some insurers won't if the assessment has been obtained for the purposes of establishing cover only. What Mrs C needs to know is the substance of the advice, so that she can understand why the claim was declined. And I'm satisfied that she was given this information.

Mrs C is aware, following her SAR, what Amtrust paid Firm B for the legal assessment and subsequent reassessment. She's concerned that the amount paid was minimal, which would've impacted the amount of work undertaken to assess her case.

But the commercial arrangements with panel solicitors often include an agreement that work will be conducted at a fixed fee, usually at discounted rates. This is based on the volumes of work the insurer will provide the firm. For this reason, I'm not persuaded the fees paid had any impact on the quality of the work undertaken.

Legal assessment

The terms and conditions of Mrs C's legal expenses insurance policy says cover is only available while there are prospects of success defined as a "more than 50% chance of winning the case and achieving a positive outcome".

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

In this case, Amtrust obtained the advice of a panel firm. And they were of the opinion that, based on the information available, the claim had prospects of around 30-40%. So the policy terms and conditions had not been met.

Having considered the legal assessment, I'm satisfied it's properly written and well-reasoned. And it's been obtained from a suitably qualified lawyer. So I haven't seen anything to persuade me that Amtrust shouldn't rely on it.

Rather it's up to Mrs C to obtain a contrary legal opinion on the merits of her claim, at her own cost if she wants to challenge this further. If such an opinion is supportive then Amtrust should reconsider the claim.

I appreciate Mrs C believes Amtrust hasn't passed on all available evidence to the solicitors, but Amtrust say it has. I know there were problems initially with Amtrust receiving Mrs C's emails due to the size. So I would suggest she clarifies with Amtrust exactly what evidence it has. And if there is anything additional, she should submit this to enable Amtrust to seek a further reassessment."

Responses to my provisional decision

Amtrust disagrees with the compensation awarded. It refers to an investigator's opinion on another complaint with our service which says that a five working day turnaround for responses isn't unreasonable and that a business' service standards are a commercial decision it is entitled to make.

Mrs C doesn't accept that the legal opinion obtained by Amtrust was from a suitably qualified lawyer because the author of the assessment is a paralegal. But Mrs C appears to accept the remainder of the provisional 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.

I appreciate Amtrust's comments regarding its service standards. To clarify, it's not my role to determine whether its five working day turnaround time is fair and reasonable. And that's not what I've done here.

It's my role to decide whether Amtrust has acted promptly and fairly, in accordance with its obligations under ICOBS, in the individual circumstances of this complaint. I've thought about Amtrust's submissions following my provisional decision. But I'm still not persuaded that it dealt with this claim as promptly as it could have.

I don't intend to repeat my provisional decision here, but I've identified specific times when Amtrust allowed this claim to be put back into its five working day turnaround when it wasn't appropriate to do so given the time restraints involved.

In particular, on 8 February 2021 Amtrust were on notice that Mrs C's supporting documents hadn't been received due to restrictions on its email system. Mrs C said she would resend them separately that day. So it's not clear why Amtrust felt it was appropriate for this claim to be put back into the turnaround, when Mrs C had already waited five days for her claim to be picked up and it was due to circumstances beyond her control that her documents weren't received.

Furthermore, on 8 March 2021 Amtrust chased the solicitors for the legal assessment. As the claims handler was aware of the urgency – having highlighted this to the solicitors – it's not clear why the claim would go back into the turnaround again when the assessment was then received that same day.

Whilst a business will have processes in place on how it deals with incoming correspondence, these processes shouldn't come before the best interests of a legal claim. And it doesn't absolve a business' obligations under ICOBS. There will be situations where it is common sense and good judgement that it's not appropriate for a claim to be left unactioned for five working days and I've identified several circumstances in the handling of this claim where that is the case.

I've also thought about Mrs C's concerns over whether the legal assessment was obtained from a suitably qualified lawyer, due to the author being a paralegal. But it's common practice for a paralegal to undertake a prospects assessment and this is done so with the supervision of a senior colleague. So I'm not persuaded that Amtrust can't rely on this opinion.

Having considered the submissions from both sides, I've reached the same conclusion as set out in my provisional decision for the reasons explained.

My final decision

I'm upholding the complaint and direct Amtrust Europe Limited to pay compensation of £200. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 July 2022.

Sheryl Sibley
Ombudsman