

The complaint

Mrs C is unhappy Amtrust Europe Limited withdrew legal expenses insurance (LEI) cover having agreed to cover an employment claim she wished to pursue. Mrs C says she's missed out on the opportunity to take the case to an employment tribunal as a result, and she'll have to accept a lower settlement amount. She also wants to be compensated for the distress she's experienced as she feels she's supplied medical information unnecessarily.

Any reference to Mrs C and Amtrust includes the actions of their representatives and agents.

What happened

- Mrs C has a legal expenses insurance policy which is underwritten by Amtrust.
- In October 2021, she submitted a claim as she wanted cover to pursue an employment claim for disability discrimination.
- Amtrust asked Mrs C to provide further information – including medical information – so it could determine whether cover would be granted.
- Mrs C expressed her angst at sharing her medical information but agreed to.
- Mrs C's legal claim was passed to Amtrust's panel firm of solicitors for consideration.
- At the end of November 2021, the solicitors said the claim had reasonable prospects of success.
- On 9 December 2021, the solicitors said cover would no longer be provided as Mrs C was an agency worker and this wasn't covered under the relevant section of the policy.
- Amtrust apologised for not having spotted that Mrs C was an agency worker earlier on, and it offered £250 compensation. It also reimbursed Mrs C the excess fee she'd paid and offered to delete the medical information. Its panel solicitors also offered to try and settle with the defendant (at no cost to Mrs C) as a goodwill gesture.
- Mrs C brought a complaint to this service. Our investigator thought Amtrust should pay £500 compensation to reflect the difficulties Mrs C had experienced considering her disability.
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- Amtrust disagreed and asked for an ombudsman's decision. And so, the complaint has been passed to me.
- On 6 July 2022, I issued a provisional decision, in it I said:

What I've provisionally 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. Having done so, I'm intending to

reach a different outcome to the investigator, and I'll explain why.

Mrs C says she's missed out on the opportunity to take her claim to an employment tribunal because of Amtrust's actions, and that she'll have to accept a lower financial settlement for her legal claim as a result.

From what I've seen, having been told in mid-December that cover had been withdrawn, Mrs C was in contact with another firm of solicitors – and was discussing the matter with them. I understand Mrs C wants to provide medical information which shows she couldn't take her claim forward at that time because of poor health, but I'm not persuaded this would change my thinking. I say this because as she was discussing the case with another solicitor during this same period, I think it's reasonable to conclude that if she was able to instruct another solicitor, she was likely able to lodge the claim with the tribunal. Furthermore, Mrs C had until early January 2022 to lodge her employment claim with the tribunal– meaning there was a period of approximately four weeks for her to do so – which I think was a reasonable amount of time. So, whilst I accept Amtrust's actions did eat into the time she had to lodge her claim, I'm not persuaded it prevented her from doing so.

Mrs C has said that because she doesn't have legal representation through Amtrust she'll have to accept a lower settlement. No doubt it was disappointing for Mrs C to be told she no longer had cover, but ultimately, she wasn't entitled to it in the first place as her type of employment, namely an agency worker, wasn't covered. If Amtrust hadn't made its mistake, Mrs C would have been told earlier on that she didn't have cover, and that'd she would have had to seek and fund her own legal representation. So whilst I agree Amtrust fell short in failing to identify early on that she didn't have cover, I'm not persuaded its actions have prejudiced her position that it should be held responsible for her having to possibly accept a lower settlement.

The next issue relates to the impact that sharing medical information with Amtrust had on Mrs C. I recognise that Mrs C's mental health and disability meant she found sharing her medical information particularly challenging. In determining what I think is fair compensation I have kept in mind that the information was shared with Amtrust's panel firm of solicitors who would be reviewing it in a professional capacity and would have been required to treat it sensitively. It's not my intention to diminish how Mrs C felt in sharing her information but by sharing it she's benefited from the panel firm of solicitor's prospects of successassessment – which wasn't something she was entitled to under the policy.

I've considered this, along with the panel solicitors' offer to try and settle the legal claim with the other party and Amtrust's decision to reimburse Mrs C the excess fee. I'm satisfied Amtrust's mistake added to what was already a challenging time for Mrs C, but I'm not persuaded it's reasonable to say the difficulties she experienced at that time are solely attributable to Amtrust's mistake. So, on balance, I'm satisfied £250 is fair compensation, and I won't be recommending it increases this.

I know my provisional decision will be disappointing for Mrs C, but I hope she understands why my final decision is likely to be along these lines.

- Mrs C supplied medical information which she considered showed how her mental health impacted her ability to submit a claim to the employment tribunal.
- Amtrust confirmed it had no further comments to make.

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.

Having done so, my decision remains the same, and I'll explain why.

The new medical information from Mrs C's doctor relates to the period January 2022 onwards and it explains how the sad passing of a close relative in the first week of January exacerbated Mrs C's ill health at the time. It goes on to say that Mrs C also contracted COVID in mid-January and became very unwell.

I'm sorry to hear of the struggles Mrs C faced during this time, but I must keep in mind that these events happened on or after the deadline for submitting a claim to the employment tribunal. So, I'm not persuaded these events *prevented* her from lodging a claim. No doubt Mrs C was going through a very difficult time, but I don't think it would be fair to say Amtrust is responsible for her not having lodged her claim. As I explained in my provisional decision, as Mrs C was able to contact another solicitor in December 2021, I think it was more likely than not that she could have lodged the claim with the tribunal by the given deadline.

I know my decision will disappoint Mrs C but based on what I've seen, I'm satisfied the offer from Amtrust is fair and so I won't be asking it to increase it.

My final decision

Amtrust Europe Limited has already made an offer to pay £250.00 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Amtrust Europe Limited should pay £250.00

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 30 August 2022.

Nicola Beakhust
Ombudsman