DRN-4095487

The complaint

Ms O complains about the services she's received from Atkinson Rose LLP (AR) when dealing with her Employment Tribunal (ET) claim.

Ms O is represented by Ms M in making her complaint but for ease of reading I will only refer to Ms O in my decision.

What happened

Ms O said she agreed to use the services of AR to make an ET claim against her local authority for unfair dismissal. She said she'd been looking for solicitors to act for her for some time and after seeing an article about a similar case she'd contacted the barrister involved who referred her to AR. Ms O said she was led to believe that AR were employment law solicitors. She said she agreed to use their services for a fixed fee of £5,000 plus VAT, payable in four monthly instalments of £1,500. Ms O paid AR £2,400. In June 2021, Ms O said AR submitted a claim to the ET after which she represented herself while she continued to seek further legal assistance. On appointment of her solicitors Ms O said she found the claim submitted by AR was poorly drafted as some of her claims had been omitted. She said her solicitors had to resubmit her claim with the necessary amendments.

Ms O said as she'd provided AR with the relevant paperwork for her unfair dismissal claim they'd been negligent in their submission. She also said they'd provided a poor service as they'd failed to respond to phone calls and contact for information. She said AR should reimburse her the money she'd already paid to them £2,400 as her claim had to be resubmitted.

Ms O accepted she'd fallen behind in her repayments to AR but disputed the payment of any fee after she discovered AR weren't solicitors but a claims management company. Ms O said she'd to use the services of a solicitor to put right what AR had done which incurred potential costs of over £40,000.

Ms O said after disputing this with AR they'd invoiced her for payment of over £10,000 as they said she was in breach of their contract. And had started court proceedings against her for recovery of their fee. She complained to AR.

AR said they'd made clear that they were regulated by the Financial Conduct Authority (FCA) in respect of claims management activities. They said Ms O had agreed to their terms and conditions and that she would initially pay a fixed fee of £5,000 plus VAT for the drafting and submitting of her ET claim. After which any further work would accrue another fee. AR said they'd drafted, and with Ms O's approval had submitted her claim to the ET. They said as Ms O hadn't maintained her monthly instalments they were justified in charging their fee on their hourly rate. Ms O wasn't happy with AR's response and referred her complaint to us.

Our investigator said AR had made clear they were a claims management company (CMC) and they'd submitted Ms O's claim to the ET. He said that as AR had carried out some work for Ms O in her ET claim a fee was fair. He considered the payment already made by Ms O of £2,400 shouldn't be reimbursed but said AR shouldn't charge Ms O anything further.

Ms O didn't agree and asked for an ombudsman to decide.

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, I've reached the same overall conclusions as our investigator, and for broadly the same reasons. I'll explain why.

Firstly it isn't this service's role to investigate Ms O's complaint against her former employer. And the costs Ms O incurs from her solicitors for work done for her ET claim would be subject to a finding by the ET. So I won't comment on this or the merits of Ms O's ET case

I know Ms O said she used AR's services as she thought they were solicitors, but I've not seen anything to show me that AR are, or were, regulated as solicitors – they're regulated as a CMC and complaints about CMC's are dealt with by the Claims Management Ombudsman. In reaching my decision I've considered whether AR has treated Ms O fairly and reasonably when giving her advice and investigating or representing her claim.

While I've fully considered all the evidence, and Ms O's comments, I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

As a CMC,AR are required to provide Ms O with information that is fair, clear and not misleading before she agrees to them representing her. I've looked at AR's website which clearly says: "*Atkinson Rose LLP are a claims management company".*

The website gives details of AR's team and their approach. And shows they're regulated by the Financial Conduct Authority (FCA) in respect of claims management activities. They also refer to speaking to a lawyer. A lawyer is anyone who could give legal advice. So, this term encompasses solicitors, barristers, and legal executives. A solicitor is a lawyer who gives legal advice and represents their client in the court. The Solicitors Regulation Authority regulates solicitors in England and Wales.

Employment claims are very individual and, however similar, no two are exactly alike. Because of this I wouldn't expect AR to publish a schedule of costs on their website, as costs can vary from claim to claim, depending on exactly what work needs to be done. What I would expect is they're transparent and upfront about how much they're charging, and what for. And I think AR has done this.

I can see in March 2021, AR sent Ms O a Client Care Letter (CCL) after she contacted them about her claim. This confirmed they'd agree to act for her on a fixed fee basis, charging £5,000 plus VAT, in total £6,000 to draft and submit Ms O's claim to the ET. With repayment by instalments of £1,500 over four months. They explained that their retainer would end at this point, but they could *"then consider moving forward on a different type of retainer."* They also explained that, even though this didn't apply to Ms O because she was paying a fixed fee, they charged £300 per hour for the work they did. AR also said that, if Ms O terminated the retainer, or if they had to terminate it because she breached the conditions, they had the right *"to bill you on an hourly basis for the work that had been carried out."* The CCL also told

Ms O that if she was dissatisfied with AR's service she could complain to the *"Claims Management Regulator".*

By signing that she had read and understood the agreement at the end of March 2021, Ms O had agreed to use AR's services and to pay their fixed fee by monthly instalments. I can see AR drafted and submitted Ms O's claim to the ET in June 2021. I can't see any new retainer being agreed to, so I'd consider the agreement was made based on the original retainer, a fixed fee agreement of £5,000 plus VAT.

I understand that Ms O found it difficult to maintain the monthly instalments and at one point asked AR if her claim could be considered under a No Win No Fee agreement. But Ms O had already agreed to a fixed fee. To be represented on a no win no fee basis isn't something I'd expect to be offered to all AR's clients. They're usually only offered where there's a high chance of success, and where the percentage success fee charged would at least cover the cost of all the work that needed to be done. I can see from the CCL that AR had advised Ms O that the expected costs for her claim could range from £10,000 to £20,000. So, I don't think AR did anything wrong by not offering Ms O a no win no fee option, either initially, or later in the process when she'd difficulty in making her monthly instalments.

In September 2022, AR sent Ms O an invoice based on their hourly rate and the work they'd done for her, £12,424.80 less the £2,400 leaving an outstanding balance of £10,024.80, as they considered Ms O was in breach of the agreement as she'd failed to maintain the agreed monthly instalments. And as stated in the CCL they'd used their right to calculate their fee based on an hourly rate for the work they'd done.

The CCL that Ms O had signed also meant she was: *"Agreeing not to represent yourself or instruct anyone else to represent you at any Tribunal hearing unless we agree in advance".*

Ms O said she believed her agreement with AR ended upon the submission of her claim, in June 2021. And she'd gone on to represent herself and instructed a law firm to act for her. I can understand Ms O thinking this as she hadn't agreed to another retainer with AR for her claim. But the CCL says under "*Termination*":

"*This agreement has a 14 day "cooling off period" whereby you can change your mind and cancel it without any charge. After that point, the agreement terminates automatically once your claim within the Employment Tribunal has ended via either judgement, settlement, withdrawal or any other method. It does not cover any enforcement of the award, nor the bringing or responding to any appeals."*

As Ms O's ET case *"hadn't ended via either judgement, settlement, withdrawal or any other method"* she still had an agreement with AR. And the CCL says that after the claim is submitted, they would *"undertake another free risk assessment once the defence has been filed".* I know Ms O has said she'd been caused a lot of stress in trying to handle the ET claim after its submission, but she still had an agreement with AR and could have continued to use their services albeit with a different type of retainer.

So, when Ms O stopped paying the monthly instalments, she'd breached the agreement she had with AR. In doing so, under the original retainer, they had the right to charge an hourly rate based on the work they'd done.

But I've also considered that in November 2022 Ms O said her solicitors had to attend a two-day preliminary hearing with the ET for them to consider an amendment application for her claim because AR had omitted claims. And had made a number of errors in their submission to the ET. The judge's outcome from this hearing showed while some of the amendments

were straight forward, not controversial or a simple re labelling of the existing claim others weren't. I can see that several new claims were asked to be considered, some were accepted as they'd arisen from facts already pleaded or indicated to in the submission made by AR. But others were rejected as by their inclusion at this date meant there would be a disadvantage to the respondent in the case, Ms O's former employer. So, while AR did draft and submit Ms O's claim for which she'd agreed a fixed fee in payment, I think its clear the submission didn't cover all of the claims that Ms O could have had considered by the ET. And there was a need to make amendments to aspects of AR's submission.

AR has commented that Ms O had sight of the submission and was happy with its content. But in seeking advice Ms O acknowledges she needed help with her ET claim and looked for experts in this field to help her. So, I don't think its unreasonable that she would have been reliant on AR about the advice and recommendations they gave to her in the drafting of the submission.

While I don't think AR has done anything wrong in asking Ms O to pay their fee, as it adheres to the agreement, she'd with them. Its clear that Ms O has incurred additional costs after AR submitted her ET claim as it needed to be amended. And there are some claims she is now too late to bring to the tribunal for consideration. This could have a detrimental impact on the outcome to Ms O's claim which does seem unfair.

So, I agree with our investigator as AR did draft and submit the initial claim to the ET for Ms O, its fair and reasonable for them to be paid a fee. But I don't think its fair given Ms O's additional costs for the amendments and omissions that relate to the claim AR submitted for her, that she should have to pay a further £10,024.80 to them. I think a fair and reasonable resolution for both parties, would be for AR to waive any fees above the £2,400 already paid by Ms O.

I understand that AR has placed a stay on the court hearing for recovery of their fees pending the outcome from this service. The Claims Management Ombudsman – a Financial Ombudsman Service operates according to a set of rules made by the FCA. These rules are set out in a section of the FCA's Handbook called Dispute Resolution: Complaints ("DISP"). DISP 3.6.6(3) says: *"if the complainant notifies the Ombudsman that he accepts the determination within that time limit, it is final and binding on both parties".* And DISP 3.6.6(4) "…..*if the complainant does not notify the Ombudsman that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it…"*

Its now for Ms O to decide whether to accept my decision or not.

My final decision

I uphold this complaint. And ask Atkinson Rose LLP to waive any fee above the £2400 already paid by Ms O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 23 August 2023.

Anne Scarr
Ombudsman