

## The complaint

Mrs R complains about Amtrust Europe Limited's decision to decline her claim for legal expenses insurance. She's also unhappy with the service they gave in handling her claim.

## What happened

Mrs R had legal expenses insurance (LEI) with Amtrust Europe Limited (Amtrust) as part of her home insurance policy. She wanted to take legal action against her employer. She took advice about that from an adviser. Mrs R said the adviser provided poor advice and caused her to miss a time limit that meant her case against the employer was out of time.

Mrs R claimed on her LEI policy for the costs of taking legal action against the adviser for breach of contract. Amtrust declined her LEI claim. They considered it under the contracts section of the policy. But they said it fell within an exclusion for claims *"Relating to your business, venture for gain, profession or employment"*.

Mrs R disagreed and complained. Amtrust didn't uphold the complaint, so she brought it to the Financial Ombudsman Service.

Our investigator upheld the complaint. She thought, broadly, that the claim Mrs R wanted to make against the adviser related to the advice they gave under a contract for services; that advice was separate from her contract of employment; and the exclusion didn't apply. She said Amtrust should progress the LEI claim and pay Mrs R compensation of £200 for distress and inconvenience.

Since Amtrust didn't agree, the complaint's been passed to me 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.

I'm sorry to hear of the difficult time Mrs R has had with her employer. I can understand the issues she's had with her adviser and the concerns she's raised about her LEI claim will have added to an already stressful situation.

We expect insurers to consider claims promptly and fairly and not to decline claims unreasonably in line with Financial Conduct Authority rules. I'll consider Mrs R's complaint against that background. The starting point is the LEI policy.

Subject to its terms, conditions and exclusions, the LEI policy gives Mrs R limited cover for legal costs in relation to certain events. They include pursuing contractual claims under section 2 which says:

**"2. Contract  
What is insured:**

***Costs to pursue or defend a legal action following a breach of a contract you***

have for:

a) *Buying or renting goods or services for **your** private use.*

...

***“What is not insured***

***Claims***

...

c) *Relating to **your** business, venture for gain, profession or employment...”*

Amtrust is setting out the types of contract disputes for which they offer cover. These terms are common in LEI policies, although wording may differ from one policy to another, and we don't generally consider them to be unfair.

Amtrust accept Mrs R's claim falls within section 2. I think that's right since she was getting guidance from the adviser, which she was entitled to as she'd paid her subscription, in her personal capacity. But Amtrust rely on exclusion c) to decline the claim.

Mrs R wants to pursue the adviser for the breach of contract/professional negligence in relation to the handling of her employment claim, subscription payments she made to the adviser and compensation for personal injury resulting from the service she received. So, the question is whether Mrs R's claim against the adviser “relates” to her employment and, if so, whether it's fair for Amtrust to rely on the exclusion to decline the claim.

Amtrust point out the exclusion doesn't say the claim has to be against the employer; if it did, the claim would be covered under the employment section of the policy and not under the contract section; and since Mrs R's claim against the adviser would be for negligent advice about the limitation date for taking legal action against the employer, it must be a claim “relating” to Mrs R's employment.

It's true to say the exclusion is widely drafted. It could be said that, but for the employment dispute, Mrs R would never have contacted the adviser for advice. And Amtrust may be right that on a strict interpretation the exclusion applies here. But I think it's fair to set aside a strict interpretation of the exclusion in the individual circumstances of this complaint to come to an outcome that's fair and reasonable.

Mrs R's claims against her employer and adviser are separate. They arise out of two different contracts. Her claim against the employer would relate to her contract of employment. Her claim against the adviser would be based on her contract with them for advice. It so happens Mrs R was seeking advice about her employment. But she could have approached the adviser for help in relation to several legal issues. Its legal arm provides a wide range of advice according to their website. If she'd been asking for support on something different, the exclusion wouldn't apply. I don't think it's fair Mrs R should miss out on cover just because the advice was about employment issues and hadn't yet been passed over to the adviser's legal team.

Amtrust say Mrs R's claim against the employer would be considered under the employment section of the policy. I think the purpose of the exclusion was probably to avoid claims relating to disputes between employers and employees being dealt with under the contracts section. But even if I'm wrong about that, it's not fair to direct Mrs R to that part of the policy. Mrs R doesn't want to claim against her employer. From what she's explained, it's too late for that. And I understand Amtrust has already considered and declined a claim under that

section.

Whilst Mrs R would be hoping to recover from the adviser what she's lost out on in any claim she might have successfully made against the employer, her claim against the adviser is wider than that. She is also seeking compensation for personal injury.

Amtrust say Mrs R's claim for personal injury would depend on her proving she has a valid claim for professional negligence which is not covered under the policy. I haven't seen a specific exclusion for professional negligence claims in the policy if that's what Amtrust were suggesting. They may simply be referring to their point that Mrs R's claim against the adviser falls within the exclusion. The basis and strength of a personal injury claim can only be determined by solicitors advising on the prospects of success. But it wouldn't be fair to rule that claim out by declining cover before it reaches that stage.

I also note there's a separate section in the LEI policy for personal injury claims which covers *"Costs to pursue a legal action following an event resulting in your personal injury or death against the person or organisation directly responsible."* *"Claims Arising from medical or clinical treatment, advice, assistance or care"* aren't covered. But there aren't any other relevant exclusions. It's possible Mrs R has a valid claim under that section depending on the allegations she is making against the adviser and whether they meet the policy definition. Amtrust would need to consider that.

Bearing the above in mind, I think it would be fair for Amtrust to deal with the claim in line with the terms of the policy ignoring the exclusion for claims relating to Mrs R's employment under the contracts section.

Mrs R's explained she was unhappy not only with the policy decision but also the way in which her claim had been handled. She's told us Amtrust's handling of her claim caused her to relive the experiences she'd had that led her to want to pursue her employer in the first place. And she's said the mistakes she alleges against the adviser affected her too. So, I can understand the rejection of her claim will have added to her overall distress.

Amtrust explained their delay in dealing with her complaint was because she hadn't made a formal complaint. She'd asked for details of the complaint process which they gave her. I don't think that's unreasonable. But it's fair to compensate her for the impact the rejection of the claim has had on her. I think the £200 compensation our investigator proposed is fair and reasonable in the circumstances.

### **Putting things right**

Amtrust should now progress the claim and pay Mrs R the compensation on the basis I'll set out below.

### **My final decision**

My final decision is that I uphold Mrs R's complaint.

I direct Amtrust Europe Limited to progress Mrs R's claim, ignoring the exclusion under the contract section of the LEI policy for claims relating to her employment, and in line with the remaining terms and conditions of the policy. In addition, I direct them to pay Mrs R £200 compensation for distress and inconvenience.

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

Julia Wilkinson  
**Ombudsman**