

The complaint

Mr H is unhappy with what happened with Amtrust Europe Limited when he made an unemployment claim.

What happened

Mr H took out an income protection policy in July 2022. The policy was underwritten by Amtrust and provided cover in the event of accident, sickness or unemployment.

In May 2023 he was made redundant, so Mr H made a claim on his policy. Amtrust approved his claim but as he was receiving three months' pay in lieu of notice, his first unemployment benefit payment wasn't due to be made until 11 October 2023 under the terms of the policy.

During his period of unemployment Mr H began searching for a new job. But he became concerned about the "failed probation" exclusion in his policy - he thought it may deter him from applying for positions that stretched his skills because he was worried he wouldn't have a successful claim if the new role ended during the probation period. So he asked Amtrust if they'd be willing to waive the exclusion if that happened.

Amtrust confirmed Mr H couldn't turn down jobs because they had a probation period. They explained most people enter a probationary period when starting a new job, so this exclusion applies to all policyholders who obtain employment again after being unemployed. They confirmed they wouldn't be willing to waive the exclusion if he was unable to complete the probationary period in his next role.

On 13 September Mr H emailed Amtrust to say *"I have not put in the final forms for my claim because I found a new job in July. Unfortunately, much to my disappointment, that was terminated last Friday, during the probation period."*

Amtrust confirmed the failed probation exclusion would be applied and Mr H wouldn't receive the unemployment benefit he was expecting from his redundancy in May. Unhappy with the failed probation exclusion, Mr H referred the matter to our service.

Our investigator looked into what had happened and said she thought Amtrust had acted fairly by applying the exclusion. Mr H disagreed. In summary he said:

- Amtrust reached their conclusion without any supporting evidence because his employer refused to state any reason for the end of his employment. He told the insurer he wasn't to blame, and this evidence should be taken into account.
- It's clear from Amtrust's internal system notes that the probation clause is only applied if the claimant is to blame for the employment ending.
- His other income protection policy paid out based on the same evidence.
- Amtrust hadn't returned him the premium they had promised.

Our investigator looked into the premium refund issue and found Amtrust had said if Mr H wanted to cancel the policy they would refund his premium from the date of his unemployment in August 2023 (which amounted to £289.03).

Mr H said he'd cancelled his policy, but he didn't receive a refund, so our investigator contacted Amtrust. They confirmed the refund was paid on 12 January 2024.

The case has now 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.

The relevant industry rules say an insurer must handle claims promptly and fairly and shouldn't unreasonably reject a claim.

The exclusions for unemployment are set out in the policy terms at section 4.2.1. the exclusions are listed under the heading "*No benefit will be payable to you if.....*"

Relevant to this case are the exclusions for if:

- *You failed to pass a trial or probationary period.*
- *Your Unemployment arises as a result of your own act, willful misconduct, negligence, dishonesty or fraud.*

There is no dispute that Mr H's employment ended during the probation period of his new employment. Amtrust based their claim decision on the information Mr H provided to them himself on 13 September when he told them he'd found a new job in July, but it had terminated the week before "*during the probation period.*"

Amtrust also contacted Mr H's former employer to see if they could ascertain any further information. The response they received said "*the employment relationship broke down irretrievably and this was resolved via a settlement agreement, the terms of which much remain confidential. We will not be supplying any further information.*"

It isn't unusual for the insurer to reach out to the employer in these types of claims. I think it was fair in the circumstances here as Mr H's employment may have terminated during that period, for a specific reason other than him not passing his probation – and the insurer may think it's unfair to apply the exclusion in those circumstances. But as the employer confirmed "*the employment relationship broke down irretrievably*" and didn't give any reasons to the contrary, I think it was fair for Amtrust to apply the exclusion here for failed probation period.

I note Mr H's concerns that his claim was declined because Amtrust think he was to blame for his employment ending during the probation period. But I'm not persuaded that's the case. The policy term on failed probation doesn't say anything about the policy holder needing to be at fault for it to be applied. From the wording of the policy terms, no explanation is needed. It is enough that a policy holder just didn't pass the probationary period.

The exclusion listed below the probation term is for when "*Unemployment arises as a result of your own act, willful misconduct, negligence, dishonesty or fraud*" and Amtrust have made no mention of this exclusion. So although Amtrust's internal system notes make reference to Mr H being at fault, I don't think that made a difference here.

I'm also mindful that Mr H raised several questions to Amtrust about the exclusion for failed probation, before he disclosed he'd got a new role. I'm satisfied Amtrust were clear to him in their responses that the exclusion would be applied if he failed probation in a new role. And that his previous claim for redundancy would be impacted.

I note Mr H's comments about his other insurance policy paying out, but I'm unable to comment on another policy that may have different terms and conditions.

I understand Mr H feels it's unfair that he's paid premium for a policy that doesn't provide cover for him. But, his policy didn't only provide cover for unemployment – it also provided cover for accident and sickness. As has already been advised, if Mr H also feels this policy was mis-sold to him then this would be a separate complaint against the business that sold the policy. And any refund of premiums that have already taken place would be taken into account.

To summarise, it's unfortunate Mr H's second role was terminated during the probationary period. I understand his disappointment and frustration with the situation he found himself in when the exclusion was applied and he was unable to receive the benefit. But I'm satisfied Mr H was adequately told and made aware of what would happen in these circumstances.

My final decision

For the reasons explained above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 April 2024.

Georgina Gill
Ombudsman