

The complaint

Mr S is unhappy with what Amtrust Europe Limited did following a claim he made on his legal expenses insurance policy.

What happened

Mr S had a dispute with his former employer relating to pay and a bonus. In May 2021 he contacted Amtrust seeking assistance in bringing an Employment Tribunal (ET) claim. Amtrust didn't think the claim had reasonable prospects of success.

A complaint about that decision was considered by us in January 2023. Our investigator wasn't satisfied the prospects of success opinion was one Amtrust could rely on because it hadn't been carried out by a suitably qualified legal expert. In order to resolve the complaint Amtrust agreed to obtain an assessment from a barrister.

That opinion also concluded Mr S's claim didn't have reasonable prospects of success. After being provided with further information counsel reviewed matters but this didn't lead them to change their view. Mr S didn't think Amtrust should have relied on the new assessment. And he said having pursued the claim through his own solicitors he'd achieved a successful outcome. He thought Amtrust should reimburse the legal fees he'd incurred which he thought his policy should have covered.

Our investigator thought the legal assessment from the barrister was properly written and reasoned and Amtrust was entitled to rely on it. However, he thought there had been some service issues in the handling of the claim for which Amtrust agreed to pay Mr S £100. Mr S didn't agree with his outcome so I need to reach a final 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.

The relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr S's policy. I don't think it's in dispute that this could potentially cover the claim he wants to bring as Employment Disputes are an insured event under the policy. But it's a condition of the policy that a claim has prospects of success which it defines as:

"There must be a 51% or greater chance of winning the case and achieving a positive outcome. A positive outcome includes, but is not limited to, recovering the amount of money at stake, enforcing a judgment or achieving an outcome which best serves your interests."

Our long standing approach is that, as an insurer isn't a legal expert, we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done, we think it's reasonable for

an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case, following the outcome of Mr S's previous complaint, Amtrust referred the matter to a barrister for them to review whether the claim did have reasonable prospects of success. I've reviewed their opinion and I think it is properly written and reasoned. I can also see that the barrister who carried out that assessment is experienced in employment law and listed as regularly carrying out ET work.

I appreciate the barrister does appear to have been in error when suggesting Mr S wouldn't be able to pursue his ET claim as it hadn't been lodged in time (Mr S had in fact pursued the claim using his own solicitors). But I don't think that means Amtrust couldn't rely on the assessment. It's clear from the assessment that, whether the claim was in time or not, it wouldn't have reasonable prospects of success for other reasons.

I think it was right Amtrust asked the barrister to review matters once Mr S drew attention to documents he didn't feel had been considered. And counsel explained in a revised opinion why that didn't make a difference to their thinking. I don't think there was any reason why Amtrust shouldn't have relied on that opinion and I don't think it acted unreasonably in concluding Mr S's claim didn't meet the policy requirements and so wasn't one it should fund (and that decision would have been the same if the assessment had been properly carried out when the claim was initially considered).

I appreciate Mr S was subsequently able to achieve a successful outcome to his claim. But I don't think that means Amtrust was wrong to rely on the assessment either. A negative prospects assessment doesn't mean a customer has no chance of winning their case; just that it's unlikely. And there may have been other factors that led his former employer to offer a settlement in this case.

Mr S subsequently raised concerns about what documents the barrister had considered. Amtrust has provided details of what information was provided to the barrister and his assessments set out the documents he'd primarily relied on to reach his outcome. I don't think there was further action Amtrust needed to take in response to the queries Mr S raised. And while I understand he's concerned about the time the barrister took to complete their assessment there isn't a set timeframe for that; the question is whether the opinion is itself properly written and reasoned and I've already concluded it was.

However, I do accept that there were some service failings by Amtrust when dealing with the claim, in particular there was a delay of over a month in it providing Mr S with the revised opinion from the barrister. I appreciate that will have caused him some inconvenience. But I think the £100 Amtrust has now agreed to pay does enough to put things right here.

My final decision

I've decided to uphold this complaint in part. Amtrust Europe Limited will need to put things right by paying Mr S £100. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 June 2024.

James Park
Ombudsman