

The complaint

Mr B complains that Amtrust Europe Limited unfairly refused to fund a claim under his legal expenses insurance policy.

Where I refer to Amtrust, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

In March 2022, Mr B made a claim under his legal expenses insurance policy to pursue an employment dispute as he'd been suspended from work. He was subsequently dismissed in April 2022.

Amtrust declined the claim, so Mr B raised a complaint. And in May 2022, Amtrust issued its final response maintaining its position that cover wasn't available.

In July 2023, Mr B returned to Amtrust explaining that he'd funded his legal case himself so far but could no longer afford to. He asked that his claim be reconsidered. But Amtrust said the series of events giving rise to Mr B's dismissal started in March 2021 when he received a written warning. This was prior to the inception of the policy in October 2021.

Mr B didn't agree. He referred Amtrust to comments made in the dismissal letter which specifically said the incident in March 2021 wasn't taken into account by his ex-employer when reaching the decision to terminate his employment. So he didn't think this incident could be considered as part of the series of events which led to his claim for unfair dismissal and discrimination.

Amtrust agreed to seek an underwriting decision. And having done so, it agreed to cover the claim. It asked Mr B to provide a prospects assessment from his barrister.

Mr B said he'd already provided confirmation that his claim enjoyed reasonable prospects of success. He said his tribunal hearing was in two weeks and cover under the policy was required urgently. But Amtrust maintained that it hadn't seen satisfactory evidence that reasonable prospects existed. Mr B went on to win his legal case in court.

Mr B raised a complaint, which he brought to our service. And our Investigator upheld it. She was satisfied Amtrust had enough information to accept the claim in 2022 and that it should've obtained a prospects assessment from its panel solicitors rather than insist Mr B provide this himself. She recommended that Amtrust reimburse Mr B his reasonable and necessary legal fees incurred from March 2022 to conclusion of his claim plus 8% interest.

Whilst Mr B accepted our Investigator's findings, Amtrust didn't. So the complaint has 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 Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires Amtrust to handle claims promptly and fairly, provide information on the claims progress, and to not unreasonably reject a claim. I've kept this in mind when considering Mr B's complaint.

A requirement for cover under the terms of Mr B's legal expenses insurance policy is that the insured event must take place within the period of insurance. The policy defines an insured event as *"the incident or the first of a series of incidents which may lead to a claim under this insurance"*.

Amtrust initially believed the first of the series of events began in March 2021, but in August 2023 it accepted this wasn't the case.

I can't see that Amtrust had any additional information at that time which changed its opinion. I say this because the dismissal letter was available in May 2022 when it maintained its decision to decline Mr B's claim. Whilst I can't say for certain whether it had a copy of the letter then – because Amtrust hasn't provided its file for anything that happened prior to July 2023 – I'm satisfied it could've asked for it. And as a dismissal letter is a key piece of information for an unfair dismissal claim, I would've expected Amtrust to have reviewed this before reaching its decision on cover.

It's for this reason that I'm not satisfied Amtrust complied with its obligations under ICOBS to not unreasonably reject a claim. Mr B funded his claim himself for over a year only to have his claim accepted on the same information that was available previously.

Once Amtrust accepted Mr B's claim was covered by his policy, it still refused to put funding in place as it said it needed a prospects assessment from his barrister.

Another requirement for cover under the terms of the policy is that a claim must enjoy reasonable prospects of success. The policy says *"the assessment of your claim and the prospects of its success will be carried out by an independent advisor"*. It's standard industry practice for the insurer to obtain the prospects assessment at its own cost from its panel solicitors. So it's not clear why Amtrust insisted that Mr B obtain this himself at his own expense from the barrister representing him, rather than an independent advisor as stated in the policy.

In any event, Mr B had provided Amtrust with written confirmation that his barrister believed his claim had reasonable prospects. I say this because Mr B provided Amtrust with a screenshot of an email dated July 2023 from his solicitor which said:

"I have had a brief chat with [the barrister] and updated him with the amended grounds of resistance and disclosure. I expect [the barrister's] views on prospects of success to remain unchanged. To put a number on it, this would be over 50% but perhaps only 55% 60% taking into account not only of the legal argument but also the practical experience of how Tribunal's respond to such claim."

This was sent by a solicitor who specialises in employment law, and Mr B's barrister – who also specialises in employment law – was copied in.

I appreciate this isn't a full reasoned legal assessment which Amtrust may have required. But Amtrust's email to Mr B in August 2023 said it hadn't seen that the barrister had confirmed in writing that prospects were 55-60%. And that isn't strictly true. I'm satisfied Amtrust had this screenshot because it provided a copy in its file submission to our service.

And if it was only looking for written confirmation of prospects – rather than a full reasoned assessment – as indicated in its email, then I'm satisfied it had that already from Mr B's solicitor. There's no policy requirement that the legal opinion must come from a barrister.

In summary, on the information I've been provided, I'm not persuaded that Amtrust had any new information in August 2023 which enabled it to accept the claim which leads me to believe it could've covered it from the outset. I'm satisfied Mr B provided Amtrust with all the information it required to obtain a prospects assessment in line with the policy's process and standard industry practice. And that Mr B had given sufficient information to show his claim had reasonable prospects of success in any event.

For this reason, I'm persuaded Amtrust should reimburse the legal fees Mr B has incurred. Amtrust is entitled to assess the costs to ensure they were reasonable and necessary.

My final decision

I'm upholding this complaint and direct Amtrust Europe Limited to reimburse the reasonable and necessary legal costs and disbursements Mr B incurred pursuing his employment claim from March 2022 to its conclusion. Amtrust should pay 8% simple interest per annum from the date Mr B incurred the fees up until the date he is reimbursed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 May 2024.

Sheryl Sibley
Ombudsman