

The complaint

H, a limited company, complains about what Amtrust Europe Limited did after it made a claim on its business legal insurance policy in April 2022.

H is represented by one of its directors, Mr S.

What happened

In 2017 H invoiced a client for work it had carried out. As that wasn't paid it sent reminders and a final reminder in November 2017. A statutory demand was issued in January 2022. The client applied to have that set aside and a hearing was scheduled for 25 April 2022 (which was adjourned by consent to 8 June). H sought assistance from its policy with that claim on 22 April 2022. Amtrust asked for further information which H provided. The claim was accepted on 20 May and referred to panel solicitors for an assessment of whether it had reasonable prospects of success (a requirement of the policy).

I understand the panel solicitors said they were unable to act because of short notice in relation to the upcoming hearing. Amtrust said as H had already appointed its own solicitor (and a barrister had been instructed) it would consider reimbursing their fees in line with the terms of the policy from the date the claim was accepted. I understand H was unsuccessful at the hearing and Amtrust subsequently paid both its costs and adverse costs.

H complained those amounts didn't include a sum of £2,052 which it had paid on account to its solicitors following their appointment at the start of May 2022. And it said Amtrust had taken too long to confirm cover was in place for its claim and there had been further delays in making agreed payments with the same information being repeatedly asked for.

Amtrust said it wouldn't reimburse the outstanding amount because it had only agreed to do that from the date the claim was accepted. The sum in question dated from before that date. And it didn't think there had been significant delay in the claim initially being assessed. It also questioned whether cover should have been provided for the claim at all given H appeared to have been aware of the issues giving rise to it in 2017 which was before it took out legal expenses insurance. But it did identify some delay in correspondence being responded to and offered to pay H £50 in recognition of that.

Our investigator didn't think it was clear from H's initial submissions what its claim related to and it was reasonable of Amtrust to request further information. And he thought it acted reasonably when the panel firm was unable to act in saying it would reimburse H for fees it incurred in pursuing the claim from its own solicitors and counsel.

He didn't think it needed to pay the £2,052 invoice because that was prior to acceptance of the claim. But he accepted Amtrust could have been clearer and acted more quickly in relation to payment of other invoices. However, he agreed H's claim did seem to be excluded from cover because it was aware of the issues giving rise to it before the policy started. So it appeared H had benefited from a claim that shouldn't have been covered. Given that, he thought the £50 Amtrust had already offered to recognise the impact on H of what it got wrong was fair.

Mr S on behalf of H didn't agree. He reiterated complaints points it had already made (which I've read but haven't repeated) and in addition said:

- Amtrust took many days over its own timeframes to accept the claim. He'd contacted Amtrust in February 2022 and provided information about this claim at that point including the name of the client involved (and Amtrust hadn't responded to issues he raised then until April 2022).
- In any event Amtrust had all the information it needed to progress the subsequent claim by 5 May but a decision wasn't reached until 20 May. As there was an imminent court deadline H had no choice but to appoint its own solicitors incurring the £2,052 cost. So Mr S thought Amtrust should be responsible for that particularly as by the time the claim was accepted there wasn't time for the panel solicitor to deal with it.
- He said Amtrust hadn't paid the £50 compensation and owed him a further £288.20 which was separate from and in addition to the £2,052 sum Amtrust wouldn't pay. He said H had been caused distress by the failures of Amtrust he'd identified and its directors time had been wasted by needing to deal with the issues Amtrust caused.

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.

I'm aware Mr S has asked the Ombudsman reviewing his complaint to contact him. I can also see we've made clear to him on a number of occasions that it would be unusual for the deciding Ombudsman to do that. I've nevertheless thought carefully about whether I do need to contact Mr S in order to reach a fair outcome on this complaint.

I don't think I do. Mr S has had the opportunity to provide his comments in his initial complaint to us and in response to our investigator's view (which he's done). We also explained in February that Mr S should provide any further points or information he'd like the Ombudsman to consider. And in response to a complaint about our service (in June) we said if Mr S wanted to draw something to the Ombudsman's attention he should send that information to us. I've reviewed everything he and Amtrust have provided and I'm satisfied that, having done so, I have the information I need to reach a fair decision on this complaint.

Mr S also asked our investigator to provide all the documents he relied on to make his decision as he was concerned evidence he'd provided had been ignored. The issues he raised about bias have been addressed under our procedure for dealing with complaints about our service. That isn't something I'm considering in this decision.

I appreciate there were some technical difficulties in providing Mr S with the information he asked for but I can see those have now been resolved. And that information includes the policy terms, the evidence provided to us by Mr S and correspondence between him and Amtrust.

So I think Mr S is aware of the key evidence that I'm relying on to reach my decision. And, as I've said, he provided his comments to us in his initial complaint and in response to our investigator's view which I've taken into account as part of my review of the file. I'm satisfied he's been given a fair opportunity on a number of occasions to provide his comments. And it's therefore appropriate for me to reach a decision on H's complaint.

In relation to that the relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of H's policy. For cover to be available at all the claim needs to fall within one of the insured events the policy contains. I don't think it was clear from the information H provided in April 2022 whether that was the case or not. It's initial claim form described the circumstances as *"I got an email that they have listed the matter for a hearing"*. And it said it wanted help with the defence of a claim. On the basis of the information supplied at that time I don't think it was unreasonable Amtrust needed to ask H for more details to establish whether its claim was something the policy could cover.

However, I appreciate this wasn't H's first contact with Amtrust. It initially sought assistance in relation to the dispute with its client in 2021. Amtrust turned down that claim because it said H only had legal expenses cover in place from October 2018 and it thought it would have been aware the dispute with its client could give rise to a claim prior to that date.

H then made a further claim to Amtrust in February 2022. That included background information about the statutory demand it had issued and the response from (and name of) the client. Amtrust reiterated its previous position which was that cover wasn't available for the claim because H ought reasonably to have known the dispute with its client could lead to a claim when it issued a final payment reminder in November 2017.

It doesn't appear that correspondence was reviewed when H subsequently contacted Amtrust again in April 2022. I think if it had been then Amtrust would likely have been able to establish the underlying facts of the case sooner that it did. However, I don't think H has lost out because Amtrust didn't do that.

The earlier correspondence explained this claim wasn't covered by the policy because the events giving rise to it had taken place before the policy started. H has previously argued this is a 'claims made' policy and it made its claim during the policy period. But while that's correct the issue in this case is the policy doesn't cover claims arising from *"any actual or alleged act, omission or dispute happening before, or existing at the start of the insurance provided by this policy, and which the insured knew or ought reasonably to have known could lead to a claim"*.

I think that exclusion applies here. I'm satisfied H only had legal expenses cover in place from October 2018. It's also clear its client had failed to make payment prior to that taking place. And I think H would reasonably have known that could lead to a claim as I understand it issued a final reminder for payment in November 2017 (nearly a year before it took out legal expenses cover) which the client didn't pay.

I appreciate by the time H made its claim in April 2022 events had moved on because its client had made an application to set aside the statutory demand it had issued. But the underlying dispute remained the same; it related to the client not making payment of fees H had invoiced it for. And that's something H was aware of prior to legal expenses cover starting. So I think Amtrust was correct to say in its final response the claim H made in April 2022 was caught by this exclusion and so isn't one for which cover should have been provided at all. As a result, if Amtrust had properly reviewed matters at that time. it would again have declined cover for H's claim in or soon after April 2022.

Instead it accepted the claim and has paid H's costs (and adverse costs) relating to it from 20 May 2022. As a result, even if H is right to say there was delay by Amtrust in assessing this claim, I can't fairly conclude that's caused the loss H is claiming (the unpaid invoice of £2,025) because this isn't something its policy should ever have covered.

I'm also satisfied H would have incurred that cost even if Amtrust had told it an earlier stage cover wasn't available for the claim. I say that because it engaged solicitors on the basis it clearly believed it had a strong case (it referred in correspondence with Amtrust to this having a 100% chance of success). And it did that having previously been told by Amtrust its claim wasn't covered and prior to the subsequent claim being accepted. In fact, rather than losing out on £2,052 (and the additional sum Mr S has referenced), I think H has benefited from a significant amount of legal expenses cover it wasn't in fact entitled to.

I've also considered the points H raised about delay and other customer services issues. I don't think it's in dispute there were some delays and communication problems here. I appreciate that will have been frustrating for H. But while Mr S has also referenced distress that isn't something I can consider. I appreciate Mr S may have been personally impacted by what Amtrust got wrong but this complaint isn't one he's making in his own right but on behalf of H. And it's the 'eligible complainant' in this case.

That means under our rules it's only the impact on H I can consider not any distress Mr S may have been caused personally. And a limited company isn't a natural person and so can't suffer distress in the way an individual can. It could be caused inconvenience and I accept that's likely to have been the case here. But in considering what needs to be done to put that right I think it's reasonable to take into account that H has benefited from the fact a claim which shouldn't have been covered was. Given that I don't think there's more Amtrust needs to do than pay the £50 it's already offered.

My final decision

Amtrust Europe Limited has already made an offer to pay £50 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is Amtrust should pay H £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 21 August 2024.

James Park
Ombudsman