

## **The complaint**

Ms H1 and Ms H2's complaint is about the handling of claims made under the legal expenses section of a household insurance policy by Amtrust Europe Limited. The complaint is about the claims made by Ms H1, so I will refer to her throughout.

Amtrust Europe Limited is the underwriter of the policy, i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As Amtrust Europe Limited has accepted it is accountable for the actions of the agent, in my decision, any reference to Amtrust Europe Limited includes the actions of the agents.

## **What happened**

Ms H1 has been in dispute with her employer since 2021. She made a claim under the policy for cover in relation to a tribunal claim she wanted to make for discrimination and breach of the Equality Act 2010. This claim was refused by Amtrust on the basis there were no reasonable prospects of success, which is a pre-requisite of cover under the policy. I understand Ms H1 continued the employment claim herself, which was settled by way of an agreement in mid-2022.

In 2023, Ms H1 made further claims under the policy, as she says her former employer had breached the terms of the settlement agreement, which has resulted in financial loss; and she wanted cover for an issue with her tax.

Amtrust said there was only cover for tax issues if the policyholder is subject to a formal aspect or full tax enquiry, which was not the case. It therefore refused cover for that claim.

In relation the breach of the settlement agreement, Amtrust said that while there is cover for employment disputes this is only for disputes relating to a contract of employment. Amtrust said that Ms H1 had ceased her employment in mid-2022, so she no longer had a contract of employment and was out of time to bring any employment tribunal claim against her former employer (as any claim would need to be made within three months of the employment ending) and there is no separate cover for breach of settlement agreements.

Amtrust also considered if there might be cover under the contract section of the policy but said this excludes claims relating to the policyholder's employment. It therefore refused this claim as well.

Ms H1 is very unhappy with this and complained to Amtrust. She has made a number of submissions in support of her complaint.

I have considered everything Ms H1 has said but have summarised the main points below:

- Amtrust misled her into believing that her claim against her former employer could be assessed and Amtrust sent an email on 7 March 2023 stating that settlement agreements are covered under the policy.
- On a previous claim, Amtrust said it could represent people in relation to settlement agreement disputes but her financial losses were too small. Now she has had substantial financial losses, Amtrust changed its position.
- She has been let down repeatedly and not received the service that she has been paying for.
- As she is disabled, has been recognised as being vulnerable, and has been the victim of crime, Amtrust's action could be deemed as disability discrimination contrary to the Equality Act 2010.

Ms H1 says she has suffered financial losses that she wants recovered. She also says Amtrust should pay her £5,000 compensation for stress, distress, inconvenience and for the poor level of service provided.

Amtrust said it told Ms H1 to submit the relevant documents so it could assess if there was cover for the breach of the settlement agreement claim. Once it assessed this the claim was correctly repudiated. It says Ms H 1 was not misled when it was seeking the documents to be able to assess cover and it managed her expectations. Amtrust does not accept it did anything wrong.

As Ms H1 was still unhappy with Amtrust's response, she brought the complaint to us. For clarity, this complaint is only about the claims made in 2023.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld as she thought Amtrust had fairly declined the claims.

Ms H1 does not accept the Investigator's assessment. She says the complaint concerns a wider issue about how she's continually been failed by Amtrust when she puts in claims.

Ms H 1 also says that Amtrust told her claims for breach of settlement agreements are covered, then told the Investigator they are not covered and more recently that they may be covered. Amtrust has continually changed its position to avoid the fact it misadvised her.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

### **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.

#### Claim for breach of settlement agreement

Ms H1's policy includes cover for employment disputes as follows:

*"Employment disputes*

*What is insured:*

*Standard advisers' costs to pursue a legal action against an employer, prospective employer, or ex-employer, arising from a dispute relating to your contract of employment or related statutory rights."*

Amtrust considered the claim for breach of the settlement agreement but determined that as Ms H1's employment had ended in 2022, there was no contract of employment and she was out of time to bring a tribunal claim, so there was no cover under the employment section of the policy.

As the employment section of cover, set out above, only provides for disputes relating to the contract of employment, I think Amtrust was entitled to refuse cover under this section of the policy.

Amtrust also considered if there was cover under the contract section of the policy which provides cover on the following basis:

*"Contract*

*What is insured:*

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

However, this excludes any claims relating to *"your business venture for gain, employment"*.

There is no other section of the policy that would provide cover for enforcement of settlement agreements.

Given this, I do not think that Amtrust's refusal of the claims for breach of the settlement agreement was unreasonable or unfair.

#### Advice about cover

Ms H1 is also very unhappy as she says she was misled into believing there would be cover for this.

I have considered the communication around this claim, including the email of March 2023, which Ms H1 says confirms that there is cover for disputes about settlement agreements. The email says:

*"In respect alleged breach concerning ... [the settlement agreement], we can consider this claim under the terms of the policy. However, to manage your expectations the claim may not be proportional to pursue. Do you any other relevant documents that you can send us concerning this element of your claim before we instruct our solicitors for a legal opinion on the merits of the claim."*

I agree that this email does give the impression that breaches of settlement agreements are covered in principle but it does not state specifically that Ms H's claim will be met.

Ms H1 provided Amtrust with some further information about the matter and on 11 April 2023, Amtrust said it was unable to cover any claim, as the contract of employment had ended in 2022 and as such she was out of time to bring any tribunal claim, and there was no separate cover for the alleged breaches.

Ms H1 says she was misled into believing this claim would be covered. While I have acknowledge that the email in March 2023 may have raised Ms H1's hopes, I do not think the content of that email binds Amtrust in any way to meeting the claim. The email made sufficiently clear that it had not accepted the claim and said it needed more information. Within a relatively short time, Amtrust assessed the claim and explained to Ms H1 why it was not covered. I think Amtrust acted reasonably overall and do not think that it misled Ms H1.

Ms H1 also says that Amtrust has changed its position on cover for settlement agreements. I do not agree that Amtrust has changed its position on the policy cover. There is cover for employment disputes where there is the possibility of taking tribunal proceedings about an employment contract. That was not the case for Ms H1 at the time she asked Amtrust for cover for this. While I can understand Ms H1 was disappointed with the refusal of the claim, I do not think that Ms H1 was misled or that any award is warranted.

#### Tax claim

Ms H1 also wanted cover in relation to a tax issue, related to her previous employment. The policy provides cover for certain tax issues, as follows:

*“Tax*

*What is insured:*

*Standard advisers’ costs incurred by an Accountant if you are subject to a formal aspect of full enquiry of your personal tax affairs.”*

Ms H1 has had a dispute with the tax office but was not as far as I am aware subject to a formal aspect or full enquiry. As such I consider Amtrust was not unreasonable in refusing cover for legal representation for the tax matters.

#### General service from Amtrust and The Equality Act 2010

Ms H1 says she has been repeatedly let down by Amtrust and has suggested that Amtrust has been in breach of the Equality Act 2010 in the way it has handled her claims.

I’ve taken the Equality Act 2010 into account when deciding this complaint – given that it’s relevant law – but I’ve ultimately decided this complaint based on what’s fair and reasonable.

I accept that Amtrust was aware of Ms H1’s personal circumstances and had a duty to act fairly and reasonably in handling her claims. I can see it would have been disappointing not getting any of her claims met but Amtrust is only obliged to provide cover in accordance with the terms of the policy. As I am satisfied Amtrust was entitled to refuse cover for the claims set out above, and did not mislead Ms H1 about the cover provided under the policy, I do not think it has done anything wrong and I do not consider there is anything to suggest Amtrust discriminated against Ms H1 in any way.

#### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms H1 and Ms H2 to accept or reject my decision before 21 June 2024.

Harriet McCarthy  
**Ombudsman**