

## The complaint

Mr H is unhappy Amtrust Europe Limited didn't agree to cover a claim on his legal expenses insurance policy.

## What happened

Mr H has an employment dispute for which funding is being provided on a legal expenses policy he holds with a different insurer. Mr H says in July 2023 he was dismissed by his employer and he brought Employment Tribunal (ET) proceedings in relation to that. He sought funding under his Amtrust policy for that claim. Amtrust said his policy with it began on 10 May 2023. And it didn't cover claims where the circumstances leading to them existed prior to cover being taken out. It thought that applied here and so didn't agree to provide any funding for Mr H's claim.

Our investigator agreed the issues giving rise to Mr H's claim had begun prior to the start of his policy with Amtrust. But he said Mr H had cover in place with a different insurer which covered 'claims made' during the period of insurance. And he'd had continuous cover in place. Taking into account the particular circumstances of the case (including that Amtrust had been aware of that cover at the point it declined the claim) he thought the fair outcome was for Amtrust to accept the claim on the policy it was responsible for.

Mr H agreed with his outcome. Amtrust sought clarification on the policy Mr H held with the previous insurer and after that was provided confirmed its agreement to what our investigator had said. However, a week later it sought further information on how our online approach applied to this claim. And it then said it wouldn't agree to our investigator's outcome after all.

It said that was because when Mr H asked about using his Amtrust policy it hadn't been aware he had previous cover with a different provider. It had only become aware of that following our investigation. And it thought, taking into account our online guidance, that insurer should be responsible for this claim. It didn't accept that pursuing matters with them would disadvantage Mr H given that cover for his claim was ongoing with his other insurer.

I issued a provisional decision on the complaint earlier this month. In summary I said:

*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 Mr H's policy with Amtrust. This does cover 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". So it could in principle cover the claim Mr H was seeking to make about his dismissal by his employer. However, the policy only provides cover where the "insured event" takes place in the period of insurance. And it defines "insured event" as "the incident or the start of a transaction or series of incidents which may lead to a claim or claims being made under the terms of this insurance".*

*I understand cover under this policy began on 10 May 2023. So I've considered whether, the*

*incident which led to this claim likely took place prior to the start of the insurance. I don't think it's in dispute there were acts of alleged discrimination by his employer prior to the start of this policy; Mr H has referenced them taking place from 1 March 2023. The issue is whether the claim Mr H subsequently made for unfair dismissal is separable from incidents that had arisen (and might lead to a claim) prior to the policy start date.*

*I don't think it was unreasonable of Amtrust to conclude, on the basis of the available evidence, that wasn't the case. I note in particular that his employer's grounds of resistance in response to the ET proceedings that had been lodged reference its reasons for his termination and make specific reference to a grievance Mr H pursued prior to cover being taken out as reasons for ending his employment.*

*I also note Mr H's solicitors advised in October 2023 (after Mr H had been given notice of dismissal) that further incidents had occurred since the original claim was brought and "it is likely that all subsequent incidents will be found to form part of the same matter". And they confirmed an unfair dismissal claim had been lodged as part of the proceedings and "we have issued the attached pleadings which includes all claims together". All of that suggests Mr H's unfair dismissal claim was related to incidents which had taken place prior to the policy start date. If Mr H has evidence to show that isn't correct I'd expect Amtrust to review matters but I think it was reasonable of it to conclude the exclusion would apply based on the available information.*

*I've gone on to consider whether it's nevertheless fair of Amtrust to decline the claim on that basis. We wouldn't generally consider it right that where a consumer held continuous legal expenses cover but had switched from a 'claims made' to a 'claims occurring' policy with no break in cover they should lose out on legal expenses funding as a result of that. That would likely be the case where the event giving rise to the claim took place under the first policy but the policyholder wasn't able to make a claim until they took out the second policy. Where that's the case we'd need to consider which insurer should fairly cover the claim.*

*However, I don't think that applies to Mr H's claim. His policy with Amtrust started on 10 May 2023. He did have a 'claims made' policy in place with a different insurer prior to that which began on 31 March 2023. But that policy didn't end until March 2024. So this isn't a situation where Mr H moved from a 'claim made' to a 'claims occurring' policy; he had overlapping cover. And Mr H was clearly aware he had a claim for which funding was required prior to March 2024 (because of his ongoing claim with a different insurer). But he didn't contact the 'claims made' insurer to make a claim until after its policy ended.*

*So Mr H hasn't lost out on cover because of the move from a 'claims made' to a 'claims occurring' policy; his claim has been declined because a claim he was aware of wasn't made on the 'claims made' policy while it was in force. If Mr H think that decision was unfair he can make a complaint against the insurer responsible for that decision. But I don't think that provides grounds on which I could fairly direct Amtrust to provide cover for this claim.*

*Nevertheless, I do find it disappointing and concerning Amtrust initially accepted the outcome our investigator reached and then changed its position a month after it had received his view. That was at a point when it had already had more than enough time to review our guidance and was after the case closed. That may be something we'll discuss with Amtrust separately. But given the findings I've already reached I don't consider I can reasonably rely on that error to direct Amtrust to cover a claim that isn't covered by Mr H's policy and which, for the reasons I've explained, it wouldn't be fair to require it to do.*

## **Responses to my provisional decision**

Amtrust didn't respond to my provisional decision. Mr H said he rejected the decision but

didn't provide any further comments.

### **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.

As neither party has provided any further comments for me to consider I don't have any reasons to change the findings I set out in my provisional decision.

### **My final decision**

I've decided not to 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 27 February 2025.

James Park  
**Ombudsman**