

The complaint

Ms P on behalf of A, a limited company, complains that AmTrust Speciality Limited (“AmTrust”) has treated it unfairly in relation to a legal expenses insurance claim under its business insurance.

Any reference to Ms P, A, or AmTrust includes respective agents and representatives.

What happened

The background of this complaint is well known between both parties. So, I’ve only provided a summary of events here.

- A, a company, terminated a contract of a self-employed individual (“Person B”) that had previously provided consulting services to its business. Person B raised an unfair dismissal dispute at an employment tribunal.
- In January 2024 A raised a claim with AmTrust under its legal expenses insurance cover in relation to this tribunal action from Person B.
- AmTrust investigated the matter then rejected the claim. It said as Person B was not an employee, it would not cover legal costs to defend itself.
- A complained, saying the dispute should fall under the contract section of its policy which protected against contracts with suppliers that provide services. And that the situation was simply unfair as it had no control over Person B’s choice of remedy against it – and that its relationship with Person B was for services not an employment contract.
- AmTrust provided its final response on 22 May 2024, saying:
 - It had sought Counsel’s opinion on A’s claim, and their opinion was that Person B could not be considered an employee and therefore would not be entitled to bring a claim for unfair dismissal. It followed this opinion and declined the claim, saying the terms of the policy would only allow for a dispute between an employee or former employee to bring a claim.
 - A argued that Person B was not legally an employee when the contract was created as they had been engaged as a business consultant for a defined project role. However, this may have changed to a more consistent role by the termination of the contract which may define Person B as an employee in law providing them with certain statutory rights.
 - AmTrust said it acknowledged the ongoing dispute about whether Person B amounted to an employee. But it stated that its staff were reliant on the legal opinion of experts – so if A had conflicting counsel opinion from a suitably qualified individual with the same documentation it would revisit this.
 - AmTrust said if an employment tribunal established Person B had been an employee, cover would be reconsidered.
 - The contract section of cover related to disputes between A and its customers or suppliers. It said given the matter had proceeded through an employment

tribunal, the claim could not be considered under the contract section of cover. It mentioned A's submission that the original contract was regarding a contract of service and not one of employment and referenced Person B's admission within the eventual settlement that they were not an employee.

- AmTrust concluded that the policy covered certain insured perils, and this was simply not one of them. And the assurance that Person B was not an employee further supported why it was correct for it to decline cover.
- A brought the complaint to this Service, saying it had spent around £36,000 in legal costs then settled for a sum of £8,500 as it was unable to continue through the full tribunal process. A also described the stress of the ongoing matter caused its director given the uncertainty of whether the event would be covered.
- Our Investigator looked into things and upheld the complaint. He said:
 - AmTrust had acted fairly in assessing the claim under the employment dispute section of the policy, and by appointing Counsel for a legal opinion on prospects. He said AmTrust's decline under this section was fair as Person B was not an employee or former employee – which was required under this section for a successful claim.
 - But, the Investigator said AmTrust hadn't clearly evidenced why the claim couldn't be considered under the contract dispute section of the cover. So, he said it should reassess the claim.
- AmTrust said it had correctly considered the matter under the employment dispute section of the policy. And that it had already considered the outcome of the claim under the contract section and declined it related to the circumstances not meeting the requirements and an exclusion within the terms. This didn't change the Investigator's mind, so the matter was passed to me for an Ombudsman's decision.
- I issued my provisional thoughts on the complaint on 8 July 2025 explaining why I wasn't intending on upholding the complaint. I've included an extract of this below.

"My starting point here is the policy terms. Under the commercial legal expenses section it outlines the policy is designed to provide cover to the Insured in the event of the Insured needing legal assistance arising under a list of sections of cover. This list includes employment disputes and compensation awards, contract, amongst others.

Within the policy, it defines "*Employee / The Insured's Employee(s)*" as:

"Any person who has entered into or works under (or, where the employment has ceased, worked under) a Contract of Employment with The Insured in connection with the business insured under this policy."

I think the terms are clear here that the individual needs to have entered into a contract of employment or works under one.

A has provided a copy of the contract for services between itself, and Person B listed as "*the contractor*" throughout the document.

In this case it doesn't appear in dispute to me that at this current time all parties agree that Person B wasn't an employee (seemingly including Person B). From what I've seen, this appears to have been A's main argument throughout. AmTrust relied on the evidence provided to it, including opinion of Counsel who found Person B didn't amount to an employee with a detailed and reasoned account of why they believed A's case would be most likely to succeed at tribunal. I see no reason for AmTrust to have departed from this advice, it's not the legal expert in this case and it has relied upon the

views it's been given by a suitably qualified person.

I'm satisfied that AmTrust's initial investigation into these matters was reasonable, as was its offer to reconsider matters in light of any conflicting Counsel opinion. As nothing was forthcoming, I'm satisfied its conclusion in light of the evidence was fair. And I'm not intending on directing it to act outside of the terms of cover of this section.

A has also put forward an argument that AmTrust should be covering the claim under the contract section of the legal expenses insurance. So again, I'll start with the terms. Under "*Contract*" it states:

"Legal Costs and Expenses arising from any dispute between The Insured and a customer or supplier about a contract for the supply of goods or services where the total amount in dispute, is at least £250."

AmTrust has been clear it doesn't believe that the matter brought in the employment tribunal would amount to a dispute arising from a dispute between A and Person B's contract of services. From what I've seen, Person B's claim relates to the rights they believe they were afforded to them as an employee of A. So, I think AmTrust's conclusion that this didn't amount to a dispute between A and a supplier about a contract for the supply of goods or services was a fair one.

AmTrust has also pointed to a specific exclusion within that section of the policy. This states (under this section) it won't cover claims "*arising from a dispute with an Employee or former Employee arising from a Contract of Employment*". AmTrust has said given the nature of the claim, this highlights that this section of cover would not be designed to cover such a claim that A is making.

I've thought carefully about this, and in this case it's evident that Person B isn't and was never an employee of A's. However, the claim itself arises from Person B's supposed belief that they were employed and an alleged contract of employment. The claim was brought in the employment tribunal and was an employment dispute. The policy doesn't cover that type of dispute under the contract section. So, I think AmTrust's right to highlight this term as relevant. For these reasons I'm satisfied that the circumstances do not meet the requirements of the contract section, and even if they did, the matter would be excluded in light of the above exclusion.

I can understand that this decision will be disappointing for A, but in the circumstances of this particular claim I'm not satisfied it was covered for such an event.

I've also thought carefully about the impact of what's happened in this case on A's director and the details they've given. And while I'm sympathetic, I do not have the power to make an award of distress to a limited company."

Both parties have had the opportunity to respond. We didn't hear back from AmTrust, but Ms P responded on A's behalf, reiterating her belief that the dispute stemmed from a contract for services not employment, and adding:

- The forum of the claim should not dictate policy coverage – saying that Person B's choice to bring their case related to a contract dispute through an employment tribunal was problematic and left policyholders without cover. And such an interpretation is not in keeping with the spirit of purpose of the cover. In addition, the Tribunal should never have accepted the claim.
- The exclusion quoted should not apply – as Person B was never found to be an employee.

- A request that this case be considered as exceptional, and the terms not to be read with a narrow perspective. But if I were to not uphold the complaint a request that I recommend a goodwill or partial contribution in light of the circumstances being reasonably unforeseeable and unavoidable on the part of A.

So, the matter has been passed back to me for an Ombudsman's 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.

Having done so, I'm still not upholding this complaint. I'll explain why in response to Ms P's points.

- As I've outlined previously, Person B's claim related to the rights they believed they were afforded to them as an employee of A. So, I'm still satisfied AmTrust's conclusion that this didn't amount to a dispute between A and a supplier about a contract for the supply of goods or services was a fair one.
- Ms P has said the forum of the claim should not dictate policy coverage. But simply, it does. I take on board the point she's made, but insurer policies of this nature aren't designed to cover every eventuality. Ms P may have beliefs about whether the Tribunal should have ever accepted the claim – but this isn't a matter that would be useful for me to discuss given the scope of my decision is about AmTrust's actions.
- I've outlined my position on the relevant exclusion previously, so I won't go over this again. But I will add again that I'm satisfied that the circumstances do not meet the requirements of the contract section so there is no need for the exclusion to be applied in any case.
- In all of my decisions I am required to take into account the law, relevant rules and regulations, as well as what is fair and reasonable in the circumstances of each complaint. I understand that A may not have foreseen this matter arising, and I can also understand Ms P's frustration the policy does not extend to these particular circumstances. But I am not persuaded that it would be fair and reasonable in this case to direct AmTrust to cover matters that fall outside the scope of its policy. Given the nature of my role, it also wouldn't be appropriate to direct AmTrust to pay a goodwill gesture or any payment when I'm satisfied it has declined the claim fairly and in line with its policy terms.

My final decision

For all of the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 21 August 2025.

Jack Baldry
Ombudsman