

The complaint

A company, which I'll refer to as T, complains that Irwell Insurance Company Limited did not cover in full a claim on its commercial legal protection policy.

What happened

A former employee took T to an employment tribunal, alleging unfair dismissal and disability discrimination. She was successful and the tribunal ordered T to pay compensation to her.

T has a commercial legal protection policy which includes cover for awards made by the employment tribunal and legal costs. It made a claim on the policy. Irwell agreed to cover the legal costs but said it would not cover the compensation award.

Irwell said some aspects of the claim were not covered at all, and although the award made for dismissal and indirect discrimination was potentially covered, there were some exclusions that applied.

T complained about the decision. When our investigator considered the complaint, they said Irwell had shown an exclusion applied and it was fair to decline cover for the tribunal award.

T disagrees and has requested an ombudsman's 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, support a policyholder to make a claim, and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed. Having considered everything carefully I'm satisfied the claim was dealt with fairly for the following reasons:

- The starting point when deciding whether the claim was declined fairly is the policy terms; these set out the terms of the insurance contract between T and Irwell.
- The policy provides cover for disputes with employees in the employment tribunal. This includes compensation and damages awards made against T by the tribunal, and legal costs, but is subject to the terms and conditions.
- The policy terms are clear that cover for any award made for direct discrimination is excluded, so T wasn't covered for that.
- The cover is provided together with access to employment law advisers, who I will call "P". The policy document explains that "*The Policyholder's Cover is directly related to their agreement with [P] and is as indicated in The Schedule.*"
- There's also an exclusion for

"Any dispute, incident or event unless The Policyholder has sought advice promptly from [P] as soon as The Insured Event becomes known and before any action is

taken and The Policyholder has followed the advice given, and also unless The Policyholder has continued to seek advice from [P] in respect of any developments relating to The Insured Event and has followed the advice given. This is a continuing obligation for each dispute requiring The Policyholder to take and follow advice at each stage until the conclusion of each dispute.”

- The ‘Insured Event’ is defined as *“The issue or event that starts a train of events that leads to a matter which becomes the subject of a notified claim.”*
- So to be covered for a claim, T needs to have taken advice from P promptly as soon as it was aware of the issue or event that led to the claim, and before taking any action. This is the key point. Many policies will only provide cover where the claim has reasonable prospects of success – in other words, the policyholder has to show it’s more likely than not they will win their case. This policy doesn’t work in that way. It’s not based on whether a claim has prospects of success, but whether advice has been given and followed.
- Irwell made this clear when it accepted the claim, saying cover would be provided on condition that advice was sought promptly from P as soon as the event was known and before any action was taken, and the advice was followed at each stage; cover was only place for matters where advice was given.
- There had been a series of events involving the employee, who had some time off work for reasons relating to her mental health. There was a return to work meeting in May 2022. Shortly after that a warning was given to her relating to her absence. There was then another meeting in early July 2022. She resigned a few weeks later and then claimed for constructive dismissal and discrimination.
- T first obtained advice on 9 July 2022 – after the meeting with the employee. It would have been aware for some time before that of issues with the employee.
- T says there was a phone call with P on 4 May 2022 where advice was given, and there was no reason to seek further advice between then and July. There was a call in May, after which P sent an email asking T to provide some documents so they could assist. I haven’t seen evidence confirming advice was given. Even if it was, T then had a meeting with the employee in July without getting further advice.
- T contacted P again on 9 July 2022 – after the meeting with the employee. And although advice was given, it wasn’t followed at that point. P pointed out some errors in the way T was proceeding and said T needed to follow the correct process, including giving warnings in line with ACAS best practice and T’s own handbook. P said T seemed to be conflating conduct issues with capability, and *“... your overall outcome is to dismiss here, by definition you are going to unfairly dismiss this employee... My suggestion would be to step back and take the situation step by step ensure you are not vulnerable to a claim.”*
- T didn’t act on this advice. The employee resigned a few weeks later and then pursued her claim for constructive dismissal and discrimination.
- The events were all related and I’m satisfied T failed to obtain advice promptly or, when it did get some advice, follow that advice.
- It should have obtained advice before the meeting with the employee in early July 2022, and should have followed the advice given on 9 July.
- I appreciate T says many of the events the employee relied on at the tribunal were untrue, and it wasn’t aware of all the allegations until the tribunal claim was made. It could only tell P about these allegations once it received the tribunal papers. T says it was made aware of the potential for a claim on the policy when the tribunal claim was submitted and advice was then sought from P - *“...we did notify [P] of everything*

when we were made aware of the tribunal case...” But that doesn’t alter the fact it was aware of issues between May and July 2022, long before the tribunal claim, but didn’t take advice promptly at that time or act on the advice that was given.

- So I think T was in breach of the policy conditions, and cover is only provided on the basis those conditions are met.
- And it was fair for Irwell to rely on that breach because this prejudiced its position. If P had been notified earlier, it could have given advice and taken steps to ensure the correct process was followed and prevent further issues. This may have avoided the need for a tribunal claim at all or, if a claim was pursued, reduced the award that was made by the tribunal. The opportunity to do this was lost.

My final decision

My decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask T to accept or reject my decision before 25 February 2026.

Peter Whiteley
Ombudsman