

The complaint

Mr A complains that Amtrust Europe Limited caused delays in processing a claim under his legal expenses insurance policy by asking for unrealistic information, and subsequently declined cover.

Where I refer to Amtrust, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I only intend to provide a summary of the key events here.

Mr A was suspended from his place of work, which he believes was unfair and discriminatory. He made a claim under his insurance policy to pursue legal action against them.

Amtrust asked Mr A to provide further information to enable an assessment of the claim, including a chronology of the events which led to his suspension. Mr A complained that it wasn't realistic for him to provide details of phone conversations spanning the last ten years.

On receipt of further information, Amtrust determined that the series of events giving rise to the claim occurred in 2020. But it only had proof of Mr A's policy being in place from 2022 – so it declined the claim.

Mr A provided proof of an earlier policy and Amtrust established that it had been in place since 2014, so it instructed solicitors to assess the merits of the case.

The solicitors advised that there was insufficient information to confirm Mr A's employment status or whether he'd been discriminated against. But on the information available, they weren't satisfied the claim enjoyed reasonable prospects of success as required by the policy. Based on this advice, Amtrust declined the claim.

Mr A brought his complaint to our service, but our Investigator didn't uphold it. He was satisfied Amtrust had acted in line with the policy terms and hadn't treated Mr A unfairly. As Mr A didn't agree, the complaint has been passed to me to decide.

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 recognise Mr A's strength of feeling regarding his complaint. I'd like to reassure him that whilst I'm aware I may have condensed some of the complaint points in far less detail and in my own words, I've read and considered everything he's told us. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or

possibly in the level of detail he would like, in order to reach what I think is a fair outcome. This isn't meant as a discourtesy, but it simply reflects the informal nature of our service.

Requests for information

Mr A is required by the terms and conditions of his policy to provide Amtrust with all information it requires in order to assess the claim.

Having considered the information requests made by Amtrust, I'm satisfied they were reasonable. Mr A is alleging that his place of work discriminated against him and that his suspension was unfair, so for Amtrust to assess cover under the policy and the merits of the legal action, it will need to know what acts of discrimination took place and when. And it asked for this in the form of a chronology.

I appreciate Mr A says these acts took place over ten years and he can't reasonably list the date of every call and what was said after all the time that's passed. But if he wasn't able to provide exact dates of when things had happened, he could've provided a rough timeline of the key events. After all, if the matter goes to court, Mr A would need to provide details of the specific incidents that he believes amount to discrimination – so it's not unreasonable for Amtrust to require this information.

Mr A says these requests resulted in delays, but I don't agree. Amtrust were entitled to ask for the information. Had Mr A complied with the requests when they were made, these wouldn't have impacted the progression of his claim.

Policy validation

As Amtrust doesn't sell the policies, it doesn't hold policy information on its system until a claim is made. At that time, it reaches out to the relevant provider to check a policy is in force and when it was inceptioned.

In Mr A's case, Amtrust only had evidence of Mr A's policy starting in 2022. So when Mr A confirmed that the series of events started in 2020, Amtrust concluded that the claim started prior to the policy so cover was unavailable.

This was incorrect as Mr A's policy started in 2014. I'm satisfied that once Amtrust were aware of the correct policy start date, it proceeded with the claim and the matter was resolved within a week. So I can't see an impact here which would warrant a payment of compensation.

Prospects of success

The terms and conditions of Mr A's legal expenses insurance policy say that in order for a claim to be covered, it must have a 51% or greater chance of winning.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't generally want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

In this case, Amtrust has obtained a legal assessment from one of its panel firms of solicitors who concluded that the claim doesn't enjoy prospects of 51% or greater. As insufficient information was provided, the solicitors put prospects for discrimination at only 10-15%.

Whilst I appreciate Mr A disagrees with the advice, I'm satisfied it is well-reasoned, not obviously wrong, and provided by a suitably qualified lawyer. And it was based on all the information available at that time. As such, I haven't seen anything to persuade me that Amtrust can't fairly rely on it.

Rather, it's up to Mr A to obtain a contrary legal opinion on the merits of his claim, at his own cost, if he wants to challenge this further. If such an opinion is supportive then I'd expect Amtrust to reconsider the claim.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 August 2023.

Sheryl Sibley
Ombudsman