

The complaint

Mr and Mrs B complain that Amtrust Europe Limited will only pay £100 per hour for their solicitor's costs to pursue a claim under their legal expenses insurance policy.

Whilst the policy is in Mrs B's claim, for ease of reading, I'll mainly refer to Mr B as this is his claim.

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

What happened

Mr B made a claim under his legal expenses insurance policy to pursue an employment dispute. He'd been dismissed which he believed was as a result of several protected disclosures he'd made.

Amtrust advised Mr B that, in order to be covered under his policy prior to the issue of court proceedings, he had to use a panel firm – which he agreed to. The panel solicitors – who I'll refer to as L – assessed the merits of his claim and were of the opinion that only two aspects of the case enjoyed reasonable prospects of success.

Mr B didn't agree with the legal advice which had been provided by a paralegal, so he sought the opinion of a solicitor of his own choice – who I'll refer to as J – who specialises in whistleblowing cases.

J agreed with L that there were two claims which enjoyed reasonable prospects of success, but they said L's advice was defective and, if followed, would've led to the claim proceeding without the correct respondents and wouldn't have included disclosures which could be protected, were of significant public interest, and crucial to issues of causation.

Based on this advice, Mr B says he wasn't happy to remain with L so he asked Amtrust if he could instruct J under the policy terms. Amtrust agreed but said the policy will only cover £100 per hour, which is what it would've paid a panel firm.

J – who represents Mr B in his complaint – says whistleblowing cases are the most complex employment claims. Mr B has made a number of protected disclosures to his employer, and he is a worker for two different companies. They argue that L were only able to deal with the case for £100 per hour because a paralegal was acting, which could've caused significant detriment to the outcome of the claim given the deficient advice on how to pursue it.

Our Investigator didn't uphold the complaint. She was satisfied Amtrust had applied the policy terms fairly in the circumstances. As Mr B 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.

The terms and conditions of Mr and Mrs B's legal expenses insurance policy say:

"If a claim is accepted under this insurance, we will appoint our panel solicitors, or their agents, to handle your case. You are not covered for any other legal representatives' fees unless it is necessary to start court proceedings, or a conflict of interest arises. Where it is necessary to start court proceedings or a conflict of interest arises and you want to use a legal representative of your own choice, advisers' costs payable by us are limited to no more than our standard advisers' costs, which is the amount we would have paid to a legal representative from our panel. This amount is currently £100 per hour and can vary from time to time at our discretion."

Insurers must provide information that's clear, fair, and not misleading. Where there's a significant limit on cover, such as an hourly rate lower than the amount the policyholder might pay their own solicitors, the insurer needs to make this clear; policyholders should know at the outset what cover they're getting.

As the insurer that will be paying the legal costs, it's reasonable for Amtrust to have a say in the amount being charged by the policyholder's solicitor. I'm satisfied the policy is clear that the rate Amtrust will normally pay is £100 per hour. This is the level of cover provided and for which Mr B has been charged a premium. So, the starting point is that this is what Mr B can expect.

Mr B and his solicitor argue that the claim is complex so a higher rate should be offered. And they've provided information detailing why. But we wouldn't consider it unfair for Amtrust to rely on its policy terms as long as the hourly rate specified in the policy doesn't render Mr B's freedom of choice meaningless.

In determining this issue, we look at whether other panel and non-panel firms are able to take on and work cases of a similar nature to Mr B's at the rate set out by the policy.

Amtrust has provided confirmation from its panel firms to show that they would've handled this claim for £100 per hour. It's also provided information to show that at least three non-panel firms have worked similar employment disputes at the same hourly rate.

Based on this, I'm not persuaded that Mr B's freedom of choice under the policy terms is rendered meaningless. The evidence I've seen supports that other panel and non-panel firms can take on cases similar to his at the rate offered by Amtrust. I appreciate Mr B wanted J to represent him, but whilst he's entitled to choose his own solicitor, it doesn't automatically follow that Amtrust will meet their costs in full if its more than the policy covers. I'm satisfied that legal representation at the rates offered was available to him. And I've seen nothing that supports that those firms Amtrust has referred to aren't able to competently represent Mr B in his claim.

For these reasons, I don't think Amtrust has acted outside the policy terms and conditions or treated Mr B unfairly when applying the policy's hourly rate of £100 per hour.

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 Mrs B and Mr B to accept or reject my decision before 23 May 2024.

Sheryl Sibley
Ombudsman