

The complaint

Ms I has complained that Amtrust Europe Limited declined to pay a claim she made for unemployment on her mortgage payment protection insurance policy.

What happened

Ms I resigned from her job in October 2021. She says she had no other choice because of bullying and harassment by her employer. As such, she was pursuing a claim for constructive dismissal. The employment tribunal was due to take place in November 2022. In the meantime, she had found a new job that she started in February 2022.

The tribunal didn't go ahead as Ms I and her former employer reached a settlement via the Advisory, Conciliation and Arbitration Service (Acas) just prior to the hearing date.

Amtrust declined the claim on the basis that there had been no tribunal hearing resulting in a ruling in Ms I's favour. Therefore, it considered that she had resigned from her job and made herself voluntarily unemployed, which is not covered under the policy.

I wrote a provisional decision last month in which I explained why I wasn't thinking of upholding the complaint. Ms I has provided some more information in response to my provisional decision that I will address below.

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.

Ms I has provided some further details of how she was treated by her old employer. She has also provided documentation about her case for unfair dismissal, including a summary of her claim and a supporting statement from a colleague, as well as some information about her health.

To reiterate what I'd said in my provisional decision, the purpose isn't to make a finding on whether she was constructively dismissed or not. All I am looking at is whether Amtrust acted fairly and reasonably in declining the claim.

The policy terms state that an unemployment claim will not be paid if:

'your unemployment is due to your resignation (other than to become a carer), voluntary redundancy or voluntary unemployment except where voluntary redundancy is claimed under section 146 or 148 of the 1996 Employment Rights Act.'

Amtrust's position is that it would have likely accepted the claim if there was evidence that Ms I had been constructively dismissed. However, as the case didn't make it to tribunal, there was no finding in Ms I's favour to confirm that.

I've listened to a call between Ms I and Amtrust from October 2021. The adviser tells her that she would be able to make a claim but that it would need the outcome of the tribunal. He says: *"And it would have to find in your favour. So if you reach a settlement outside of court or if there is a settlement that doesn't overturn the original decision by your employers we wouldn't be able to pay."*

Ms I has been sent a copy of this call to listen to. So, whilst she remembered the conversation differently, I presume she would now agree that Amtrust made it clear to her that she would need to complete the tribunal process and receive a favourable outcome in order to be able to make a successful claim.

As I said in my provisional decision, the information I'd seen suggested that Ms I might have a strong case against her former employer. The additional evidence she has provided further supports that view. But that evidence would need to be tested by someone independent. I have no doubt that Ms I felt she had no option to resign. But that is not the same as proving that she was constructively dismissed.

The problem is that the nature of the evidence is all very one-sided as there is nothing to explain what the employer's position was. I'm not persuaded that the employer agreeing to settle was an admission that it had done something wrong. And of course, we can't see a copy of the confidential settlement agreement to see if they admitted any fault.

Ms I says that she had intended to go through with the tribunal but that, given her circumstances at the time, she thought that agreeing to the settlement offer was the best option. But that was a choice she made, having weighed up a number of factors such as how stressful it would be to go through with it and the financial consequences of losing. Amtrust had told her that reaching a settlement would affect her ability to claim, so that should potentially have also formed part of her thinking, although I appreciate she hadn't recalled being told that.

I'm sorry to disappoint Ms I, but the additional information she has provided has not caused me to change the outcome I reached in my provisional decision. So whilst I have a lot of sympathy for her situation, I'm still not persuaded that there is enough information for Amtrust to be able to conclude that she was constructively dismissed.

Overall, based on the available evidence, it was reasonable for Amtrust to look at the information it received at face value to conclude that Ms I resigned from her job. And as resignation is excluded under the policy terms, it was fair and reasonable for it to decline the claim.

My final decision

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 11 August 2023.

Carole Clark

Ombudsman