

The complaint

Mr H's complaint is about a claim on his Amtrust Europe Limited ('Amtrust') legal expenses insurance policy.

Mr H says that Amtrust treated him unfairly.

All references to Amtrust in this decision include their claims handlers.

What happened

Mr H made a claim on his Amtrust legal expenses insurance policy for cover to bring a claim against a trade union, of which he was a member. The claim was in respect of the trade union's decision not to help him pursue a claim against his former employer on the basis that it was unlikely to be successful. Mr H says he went on to pursue his former employer himself without the trade union's assistance and was successful. He feels the trade union were in breach of contract or trust in failing to help him with this.

Amtrust considered the claim and concluded that it wasn't covered because it didn't fall within the employment section of cover because it wasn't an employment dispute. They also considered the claim under the contract section of the policy and determined it didn't fall within this section either because there was an applicable exclusion which set out that claims relating to Mr H's business, venture for gain, profession or employment weren't covered.

Unhappy Mr H complained to Amtrust who reviewed their earlier decision to turn down cover under the contract section of the policy. They accepted that the exclusion quoted didn't apply here but thought the claim was still unlikely to be covered because the relationship between Mr H and the trade union didn't amount to a contract of service. Despite that Amtrust said they were prepared to take advice on the matter and referred it to one of their panel firms to consider.

The panel firm advised that there was no obligation on the trade union to provide Mr H with legal services so there were no grounds for a claim in professional negligence against them. Mr H didn't agree and provided Amtrust with his reasons which Amtrust referred back to the panel firm to consider. The panel firm did so but said this didn't change their opinion on things. Mr H remains unhappy, so the matter has been passed to me to determine.

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 won't be upholding Mr H's complaint. Before I explain why I want to acknowledge both Mr H's strength of feeling in respect of this complaint and his considerable submissions about it. Whilst I've considered everything he's said, I won't be addressing each and every point he's made. That's not intended to be disrespectful, rather it represents the informal nature of the Financial Ombudsman Service.

The starting point is the policy terms. I agree with Amtrust that the employment section of the policy doesn't engage here because that section requires the claim Mr H was making to be *"against an employer, prospective employer, or ex-employer, arising from a dispute relating to your contract of employment or related statutory rights."* As such I've gone on to consider the contract section of the policy, which says:

"What is insured"

"Costs to pursue or defend a legal action following a breach of a contract you have for":

- a) *"Buying or renting goods or services for your private use.*
- b) *Selling your own personal goods.*
- c) *Buying or selling your main home.*
- d) *Renting your main home as a tenant".*

The issue I need to determine here is whether Mr H's claim is covered under this section of the policy. Amtrust have said the breach of contract Mr H is alleging can't be substantiated based on the legal advice they obtained.

Essentially the advice Amtrust received was that there was no evidence of a contract between Mr H and his trade union so it would be difficult to show that a contract was breached. But even if there was, there was no obligation on the trade union to provide Mr H with legal services, including advice. As such a duty of care couldn't be established between the parties in relation to this. They also said that the trade union couldn't be considered a professional against which a negligence claim could be made for the sort of claim Mr H was seeking to make.

I haven't seen anything from Mr H to show that there was a physical contract between him and the trade union for legal advice that obligated the trade union to provide him with this. Indeed, most of Mr H's submissions focus on the underlying claim he wants to make against the trade union and his former employer. So, I understand why Amtrust sought advice from their panel firm on the matter. The issue of whether there is a contract that's capable of being breached is a matter of legal interpretation and not one I would expect Amtrust to be able to advise upon themselves. As such I think it was reasonable for them to take advice from legal professionals that could. And the advice given supports the terms of the membership provided to H by the trade union for workplace and legal assistance. This document says:

"All workplace and other legal assistance is offered at the discretion of the union and is decided on the facts and merits of each case".

So, I'm satisfied that even if a contract could be inferred, the obligation to provide legal advice or assistance was at the trade union's discretion. As such it can't reasonably be said they were obliged to assist Mr H in the way that he wanted and their decision not to do so couldn't therefore amount to a breach of contract or trust.

Mr H has said that he doesn't think the term I've quoted above is reasonable and that it's capable of challenge. But I haven't seen anything from him that supports that there's a contract between him and the trade union, that they had an obligation to provide him with legal advice or services and that this obligation had been breached.

In addition to the contract section of cover, the policy requires Mr H's claim intended claim to

have reasonable prospects of success. That means his claim against the trade union would need to have over 51% prospects of succeeding in order for Amtrust to cover it. We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined 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. So long as they have got 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. Amtrust did this.

I'm satisfied that the person that provided the advice was supervised by someone suitably qualified and experienced in the area of law Mr H was asking for help with and I've seen nothing that suggests the advice was based on factual mistakes. I appreciate Mr H doesn't agree with the advice he received but that's not something I can consider. If, as Amtrust said, Mr H was to provide an alternative reasoned opinion from a comparable legal professional (and not something summarising any advice he might have been given), then I would expect Amtrust to consider that. Equally, if Mr H provided Amtrust with any new evidence or information that has now come to light that might change the outcome of his assessment, I would expect Amtrust to refer that back to their panel firm. But as matters stand, I can't say Amtrust did something wrong by relying on the legal opinion they received.

I know Mr H is unhappy with the panel firm's advice generally. That's not something I can address. Firms of Solicitors are independent professionals with their own code of conduct and regulator. So, complaints about Solicitors don't fall within my remit.

In the circumstances, I think Amtrust have done enough here to establish there isn't enough evidence to support that Mr H's claim falls within the contract section of cover and for the reasons set out within their advice, that there are no reasonable prospects of success. Amtrust have taken legal advice and given Mr H the opportunity to comment further on it and referred that back to the panel firm to consider. That's what I would expect them to do in the circumstances. Whilst I know my decision will be disappointing for Mr H, I won't be asking Amtrust to do anything else.

My final decision

For the reasons set out above, I don't uphold Mr H's complaint against Amtrust Europe Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 January 2024.

Lale Hussein-Venn
Ombudsman