

The complaint

Mr K and Ms T complain that AmTrust Europe Limited (“AmTrust”) has unfairly handled a legal expenses insurance (“LEI”) claim made under their Family Legal Protection policy.

Any reference to Mr K, Ms T, or AmTrust includes respective representatives and agents.

What happened

The background to this complaint is well known between all parties. For this reason, I will summarise events.

- Ms T worked for Company A in a senior position for many years. She has explained Company A notified her of a significant change to her role that she was unhappy with. And she raised concerns about this – stating the proposed changes were a breach of contract, and that her employer had treated her less favourably on grounds of gender and age.
- No agreement was met with Company A, so Ms T took legal action using her AmTrust LEI policy to cover legal expenses, which was accepted.
- Ms T wanted AmTrust to fund two additional claims against Company A. The second related to unlawful discrimination on grounds of disability, including unlawful discrimination by way of harassment, and victimisation on account of having raised the issues within the first claim. The third concerned constructive dismissal, victimisation, and unlawful discrimination on the grounds of disability, age, and gender.
- AmTrust accepted all three claims – but it said the three claims shared an indemnity limit of £50,000.
- Ms T disagreed, believing the claims to be distinct, she stated each should hold its own policy limit.
- AmTrust issued its final response letter in April 2023. Within this it considered the points raised by Ms T but stood by its position, stating:
 - It was evident various incidents of discrimination were linked, and even if falling under separate Employment Tribunal claims, from an insurance perspective, the series of events leading to the claims all stemmed from 2019 when Company A told Ms T her duties would be fundamentally changing.
 - Company A had still insisted on this change despite disability concerns brought to its attention by Ms T. And the second and third Tribunal claims arose out of further acts in these ongoing series of incidents.
 - AmTrust said it was clear from the legal opinions of both Ms T’s solicitor and Counsel that all claims are “*related and interwoven*” and stem from the series

of incidents which began in 2019 and therefore, only one limit of indemnity would be provided.

- Ms T brought the complaint to this Service, stating AmTrust's actions were unreasonable. One of our Investigators looked into what happened and didn't uphold the complaint.
 - He said the policy terms said if the causes of action, incidents, or events were related by cause or time, it would be fair to allow AmTrust to provide a single indemnity limit – and this was the case here.
 - Ms T had described her reason for resigning as due to a series of discriminatory and victimising actions and conduct against her, including persistent threats motivated by discriminatory considerations and a breach of contract by unfairly moving her between roles. This supported that the resignation was connected to all the matters over time, with the lack of proposals being the “last straw” in a series of actions.
 - He said this was further supported by Counsel's opinion - which referenced Ms T's concerns about disability, and that if Company A had insisted on changing her position this may amount to a fundamental breach of her contract sufficient to justify resignation.
 - The Investigator said while the three legal claims were separate – and had separate Tribunal references, this did not mean it was unfair for AmTrust to conclude these matters were related or arose from the same cause. So, he was satisfied AmTrust could apply one policy limit of £50,000 for the three claims.
- Ms T disagreed, stating the three cases were acknowledged by Company A's legal team as separate, and asked for the matter to be reviewed by an Ombudsman.
- The Investigator reiterated he agreed the three claims were presented separately – but he believed the events/incidents were related by cause or time, which meant AmTrust could link the matters and apply one policy limit.

So, the complaint has been passed to me for an Ombudsman's final 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 submissions in this complaint are extensive. Within this decision I won't be responding in similar detail. This is not intended as a discourtesy to any party, but a reflection of the informal nature of our Service.

My role is to focus on what I consider the crux of the complaint to be, which means I will only comment on those things I consider relevant to the decision I need to make. That may mean I don't comment on everything Ms T or AmTrust has said but I have read and considered everything provided by all parties.

In this case the dispute centres simply on whether it is fair and reasonable for AmTrust to apply one indemnity limit of £50,000 to Ms T's claims. This is because it considers all three Employment Tribunal claims to be part of one "*Insured Incident*".

So, I'll start with the policy wording. "*Insured Incident*" is defined in the policy as:

"The incident or the first of a series of incidents which may lead to a claim under this insurance. Only one Insured Incident shall be deemed to have arisen from all causes of action. Incidents or events that are related by cause or time."

From this, it's clear to me that the policy only allows for *one* claim (or Insured Incident) to arise from a series of incidents, or all causes of action. And that these incidents or events may be linked by cause or time.

There's no dispute here that Ms T has made several separate Employment Tribunal claims against Company A. The question I have to answer however, is not whether these were accepted or recognised by a Tribunal but whether the Employment Tribunal claims fall under one "*insured incident*", as defined by the policy.

And if I'm satisfied the three Employment Tribunal claims are related by cause or time, then I'll be satisfied AmTrust can apply a single indemnity limit to this claim.

Ms T has said the three matters arise in separate factual context and each raise individual and quite different legal considerations. And in distinguishing the three cases she said:

- The first claim contended with age and gender discrimination concerns related to Ms T's role being changed and the reasons behind this.
- The second arose out of separate factual circumstances related to unlawful discrimination by way of victimisation by Company A - and contended disability discrimination. She said these allegations were significantly different in character to the allegation giving rise to the initial claim.
- The third arose due to a constructive dismissal claim aligned with complaints of unlawful discrimination on grounds of gender, age, and disability as well as unlawful discrimination by way of victimisation. And as the third claim arose from Ms T's resignation – she says this cannot be associated in cause or in time with either of the first two claims.

On its face, it strikes me these were a series of incidents with the same employer – with issues that occurred over time and seemingly following on from each other.

AmTrust has pointed to the comments of Ms T's own legal representation. It highlighted an email from Ms T's own solicitors from 4 January 2023 – which said:

"The second set of proceedings are different in context and form in that they contend

an ongoing pattern of discriminatory behaviour against the Claimant and specifically on the part of a named Manager who is individually named as a Respondent in those proceedings.”*

I think the description of an ongoing pattern of events between Ms T and her former employer indicates these events are linked by cause and time.

AmTrust also quoted Ms T’s own Counsel opinion from November 2021 which stated:

“The Claimant was subjected to a campaign of ongoing harassment from August 2019. She felt that unrelenting pressure was being applied by ...[Company A]... to insist that she undertake a [different position] even after a consultant ... specialist (retained by the Respondent) advised against it. The final straw was when the Respondent requested a meeting to see if any accommodation could be reached and then at the meeting on 3.11.21 brought no proposals to the table. The Claimant immediately went off on stress related absence and sent her letter of resignation on 15.11.21. The letter of resignation makes clear that the reason for termination was unequivocally linked to the breach.’

AmTrust has said this also shows the events were linked with the eventual resignation under the third claim.

Taking account the nature of the claims – discrimination and actions over time, including the change of contract – it shows that there was an alleged conduct of various discriminatory behaviours against Ms T culminating in her resignation and subsequent claim for constructive dismissal based on the discriminatory behaviours. I’m satisfied that, while they may constitute separate claims, AmTrust has acted reasonably when concluding all the events are linked by cause and time. And so, I consider its decision that the three claims are subject to one indemnity limit to be fair.

My final decision

For the above reasons, I’m not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K and Ms T to accept or reject my decision before 20 November 2023.

Jack Baldry
Ombudsman