

The complaint

Mr K complains about Amtrust Europe Limited's handling of his claim on his legal expenses insurance policy.

All references to Amtrust include its agents.

What happened

Mr K is a member of the armed services. He made a claim on his legal expenses policy after he was notified of an investigation against him for breach of a branch of the military's standing orders. He submitted his claim on 7 October 2020. Amtrust requested further information from him on 19 October 2020 which he provided the same day. He chased Amtrust for a decision on 30 October 2020 and at this time stressed the urgency as he had an interview to discuss the allegation against him on 5 November 2020. And he wished to have legal representation at this interview.

Mr K was informed he wasn't covered on 2 November 2020. He disputed this saying that he was:

the subject of a Service Police Investigation which could end in Court Martial which is a court of criminal jurisdiction. Secondly, this matter clearly has arisen out of my work as an employee: the investigation is being conducted under the Armed Forces Act 2006 as a consequence of a matter that arose during the course of the performance of my duties as an [a member of the Armed Service].

Amtrust sent him another email on 3 November 2020 and said he only had cover under the "legal defence" section for employment related issues. Mr K wasn't sure if this meant he was covered or not. It later confirmed that he wasn't covered for his interview.

Mr K's interview went ahead on 5 November 2020 with his solicitor accompanying him. Following this it was decided that Mr K would not be subject to court martial.

When Mr K complained to Amtrust about the handling of his claim. Amtrust said it would look at whether Mr K was covered if he was subject to a court martial, but it was satisfied that he wasn't covered for any legal work during the investigation stage.

In her first view the investigator didn't recommend the complaint be upheld. She thought that Mr K wasn't covered because he hadn't been charged with a criminal offence. She agreed that Amtrust gave incorrect information regarding the reason the claim was being declined but she thought this was quickly rectified and the rectification occurred two days before his interview date. She therefore didn't consider that a compensation payment was warranted in this case.

Mr K disagreed. He said he now understands he wasn't covered but he said by Amtrust not giving him the correct claim decision until 3 November, he unnecessarily incurred solicitors costs. This was because he could've considered his options regarding legal representation had he known earlier the costs wouldn't be covered.

The investigator issued a second view and said having considered the timeline of Mr K's claim, she could see Mr K should've had a claims decision by 26 October 2020. She noted that between 26 October 2020 and 2 November 2020 Mr K's solicitor had carried out 4.1 hours of work. So, she recommended that Amtrust should pay Mr K the legal costs he incurred between those dates to recognise the delay in reaching a claims decision.

Mr K responded to the investigator's view to say that he contacted Amtrust on 7 October 2020 so he should have had a response by 14 October and between 14 October and 2 November his solicitor carried out 4.6 hours of work.

The investigator responded to Mr K to say that whilst he submitted his claim on 7 October Amtrust requested further information from him on 19 October which he gave on the same day. So, that's why she said from 26 October as that's 5 working days from 19 October. But she could see Mr K's point that Amtrust was 2 or 3 days late in asking for the information on 19 October so potentially she could ask for the date to be moved forward from 26 October 2020 by a few days.

Amtrust didn't accept the investigator's view. It said whilst it accepts there was a delay in notifying Mr K of the claims decision it is satisfied that he was aware that the costs associated with the police interview would not be covered. It said in his call with its First Response Unit on 30 October 2020, Mr K acknowledged that his claim had not yet been accepted and that '*you've said implicitly that no invoices will be accepted before you've approved the claim*'. It says the policy wording also makes this clear. In the subsequent call with the claim handler on 3 November 2020 it was made clear that any legal costs incurred at the police interview would not be covered. This was clarified in the follow-up email sent following that call. It also says we should consider whether Mr K sought to mitigate his losses in arranging for legal representation at the police interview on 5 November 2020 by taking advantage of free/subsidised legal support from his employer. It says it does not consider that Mr K unnecessarily incurred solicitor's costs because of any delay in declining his claim. It was always the case that the costs for representation at interview were not covered under the policy as he was not subject to a criminal prosecution.

My provisional decision

I issued a provisional decision on 25 April 2022. In it I said:

Mr K has accepted he wasn't covered for the advice relating to the interview on 5 November 2020. I agree. He says, however, that he consulted his own solicitor because he thought he was entitled to do so under the terms of the policy. Even after he had been told he wasn't covered he continued with his legal representation. He says: I considered directing my solicitor not to attend the police interview in order to cut my legal bill. Ultimately, I decided that I would harm my case if I took this drastic step. Furthermore, I considered that the muddled and factually inaccurate assessments that I had so far received from [Amtrust] to be evidence that my claim had yet to reach the level in the company where a competent and clear assessment could be made. I could not believe that any coherent legal defence would not include the presence of a legal representative at a police interview, and therefore I reasonably concluded that the Legal Defence element of my Armed Forces Family Legal policy would include such provision.

Having read the correspondence from Mr K he strikes me as an intelligent and thoughtful man who whilst not a legal expert is likely to have understood any clearly written insurance policy if he read it carefully.

I've looked at the policy. It says:

*'If **You** make a valid claim 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 court proceedings are issued or a **Conflict of Interest** arises. Where, following the start of court proceedings or a **Conflict of Interest** arising, **You** want to use a legal representative of **Your** own choice **You** will be responsible for any **Advisers' Costs** in **Excess of Our standard Advisers' Costs**.'*

*It goes on to say the policy covers: '**Your** legal rights in the following circumstances arising out of **Your** work as an employee: In a prosecution brought against **You** in a Court of criminal jurisdiction ...'*

*It excludes cover: '**For Advisers' Costs** where **You** are entitled to a grant of legal aid from the Legal Services Commission, or where funding is available from another public body, a trade union, employer or any other insurance policy.'*

*And it also excludes cover '**Following an allegation of intentional violence or dishonesty**.'*

From what I have seen so far it seems to me that both exclusions may apply. Mr K was sent an email asking if he required 'duty legal' so this suggests he should have known that legal aid was available to him. The allegation against him – misuse of Ministry of Defence property for a personal purpose - also seems to be an allegation involving a degree of dishonesty. I think if Mr K had looked at his policy carefully, he would have realised he wasn't covered based on the exclusions alone.

From what I can see Mr K's commanding officer spoke to him about the allegation on 30 September 2020. Mr K contacted his solicitor on 6 October 2020 and insurer on 7 October 2020. After instructing his solicitor, his solicitor then carried out several hours work in the week that followed. Even when he was told he wasn't covered he continued to instruct his solicitor to act.

Overall, I think Mr K decided to have his own legal representation and hoped that his insurance would cover his costs but accepted that this might not be the case. I asked the investigator to put this to Mr K and he disputes this. He has told this service that in 2021 he was again required to attend a Royal Military Police interview as a consequence of an investigation into his conduct. He says understanding the precise limits of his Legal Insurance policy he did not instruct a privately arranged legal representative beforehand. Instead, he made use of the RMP offer to notify a Duty Solicitor. He received legal representation from a solicitor who was operating throughout under the Legal Aid system.

Mr K's explanation of later events demonstrates that his claim wouldn't have been covered in any event because it would have been excluded because he was entitled to legal aid. The fact that he didn't instruct a private solicitor the second time he was investigated doesn't persuade me that he wouldn't have done so the first time if he'd known he would have to pay himself. It isn't unusual for someone to want more support the first time they experience an investigation of this nature.

In these circumstances I don't think it would be fair to ask Amtrust to pay his costs. I do, however, think that Amtrust dealt with his claim poorly and should have been able to provide him with an answer much more quickly particularly as the policy was designed for service personnel and any complexity in the claim relates to an understanding of what a court martial is or isn't. I think in these circumstances it would be reasonable to require it to pay him £200 for the distress and inconvenience caused.

Responses to my provisional decision

Mr K didn't accept my provisional decision. He thinks Amtrust should have told him at the outset, that he did not need to pay for legal representation at the interview because all legal representation at police interview is funded by the state through Legal Aid. Amtrust should have added that he had cover for legal representation at court martial, if the case progressed that far, because his policy covered prosecution in courts of legal jurisdiction. Amtrust did none of that.

He doesn't accept the view that he would have appointed his own solicitor regardless. He says he should have been given the opportunity to make a decision based upon the facts regarding the options available, and that information should have come from Amtrust. Amtrust should take responsibility for their failure to give him accurate and timely advice and the financial consequences for him.

Amtrust has accepted my provisional 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.

I think that Amtrust should have told him sooner that he wouldn't be covered for his legal fees for the interview and the work leading up to it. I need to consider the impact of this failure. And I am not persuaded – just as I wasn't in my provisional decision and for the same reasons - that if he had been told he wasn't covered he would have not instructed his solicitor. I think Mr K decided to have his own legal representation and hoped that his insurance would cover his costs but accepted that this might not be the case. That being the case, there were no financial consequences of the delay because I think the delay didn't result in a solicitor being asked to do work that but for the delay wouldn't have happened. So, the compensation I need to look to award should reflect the distress and inconvenience caused by the delay. I remain of the view that £200 is fair for the distress and inconvenience caused.

Putting things right

To put things right I will order Amtrust to pay Mr K £200.

My final decision

I uphold this complaint in part and order Amtrust Europe Limited to pay Mr K £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 July 2022.

Nicola Wood
Ombudsman