

Still having to pay the price

Insurer pays £61,000 damages and costs despite the insured having judgement in their favour



A Student's £61,000 pay out for a "Mickey Mouse" degree is a stark warning to companies and institutions to retain their right to instruct their own solicitors when agreeing terms with their insurers. Simply "being insured" against a claim is not enough - organisations need to be able to exercise control over the conduct of claims against them. It is not just the damages that are at stake but also your reputation.

The story of Ms Wong, who received £61,000 from the insurer of Anglian Ruskin University (ARU) as ARU allegedly "exaggerated the prospects of a career" and "fraudulently misrepresented" their business course, has been widely covered in the national media. Reporting which must have been extremely damaging to ARU's reputation. However, what did not make the headlines was that that a County Court had already dismissed Mr Wong's original claim and ordered her to pay £13,700 towards ARU's legal costs.

ARU denied all the allegations from the start and defended the claim in full, which was a clear attack on their reputation and brand. However, their insurers (through the solicitors firm appointed from the insurer's panel) contacted Ms Wong after the County Court judgment had been awarded and offered to settle her claim for £15,000 and a further £46,000 to cover her legal costs. This was allegedly without any instructions from ARU. Not surprisingly Ms Wong accepted the offer.

ARU do not support the decision taken by their insurers and a spokesperson for ARU has said that the insurers and their solicitors acted negligently and against the university's interests. However, they are bound by the settlement and can do nothing about either the payment to Ms Wong or the publicity it has generated in the national press.

To add further to ARU's problems, the insurers failed to get a confidentiality undertaking as part of the settlement. This has resulted in a lot of negative publicity for ARU as the media reports create the impression that, by agreeing to pay something to Ms Wong, ARU must have been in the wrong. ARU's denial was briefly mentioned in some of the media reports, but they will not be able to erase the negative impression from the collective memory and their reputation will inevitably have been damaged.

So what can we learn from this?

One lesson we can take from ARU's misfortune it is that consideration should be given to including a clause within insurance agreements which gives companies and institutions the right to retain their own lawyers for cases of particular sensitivity. For insurers and their panel lawyers claims are a purely commercial proposition. They are generally disposed of in the most cost effective way - your brand or wider commercial interests are not factors that weigh with insurers seeking to limit the cost of claims.

In sensitive cases or those that may affect your brand it may well be that you would be better off being represented by solicitors who understand your business and the pressures under which it operates and who will seek the outcome that your organisation needs rather than using panel solicitors who may have been instructed because they offered the insurer the lowest hourly rate. Choosing your own lawyer allows you to have control over the decisions being made and seek an outcome that matches your needs rather than those of your insurer.

Insisting on your choice of lawyer is normally accepted by an insurer even if they push back a little at first - it is in their interests to have one or two firms acting on hundreds or thousands of claims - but it may not be in yours. There may well be no additional cost in doing so. The insurer will pay whatever rate they have agreed with their legal panel and there may be little or no shortfall.

Commercial pressure alone may be enough to ensure your own choice of representation but if you want to be certain, then at renewal you should insist that a term allowing you to appoint the solicitors that you want acting is included in the contract. As in life generally, it is easier to achieve that when an insurer is seeking to gain your business rather than afterwards!



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