

The complaint

Mr and Mrs S complain about Amtrust Europe Limited's settlement and handling of their landlord's insurance claim for damage to their garage caused by a falling tree

What happened

In November 2019 a tree in an adjoining sports club came down in a storm on a row of six garages to the rear of Mr and Mrs S's tenanted property. Their property is one of six flats in a block located in front of the garages. Their policy includes a sum insured for buildings of £100,000 along with £5,000 for landlord's contents.

Following the storm Mr and Mrs S made a claim on their policy to Amtrust. Amtrust appointed a loss adjuster to validate and manage the claim and he visited the site a few days later. The loss adjuster reported to Amtrust that there was damage to the asbestos roof of the garage and that he'd been unable to view the internal damage because the door wasn't able to be opened. He thought it likely the roof joints and internal walls were damaged too (Mr and Mrs S's garage being the third one in from the left of the block of six). The loss adjuster reported that all six garages would need to be repaired and that the repairs would need to be undertaken by one contractor. He noted that each of the six leaseholders were insured separately with separate policies for each of the six dwellings as opposed to there being just one freeholder's block policy. So he said the cost of repairs would be split six ways and Amtrust's proportion would be one sixth of the repair cost.

The loss adjuster went on to note in the report that the policy had a sum insured for buildings of £100,000 but, having measured the square meterage, he thought it should've been insured for a rebuild cost of at least £245,000. The loss adjuster referred Amtrust to the policy's average clause.

The loss adjuster asked Mr and Mrs S how they'd arrived at the sum insured when they took the policy out. He also said to them that, from the measurements he'd taken, it seemed like they were underinsured by 41%. Mr and Mrs S asked the loss adjuster how he'd arrived at the £245,000 rebuild cost. The loss adjuster replied to say that the rebuild cost was calculated using RICS rates and he asked Mr and Mrs S to get repair estimates for the garages which would then be divided by six.

Mr and Mrs S replied to say that their garage had sustained the most damage. They also said to the loss adjuster that he hadn't gone around the back to inspect the damage. Mr and Mrs S sent Amtrust a repair estimate in early February 2020 but the loss adjuster said he was unable to accept it would cost almost £100,000 to rebuild a single storey garage block.

The loss adjuster tried to contact Mr and Mrs S a few times over the coming months but it wasn't until early August 2020 that contact was made and Amtrust's settlement proposal was sent over to them.

In the meantime, in July 2020, Mr and Mrs S contacted Amtrust to complain. They said that they had replied to the loss adjuster's attempts to contact them between March and August

2020 but they'd been ignored. They said that all the occupants of the flats had been shocked with the loss adjuster's attitude and failure to fully inspect the damage.

In mid-August 2020, the loss adjuster contacted Mr and Mrs S to say he'd reviewed their repair quote and noted it included the cost for new footings and a slab. He said that the damage was to the roof, doors and walls and the slab was unaffected. So he excluded the cost cited on the repair quote for the replacement slab. He said that as they were underinsured the average clause was to be applied to their settlement which reduced proportionally what they received to £5,170.656. Mr and Mrs S complained to Amtrust about the settlement they'd been offered.

Amtrust issued its final response to Mr and Mrs S's complaint at the start of October 2020. It said there was no evidence about the loss adjuster's behaviour when he visited the site but for the delays in the loss adjuster's responses to their enquiries it offered them compensation of £50 for any distress and inconvenience caused. With regard to the settlement they'd been offered, Amtrust said that they were underinsured and the amount they'd been offered had been calculated in accordance with the average clause in the policy. So Amtrust didn't think it'd done anything wrong in that respect.

Unhappy with Amtrust's findings, Mr and Mrs S complained to this service. Our investigator looked into their complaint and recommended that it was upheld. He thought that Mr and Mrs S hadn't deliberately misrepresented the value of their property but that they could've taken greater care to provide a more accurate figure. So he thought Amtrust hadn't unreasonably applied the average clause to Mr and Mrs S's claim. But he did think that Amtrust's loss adjuster hadn't fairly calculated the rebuild value of the property. He thought the evidence Mr and Mrs S had provided about the rebuild cost – that it was likely to be more like £125,000 – was more persuasive and he thought their estimate fell within the ABI calculator range.

Our investigator went on to say that Amtrust had shown that it would've offered Mr and Mrs S a policy if the rebuild sum assured was £125,000 but at a higher premium. As the premium they had been paying was 81% of what they should've been paying, our investigator said that Amtrust could reduce the claim settlement proportionally by the same amount.

Our investigator noted that the loss adjuster had asked Mr and Mrs S to get a quote to rebuild all the garages and had said that it would pay their share of the rebuild cost. He said that the quote included replacing the footings/slab for the garages but that the loss adjuster had said they hadn't been damaged despite the fact he'd not inspected them. Given the lack of inspection, our investigator wasn't persuaded that the loss adjuster had reached a fair decision about the matter. And he noted there was no other evidence to support the loss adjuster's view. Our investigator said that as Mr and Mrs S's contractor had recommended that the footings be replaced, and as they would need to pay their share of the bill, Amtrust should include the cost of doing so when calculating the claim settlement.

Finally he thought that Amtrust should pay any VAT Mr and Mrs S had to pay their contractor upon production of the necessary VAT receipt.

Mr and Mrs S accepted our investigator's recommendations. Amtrust replied to say that Mr and Mrs S's recalculation of the rebuild cost hadn't included an allowance for rebuilding the garage. It said that as the garage was part of the property it needed to be included within the rebuild cost as did debris removal and surveyor's costs. With regard to the garage footings it said that these were under the garage and could not have been damaged by the tree.

Our investigator responded to Amtrust to say that the ABI calculator had included an allowance for rebuilding a garage.

The complaint was passed to me for a 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.

underinsurance

Mr and Mrs S's policy is a commercial one so it is the law as set out in the Insurance Act 2015 that applies to their situation. From what Mr and Mrs S have said about how they set the sum insured – that they asked a builder when they first took out the policy and he said roughly £100,000 for their flat – I don't think they made a fair presentation of the risk of rebuilding their property that they were asking Amtrust to insure. I say this because it appears the sum insured they selected is less than the cost of rebuilding their property. I don't think Mr and Mrs S deliberately misrepresented the value of his property. But they could've have taken more care to find out this information at the time. Consequently, I don't think Amtrust has unfairly applied the average clause in their policy to the settlement of their claim. And I note that Mr and Mrs S haven't disputed this in response to our investigator's findings.

But because there is a dispute between Mr and Mrs S and Amtrust about what the correct rebuild value should be – which in turn impacts the average calculation – I need to decide whether the rebuild value Amtrust arrived at was fair and reasonable in the circumstances.

rebuild value

Firstly, there is a dispute about the size of the property. Amtrust's loss adjuster calculated the internal floor area to measure 100 sqm to which he applied a rebuild rate of £1,700 per sqm and added an allowance for demolition and surveyors' costs. This meant a total rebuild value of £245,000 was arrived at. There is no evidence of any measurements taken.

Mr and Mrs S have provided evidence of precise (internal) room measurements totalling 72sqm. They also provided a detailed rebuild estimate from a builder to rebuild the entire block of six flats; this came to a total of £750,000 of which Mr and Mrs S's share is one sixth, so £125,000. The quote includes measurements and an allowance for debris removal and project management almost equal to Amtrust's allowance for demolition and surveyor's fees.

I think that Mr and Mrs S's evidence about the internal floor area of their flat is more persuasive than that provided by Amtrust.

I've looked at the ABI rebuild calculator provided by BCIS and it provides a rebuild cost for rebuilding a 72sqm flat with a garage at between £124,000 and £197,000 depending on the finish, fixtures and fittings etc. Given this is a rental flat it is reasonable to think it is of basic quality with minimal facilities that could be rebuilt at the lower end of that range, namely £124,000. The share of the quote (to rebuild the whole block) provided by Mr and Mrs S is within the ABI range, whilst the loss adjuster's rebuild value is significantly higher (by about £50,000) than the top of the ABI range.

I think Mr and Mrs S have provided more persuasive evidence about what an accurate rebuild value of their property is than Amtrust's loss adjuster. And their rebuild value falls within the range of the ABI rebuild calculator. I think I reasonable rebuild value for their

property (including the garage) is £125,000 and that this is the figure that should have been included on their policy as the buildings sum insured.

would Amtrust have offered a policy?

Amtrust has confirmed it would have still offered a policy to Mr and Mrs S had the true rebuild value been disclosed but that it would've charged them a higher premium. Amtrust says that a sum insured of £125k would have attracted a premium of £178.14, whereas Mr and Mrs S only paid £144.62 which is 81% of what they should have paid. It follows, for the reasons I've given above, that as the sum insured was inadequate, Amtrust can reasonably reduce its liability for the claim by applying the average clause and paying Mr and Mrs S a proportionate settlement of 81% of their claim's value.

claim value

The loss adjuster told Mr and Mrs S to get a quote to rebuild all the garages and that Amtrust would pay them their share (one sixth). The quote they obtained included replacing the footings and slab of the garage block. The loss adjuster excluded the allowance the builder had included in the quote to replace the footings because he thought they would not have been damaged by the tree. However, I can't see that the loss adjuster has, at any point, inspected the footings so I don't think he can fairly say that the footings are undamaged. I've seen no evidence that this is the case.

I have seen some more recent photographs provided by Mr and Mrs S which show that the roof and some of the garage walls have now completely collapsed on to the slab floor. Given this has happened and given the builder that provided the quote assessed that the footings/slab needed replacing, I think Amtrust should fairly include Mr and Mrs S's share of the allowance to replace the footings within the claim settlement. To exclude the footings allowance would mean Mr and Mrs S hadn't been fully indemnified for their loss.

VAT

Mr and Mrs S have asked that VAT should be included within the settlement they receive because the builder is VAT registered. Not all contractors consumers use to get work done will be registered to charge VAT. Sometimes consumers get the work done for a lower cost than the cash settlement figure. And often at the time the claim is being settled, it's not known what the consumer intends to do with the money – or how much VAT that might generate.

Because of that we generally think it's fair for the insurer not to include VAT in the settlement. But we do expect the insurer to pay the VAT added on to any insured work once the consumer has shown they've paid it. So providing, once the work is done and Mr and Mrs S are able to show Amtrust that they paid VAT to their contractor, then Amtrust should reimburse them.

claim handling

I can see that for the delays in the loss adjuster's responses to Mr and Mrs S's enquiries Amtrust offered them compensation of £50 for any distress and inconvenience caused. It's not clear to me from the file whether this has been accepted or paid. But, having reviewed the evidence myself, I think the amount offered is fair and reasonable in the circumstances of this complaint and is line with awards made by this service in similar complaints. I can't fairly award any more.

Putting things right

For the reasons I gave above, Amtrust should recalculate and pay Mr and Mrs S a proportionate settlement of 81% of their claim value. Amtrust's recalculation of Mr and Mrs S's claim settlement should include the reinstatement of the allowance the builder included for replacing the footings and slab of the garage. Finally, providing Mr and Mrs S are able to show Amtrust that they paid VAT to their contractor, then Amtrust should reimburse them for any VAT they outlaid.

My final decision

My final decision is that I uphold this complaint. I require Amtrust Europe Limited to take the steps I set out in the '*putting things right*' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 9 September 2021.

Claire Woollerson
Ombudsman