

## **The complaint**

S is unhappy with the standard of repairs authorised by Amtrust Europe Limited (Amtrust) following a claim made on a building warranty.

S is represented in this complaint by Mr M, who is a director of the management company of the building.

S and Mr M have mainly dealt with the scheme administrator during the life of the complaint. However, the policy is underwritten by Amtrust, which means they are responsible for the claim and complaint. So, for ease, I will refer to Amtrust when referencing the actions of the parties involved.

## **What happened**

S manages a building which was converted in 2011. The building consists of 23 flats and two commercial properties and is covered by a ten-year warranty provided by Amtrust. Mr M is the owner of one of the flats.

When the flats were bought, they came with a Premier Guarantee policy. This is typical of the cover people receive with new build or newly converted properties. It combines a builder's warranty with an insurance product.

Amongst other benefits, this policy provided cover for building defects identified within the first two years. Here it's the builder's responsibility to put defects right. But where this doesn't happen, in specified circumstances the insurance cover kicks in.

In 2013 S raised a complaint to Amtrust, on behalf of all the residents. Around half of the flats had experienced leaks since they were built. This, and other issues were part of the complaint. The issues were:

1. Water ingress to some flats through suspected terrace/flat roof failure with concerns over the flat roof and terrace detailing;
2. Insufficient surface water drainage from the terrace areas;
3. Lack of rodding/inspection access within each flat for the above ground foul drainage system;
4. Concern over the adequacy of the fire and acoustic protection to the undercroft garage ceiling and the uneven finishing of the garage floor;
5. Concerns over access restrictions to the car park entrance and incomplete works;
6. The window specification and installation not being in accordance with a Planning Condition or the specification marketed;

7. The buildings accessibility not taking into account that it is of mixed use, with a focus on the specification adopted not being suitable for children, the infirm or those with mobility limitation;
8. A concern raised over the construction of floors 3 and 4, manifested as noise levels between homes and the communal hallway on the third floor, and with the flooring fitted to the 4<sup>th</sup> floor.

As the complaint was raised within the first two years of the building being converted, the concerns were passed to the builder to arrange an inspection and provide a report. They were also asked to produce a Schedule of Works (SoW) and likely timescales for repair.

A SoW was provided. Amtrust weren't satisfied that it would address some of the issues raised and told S and the builder they would be sending a surveyor to the building to compile a conciliation report. This visit took place in early March 2014.

The report confirmed that points 1, 2 and 3 above were defects. It said point 4 needed further investigation by the builder, point 5 was a contractual dispute between the residents and the builder and wasn't covered by the conciliation process. The report also said points 6, 7 and 8 didn't show any failure on the builder's behalf to comply with the technical manual and therefore, wouldn't be classed as defects. The builder was asked for their comments, a revised SoW, and a timeframe for repairs to start.

The work started in October 2014 and the main roof repairs were completed by October 2015. Some work had also been done to improve the surface water drainage. But throughout the repairs S wasn't satisfied with the work and told Amtrust that the building was still leaking. It also told them that the drainage system was still inadequate. Amtrust agreed to another meeting at the building and for a further conciliation report to be provided. The meeting took place towards the end of September 2015, and the report was provided in October 2015.

The report said that there were three things outstanding from the report compiled in March 2014. These were:

- 1) Water ingress at balcony terrace flat roofs and surface water drainage from flat roof/terrace areas;
- 2) Lack of rodding points to the soil stacks in the building;
- 3) Basement garage fire protection to ceiling penetrations.

It was accepted that point 1 remained a defect. It was agreed that the builder would meet with Amtrust to confirm the remedial works. It gave several things that should be considered, including junctions to cladding and thresholds, the number and position of rainwater outlets, the overall capacity and design of the rainwater drainage system and defects in workmanship.

Point 2 was considered to have failed conciliation and Alternative Dispute Resolution (ADR) was being considered.

In relation to point 3, the builder was asked to confirm the correct fire prevention measures had been installed. If they hadn't, then they should be installed.

In early November 2015 S raised concerns that nothing had happened since the visit to the building in September 2015. Amtrust confirmed mid-December 2015 that they would give the builder a further week to respond regarding the issues raised with the roof terraces.

When the builder didn't respond Amtrust suggested they liaise with a different surveyor to look at the terraces and suggest a way forward. The builder accepted this suggestion and a visit to the building was arranged for mid-February 2016.

S was appreciative of the visit but upset as it didn't feel the surveyor had been provided with a comprehensive breakdown of the areas of concern. The surveyor was asked to assess the terraces and the drainage from them. But S still felt that the main roof itself was defective, which the surveyor hadn't been asked to comment on. Whilst the surveyor didn't comment on the main roof and its condition, the report concluded that further, invasive inspection was needed to determine why the difficulties of the water drainage were still apparent. Amtrust asked the surveyor to provide an estimate for this work, which was subsequently agreed, and a further visit was arranged. This took place mid-April 2016.

While this report was being compiled, S noticed more pooling of water on the main roof and some movement in the structure beneath. It asked for the manufacturer of the roof covering to visit and inspect.

The report on the roof terraces was sent to Amtrust and the builder at the end of April 2016, and again in early May. The report concluded that there were issues with the rainwater drainage system and overall drainage on the terraces. The builder didn't respond to the report until mid-July 2016. The builder told Amtrust that it wouldn't be carrying out any more work on the building, including to the roof terraces. In between the report and the builder responding, two further leaks were reported at the building.

As the builder had failed to carry out the recommendations of the conciliation report, Amtrust let it know that it would now be taking over the claim as the conciliation process had failed. They also wrote to S to confirm they'd now be handling the claim for the defects identified. They were:

- 1) Surface water drainage from flat roofs/terrace areas;
- 2) Fire protection in the car park;
- 3) Inspection provisions to the internal above ground drainage system.

They said the main roof had been repaired by the builder so wouldn't be considered again. Amtrust asked the previous surveyor to complete the drainage work. This work started in November 2016. Shortly after starting the work, the contractors reported there were several issues with the waterproof layer that needed repairing. A further report was provided.

The report concluded that there were problems with the work carried out by the builder in 2014 and 2015 when repairing the main roof. Because of this, the contractor couldn't continue with the work to repair the drainage system. More work was needed to repair the membrane, and they hadn't originally provided a quote for this additional work. They agreed to finish the work they'd started, and then to leave the site until the next steps had been agreed.

Amtrust notified the original builder of the problems that had been found and asked them if they wanted to get their contractor to rectify the work. The builder didn't respond

appropriately, so Amtrust told them they would continue with the work with the surveyor they'd appointed.

It wasn't until March 2017 that the estimate was provided, and work begun again. At this stage more defects with the main roof were identified. The surveyor provided a further estimate for the works, which totalled £189,217.20. Amtrust gave this information to the original builder and asked for a guarantee of the original repair work completed in 2014 and 2015. The builder had provided a guarantee in 2015, but that was only for the product used. It didn't guarantee the workmanship or application of the product. A guarantee for the repair work wasn't provided.

Amtrust approved the schedule of works, and work to the roof terrace areas and drainage system took place over the next few months. It was completed by March 2018, at which point Amtrust asked for another report to be done.

Following this report, a few issues were still not finished. The surveyors that had completed the work the previous year were no longer in business, so another surveyor was asked to assess the report and the work needed and provide an estimate. Once the estimate had been provided, Amtrust told S that it would cash settle the rest of the claim. It offered £11,685.60 for the work it considered still needed to be covered by the claim.

S didn't accept this and commissioned its own report. It was completed in September 2018. This report contradicted the final report in March 2018 considerably. Whilst it accepted the work that had been done had made some improvement, it maintained that the initial main roof had not been constructed properly and was still letting in water to the flats below. It also said that the falls still weren't at the standard expected and the rainwater drainage system was insufficient in places.

Amtrust were given a copy of this report but dismissed it. They stood by their cash settlement offer.

As S didn't agree it brought the complaint to our service. Our investigator didn't uphold the complaint. She said that the cash settlement offer was fair, and all the other work had been completed.

S didn't agree so it was passed to me for a decision. Before I felt able to make any decision on this, I asked both sides to agree to a final, independent surveyor's report to be completed. The surveyor was chosen by S and was asked to consider four things. They were:

- 1) The design and construction of the roof structure, including the waterproof protective membrane fitted;
- 2) Any subsequent repairs to the roof structure, and the integrity of those repairs;
- 3) The surface water drainage from the main roof and all the flat roofs and terrace areas;
- 4) The rainwater drainage system in place.

The surveyor was also asked to give his opinion on the following:

- 1) Whether or not there has been a breach of the technical requirements in line with the policy in the design and construction of the roof structure – and if there has;

- The extent of the damage caused by it;
- And in his opinion whether or not any repairs to address it (and any resulting damage caused by it) are lasting and effective.

The report has been shared with both parties. Both parties have accepted the findings. S has also explained the impact this situation has had on the leaseholders over the years. It has said the building has been continually leaking, and many of the flats have had their terraces lifted and replaced several times. Many have also suffered internal damage as a result of the leaking since occupation.

I issued my provisional decision on 30 November 2021. It said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Both parties have sent in a lot of correspondence regarding this complaint. And the circumstances of the claim are well known to both parties. I'd like to reassure them both that I've read everything provided, but I won't be commenting on everything that's been mentioned. I'll be concentrating on what I think is important to the outcome of this complaint.*

*The issues I asked the independent surveyor to consider are those that are considered defects in accordance with the Premier Guarantee policy. I know S feels there are other issues that fail to comply with building regulations and the Premier Guarantee Technical Manual, but they aren't covered by the insurance policy. They are design issues, which I know S has taken up with their local authority regarding concerns about the building being signed off – but they don't come under the defects part of the insurance policy.*

*I think it's worthwhile here to also explain what our service can and cannot consider in this case. Our remit is very narrow, and I think it's important for S to understand that. I'm only permitted to consider a regulated activity. As this claim was made within the first two years of the building being completed, the conciliation process was followed. And the Premier Guarantee policy only becomes a regulated activity, in this case an insurance policy, if the conciliation process isn't completed by the original builder and Amtrust need to take over the claim. It's at this stage that 'Section 3.2 Defects Insurance' of the Premier Guarantee policy comes into force – meaning the insurance policy is now active. But the conciliation process itself isn't a regulated activity, and therefore it isn't something that I can consider. Included in this is how the conciliation process was carried out, what faults were identified and what repairs, if any, were deemed necessary. I know that S believes the issues with the windows and access to the garage along with other concerns, should be considered as part of my review. But they weren't identified as defects by the conciliation report and therefore don't come under my remit for consideration. The defects were identified as the main roof and its covering, the terrace roof areas and the rainwater drainage from all surface areas, and these are the areas I asked the independent surveyor to report on.*

*As both sides have accepted the report from the independent surveyor dated 27 May 2021, and the report confirms that the areas under consideration are defective, I don't need to make a decision on those aspects. What I need to decide is what needs to happen now to put things right for the leaseholders, and what Amtrust need to do to progress this claim the right way.*

*The Financial Conduct Authority (FCA) Handbook set outs a number of Principles for Businesses (Principles) that Amtrust must follow, including:*

*Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.*

*Principle 8 – A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.*

*The relevant regulations also include ICOBS 8.1.1R which says an insurer must:*

- (1) handle claims promptly and fairly;*
- (2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;*
- (3) not unreasonably reject a claim (including by terminating or avoiding a policy); and*
- (4) settle claims promptly once settlement terms are agreed.*

*The Regulatory Guide, published by the FCA, entitled: ‘The Responsibilities of Providers and Distributors for the Fair Treatment of Customers’ (RPPD) includes the Regulator’s guidance on what the combination of Principles and the detailed rules mean for providers and distributors of financial services. The RPPD explains that firms should consider the impact of their actions, or inactions, on the customer throughout the life-cycle of the service being provided.*

*As I’ve mentioned before in this decision, the relevant section of the Premier Guarantee policy here is ‘3.2 Defects Insurance’. This says that:*

*‘The **Underwriter** shall have no liability unless:*

- a)*
- the **Developer** has refused to respond to the claim within a reasonable time period; and/or*
  - the **Developer** has withheld consent to resolve the dispute by using the **Conciliation Service**; and/or*
  - the **Developer** has accepted the decision of a building surveyor after using the **Conciliation Service** but has failed to carry out the works or repairs recommended in the surveyor’s report within the time stipulated.’*

*So, in this case Amtrust will get involved if any of the above reasons come into force. And I think it’s reasonable to suggest they could, and should, have got involved with the claim from an earlier date. S brought the problems with the building to their attention in 2013, and it wasn’t until later in 2016 that Amtrust decided they needed to take over, as the builder hadn’t complied with the conciliation report or any subsequent reports that had been commissioned. I’m not persuaded that this is a ‘reasonable time period’ and am satisfied Amtrust should have stepped in much sooner. S had raised concerns when the initial repairs started in October 2014 that the building was still leaking, and there were numerous delays caused by the builder not responding when asked for an update or to undertake more remedial work. I think Amtrust had opportunities to take over the claim before they eventually decided to do so. Amtrust’s regulatory responsibilities, set out above, means they must act in good faith when taking over the claim. And they must also have regard to S’ interests as well as their own. I don’t think they have done this throughout this claim.*

*Amtrust have asked for a further report to be commissioned by the independent surveyor, as they’d like to understand the potential costs involved to make the building watertight and the defective areas compliant. And they’ve asked our service to arrange that. But that isn’t something I’m able to do. My role is to decide if Amtrust dealt with the initial complaint and claim correctly and, if they haven’t, what needs to happen to put that right. It isn’t for me to handle the claim moving forward or to liaise with all respective parties about the best way for that to happen.*

*Having said that, I have to point out that Amtrust's responsibility in relation to dealing with S' claim doesn't end with this decision, as the report has highlighted significant defects with the building which Amtrust need to take action over, and the necessary repairs remain outstanding. My findings have been made only in relation to Amtrust's handling of the claim up until the date of this decision. However, the life of this claim will continue beyond the date of this decision. Amtrust have responsibilities to follow through with this claim, as set out in the Principles, regulations and guidance that I mentioned earlier. Amtrust's handling of the claim hereafter may give S and/or the leaseholders reason for further complaints to our service.*

*Amtrust have said they need a Scope of Works (SoW) put together to ascertain the costs of the remedial work required. I intend to tell Amtrust to commission that SoW so it's clear what work is required as a result of the defects highlighted in the independent surveyor's report. What I would expect, and urge, Amtrust to do is to move forward on this quickly, in line with their responsibilities, to ensure the claim can be progressed and a suitable resolution can be found for all sides. With this in mind, Amtrust should agree to adhere to the following timescales, unless prevented from doing so by unforeseen circumstances:*

- Amtrust will contact S within four weeks of the acceptance of this decision to arrange a date for the SoW inspection, in preparation for the SoW report;*
- The date for the SoW inspection to begin should be arranged within two months after the initial contact, with the report to follow promptly thereafter, in line with Amtrust's responsibilities.*

*Several flats have suffered internal damage, as have the communal areas such as stairwells and corridors. These flats and communal areas must be included in the SoW to ensure they are put back into the position they were in prior to any leaks occurring.*

*I also have to consider the distress the delays have caused. This claim has been going on for many years now, and the latest independent report commissioned correlates to the defects highlighted in reports prepared by S' choice of surveyor in 2013 and 2018. Amtrust have had every opportunity from those reports to do what they needed to do to ensure the building was watertight and draining correctly. But they chose not to accept the findings from the reports in 2013 and 2018. Those delays have allowed the building to continue to suffer damage, internally and externally, and have left all concerned with a building not fit for purpose at certain times of the year and during inclement weather conditions. Some flat owners have also experienced problems when trying to sell their flat or arrange for new tenants, and the building insurers have been reluctant to confirm cover without any exclusions while the uncertainties around the building have remained. They should be compensated for that and I intend to ask Amtrust to pay S £10,000 compensation, which S can use to compensate the leaseholders they're representing.*

*Any delay from here is likely to cause further concern for S and/or the leaseholders and could result in further complaints to our service. (Any further complaints would have to be based on Amtrust's actions in relation to the ongoing claim after the date of this decision, as opposed to during the period which I have considered). I sincerely hope that this will not occur, and Amtrust will do what they're required to do. It's certainly my intention with this decision to give them the opportunity to show the claim can be handled proficiently, and in accordance with their responsibilities, from this point onwards. If there are further failings, Amtrust could be liable for further costs. But that would be a matter for a different ombudsman to decide in all the circumstances.*

*But I would like to emphasise again, the commitments and awards I'm intending to ask Amtrust to undertake are only my findings on how they've handled the claim up until the date*

*of this decision.'*

Amtrust responded to the provisional decision and accepted the recommendations in full.

S also responded. Whilst they accepted parts of the provisional decision and were pleased to see Amtrust had acknowledged the failings in the handling of the claim up to this point, they felt further compensation was warranted. S said the leaseholders had also incurred costs throughout the claim's history. These costs included internal repair costs and the costs the leaseholders incurred as a result of arranging their own surveys and reports, as well as legal costs they received for advice and guidance between 2016 and 2018.

S provided impact statements from several of the leaseholders, explaining in more detail how they'd been affected by the events at the building over the previous few years. They also provided the invoices still available for the associated costs incurred.

It was clear from the impact statements the degree to which some leaseholders had suffered in terms of both physical health and mental wellbeing over many years while the building continued to leak, and no resolution looked in sight.

Having reviewed the impact statements and the invoices for the costs incurred, I felt it was reasonable for the compensation amount to be increased, and to include some of the costs incurred too. I explained this to Amtrust and provided them with the invoices and impact statements to consider.

Further responses were received from both parties around the distress and inconvenience award and the associated costs. Taking the various elements into consideration, Amtrust have come forward with an offer of £30,000 to compensate collectively for the distress and inconvenience experienced by the residents and including for associated costs.

On behalf of the residents, this is an amount S is agreeable to in acknowledgement of the impact and to bring the complaint to a close.

### **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 circumstances surrounding this complaint are well known to all parties, and my provisional decision explains in great detail what has happened up to this point. I don't think there's any need to explain it again here.

While Amtrust accepted the recommendations in the provisional decision, I want to reiterate that means Amtrust are to commission the SoW so it's clear what work is required as a result of the defects highlighted in the independent surveyor's report. I would expect, and urge, Amtrust to move forward on this quickly, in line with their responsibilities. I can see that Amtrust are doing this.

I'm pleased that Amtrust have also recognised the impact their handling of this claim has had on the leaseholders at the building. It's to their credit that they have reassessed the recommendations in my provisional decision. And returned with a significantly more substantial collective award of £30,000, which I think this is a fair amount to recognise the distress and invoiced additional costs the leaseholders have been caused.

It's clearly been a difficult time for S and the leaseholders too. I hope this award goes some way to helping them to move forward. Whilst there is still some way to go with the claim and



the repairs, I hope Amtrust and S can work closely together to ensure a much smoother journey over the coming months to achieve a watertight building.

Lastly, I must point out that this decision and the compensation award and commitments of Amtrust are only my findings on how they've handled the claim up until the date of this decision. I repeat that any delay from here is likely to cause further concern for S and/or the leaseholders and could result in further complaints to our service. (Any further complaints would have to be based on Amtrust's actions in relation to the ongoing claim after the date of this decision, as opposed to during the period which I have considered). I sincerely hope that this will not occur, and Amtrust will do what they're required to do. It's certainly my intention with this decision to give them the opportunity to show the claim can be handled proficiently, and in accordance with their responsibilities, from this point onwards. If there are further failings, Amtrust could be liable for further costs.

### **My final decision**

For the reasons above, I uphold this complaint. Amtrust Europe Limited must:

- As a result of the latest independent report in May 2021, Amtrust are to commission a Scope of Works that makes it clear what work is required, including internal damage to flats and all the communal areas.
- Pay S £30,000 compensation for the distress caused, including associated costs incurred, by the handling of the claim and the delays seen up until the date of this decision, which sum S will use to compensate the leaseholders they're representing.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, on behalf of S, to accept or reject my decision before 18 March 2022.

Kevin Parmenter  
**Ombudsman**