

The complaint

Mr and Mrs J complain about delays by Amtrust Europe Limited in dealing with a claim on their building warranty.

Except where otherwise stated, where I refer to Amtrust that includes any agents or contractors acting on its behalf.

What happened

Mr and Mrs J bought their house in 2013. They later found there were various issues with the construction of the property and made a claim on their policy. They wanted Amtrust to arrange for repairs to be carried out.

The claim has been going on for a number of years and Mr and Mrs J have made two previous complaints to us

In the first complaint, an ombudsman directed Amtrust to deal with an issue with flooring, pay compensation and reimburse some costs. Mr and Mrs J moved out of the house while repairs were carried out. In April 2018 Mr and Mrs J were told the repairs had been completed and they moved back into the house.

In November 2018 they made a second complaint. They were unhappy with the quality of the repairs and said the works hadn't all been completed before they moved back in.

In December 2018 Amtrust replied to the complaint saying it hadn't done anything wrong. When that complaint came to us, an ombudsman issued a decision relating to issues between April and December 2018. He found that Amtrust hadn't completed the repairs to a satisfactory standard by April. He accepted that further investigations were then needed, as there was a problem with standing water inside the house and the cause of that wasn't known. The ombudsman directed Amtrust to pay compensation for the distress caused. Mr and Mrs J were also seeking compensation for loss of earnings but the ombudsman didn't think there should be a payment in respect of this.

Mr and Mrs J then made this complaint about further delays after December 2018. When our investigator considered this, she didn't think the complaint should be upheld. Amtrust had accepted there were some further delays and offered compensation of £5,000 for the distress and inconvenience caused by this. The investigator thought that was reasonable.

Although Mr and Mrs J again sought compensation for loss of earnings, the investigator didn't think that was warranted. She accepted that the delays contributed to Mr J's health issues, but said this had been considered in the previous complaints and had remained constant throughout.

Mr and Mrs J didn't agree with the investigator and requested an ombudsman's decision. They said the compensation for distress and inconvenience should be higher than £5,000, and they sought compensation for loss of earnings.

I issued a provisional decision on the complaint saying I intended to uphold the complaint and direct Amtrust to pay compensation for Mr J's loss of earnings. I set out my reasons as follows:

As I've mentioned, we have dealt with two previous complaints and I can't reconsider any points covered in those complaints. This complaint only covers issued between December 2018 and August 2020, when Amtrust issued its response to this complaint. If Mr and Mrs J are unhappy about anything that's happened more recently, that would need to be dealt with as a separate complaint.

The relevant industry guidance says an insurer must deal with a claim promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

After Mr and Mrs J returned to their home in April 2018 they raised concerns about water and dampness in the property. Amtrust arranged for further investigations to be carried out between June and October 2018, with reports received in November. I agree it was reasonable for Amtrust to carry out further investigations as it wasn't clear what was causing the issues and this needed to be looked into. But I'd expect those investigations – and any repairs works that followed – to be dealt with in a reasonable time, bearing in mind the duty to deal with claims promptly.

So once Amtrust received the reports in October 2018, it should have arranged for the necessary work to be carried out. But work to reinstate the floor didn't start until October 2019. Amtrust says there was avoidable delay of around 6 months but I agree with our investigator that the delay was longer than that. In effect, the delay continued from the start of the period I'm considering in this complaint – December 2018 – until October 2019, a period of 10 months.

I appreciate the impact on Mr and Mrs J during this time was severe. The family wasn't able to use a whole floor of their house during this time. And taking into account Mr J's medical condition, this would have been particularly distressing. But as I've said, I'm not looking at the whole time the claim has been ongoing. They have already received compensation for the earlier period covered by the previous complaint. And I'm not considering any more recent issues.

I've also taken into other factors mentioned by Mr and Mrs J. They were unhappy with the work carried out by a contractor. Amtrust did agree not to use that contractor again, but I think it could have made that decision sooner.

Taking everything into account, I think the offer of £5,000 for the distress and inconvenience caused by the delays during this period was reasonable and don't require Amtrust to make any further payment in respect of this.

Mr J has suffered with health issues throughout the time the claim has been ongoing and hasn't been able to return to work. Mr and Mrs J say the only reason he's been unable to recover enough to return to work is the fact that the claim hasn't been resolved. They have provided medical evidence in support of their view that it will only be when the claim has finally been resolved fully that he will be able to recover and return to work. So they want to claim for loss of earnings.

The policy itself wouldn't cover Mr J's loss of earnings. But if the sole reason he can't work is the fact that the claim hasn't been resolved – in other words, he has suffered a loss because of delays by Amtrust – that's something he could be compensated for. He shouldn't be out of pocket as a result of something Amtrust has got wrong.

So the issue I need to consider is whether Mr J was unable to return to work because of the delays in dealing with the claim

Before proceeding with the decision I asked for more information about Mr J's medical condition. Having reviewed the evidence they have provided, it's clear he has had serious health issues for some years, for which he has been having treatment.

The medical reports I've seen refer to the ongoing issues with the house and the insurance claim. The earlier reports also refer to other issues affecting Mr J, but in more recent reports the only issue being mentioned is the insurance claim. I'm satisfied from the evidence I've seen that in 2019 the only issue preventing Mr J from recovering was the ongoing delay in resolving the claim.

The previous ombudsman said the delays up to the point he was considering were not the sole reason why the repairs had not been completed. In particular, he noted that at that time Amtrust needed to investigate what was causing the standing water and dampness in the house, and it was reasonable to allow some time for that. So it was the situation in the property as a whole, rather than any delays by Amtrust, that were preventing Mr J from getting better. But he said those investigations should be dealt with promptly.

As Amtrust has acknowledged those investigations were not carried out promptly. There were delays from December 2018 to October 2019. If that delay hadn't happened, it's likely things would have been resolved more quickly. Given the medical evidence that it's only the continuing claim that is preventing Mr J from recovering and being able to return to work, that delay of around 10 months will have delayed his recovery. I'm satisfied the fact he wasn't able to recover during that period wasn't just down to the overall situation, but to the delays by Amtrust.

It follows from this that any loss of income suffered in relation to that 10 month period should be reimbursed.

Once the works were underway, it would have taken some time for them to be completed in any event. I'm only able to compensate for periods of avoidable or unnecessary delay. In other words, where Amtrust was at fault and wasn't taking action that it should have been taking. And I can't comment on what's happened more recently or any alleged ongoing loss, as I'm only looking at the period covered by this complaint. Nor can I comment on periods covered by the previous complaints. I appreciate Mr and Mrs J have asked for compensation for the whole period from December 2018 to August 2020. But for the reasons given above I think the avoidable delay was from December 2018 to October 2019, which is 10 months.

Mr J has been receiving income protection payments but these don't cover his full salary. He's provided payslips which show details of the salary he would have been paid during that period if he'd been able to work, which would have been £7,137.25 per month

From January to May 2019 the amount he actually received was £5,133.39 per month – a difference of £2,003.86. From June 2019 the amount he actually received was £5,287.39 per month – a difference of £1,849.86. But those figures are for gross pay, before tax. So if I awarded compensation on those figures he would receive more than he's entitled to.

Assuming (based on the equivalent annual salary) that income would be taxed at 40%, there would be a deduction up to May 2019 of £801.54, so a net difference is £1,202.32 per month, amounting to £6,011.60. From June 2019 the deduction would have been £739.94, so a net difference of £1,109.92 per month, amounting to £5,549.60. The total net loss therefore is £11,561.20. So my view is that this amount should be reimbursed.

Mr J says he would have received performance related increases, which would have led to a higher pay. But since he wasn't working I can't say whether he would have met any performance targets set for him or received increases as a result. And I have to make my decision based on the evidence I have, which shows the reference pay for the whole period to be £7,137.25.

My provisional decision

For the reasons given I'm minded to uphold the complaint and direct Amtrust Europe Limited to pay to Mr and Mrs J compensation of £11,561.20, together with simple interest at 8% per year on that amount from 1 November 2019 to the date of payment.

Replies to the provisional decision

Amtrust replied to say it had no further comments to add.

Mr and Mrs J have provided further comments. I won't set them all out in full, but they include the following points:

- The complaint has two parts – the delays in beginning the work to rectify the lower ground floor ("strand 1") and the delays in either getting the contractors back to complete the work on the rest of the property or removing those contractors from the project ("strand 2").
- The provisional decision addresses the first part. They accept that once work began on the first part no further compensation is due and so are minded to accept the compensation of £11,561.20 for that. But it doesn't address strand 2 and says Amtrust paid them £5,000 for the second part, which it didn't.
- Amtrust did very little after October 2019 to get things moving and only removed the contractors following pressure from them and their solicitors. This caused further delay and the compensation should cover this period too.
- Amtrust wrongly led them to believe the delays were due to the contractor not responding to it but this isn't correct. Amtrust and its agents are solely responsible for this further delay.
- As well as the loss of earnings, this delay had a great impact on Mr J's health. The compensation doesn't adequately reflect how serious this was.
- There should be a payment for loss of earnings for this later period and the compensation for distress and inconvenience should be increased beyond £5,000.
- The total award they are seeking is as follows:
 - strand 1 - £11,516.20 plus simple interest at 8% from November 2019 (to cover loss of earnings from December 2018 to October 2019);
 - strand 2 - £11,099.16 plus simple interest at 8% from August 2020 (to cover loss of earnings from November 2019 to August 2020); and
 - an award for distress and inconvenience at the "Extreme" level – not less than £5,000.

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.

Mr and Mrs J say they are minded to accept the compensation for loss of earnings in the period up to October 2019 (which they refer to as strand 1). Neither party has provided any further comments in relation to this and so there's no reason for me to change my provisional view on that.

I do need to consider whether any further compensation should be paid for loss of earnings for the later period or for the distress and inconvenience caused to Mr and Mrs J.

Mr and Mrs J say I haven't addressed the later period in the provisional decision. What I said was that there was avoidable delay caused by Amtrust in the period up to October 2019. I didn't think there was delay after that period that would justify a further payment for loss of earnings. Mr and Mrs J were unhappy with the actions of the contractors and wanted them removed. In my provisional decision I noted that while Amtrust had agreed to this, it should have taken this action earlier. And this was one of the factors I took into account when deciding the compensation of £5,000 for distress and inconvenience was reasonable.

I appreciate Mr and Mrs J think there should also be compensation for loss of earnings for this later period. I've considered this but don't think it would be fair to make that award. The compensation for loss of earnings for the earlier period is based on the fact there were avoidable delays that were solely due to Amtrust's delays. During the later period, there were various factors at play – not least the impact of covid-19. There was some correspondence in February and early March 2020 about the contractors. But the site then had to be closed due to lockdown and all work stopped. Nothing happened until June and then, after further correspondence, Amtrust agreed to remove the contractors in August. So while there were issues with the contractors, there were other issues too. I wouldn't hold Amtrust solely responsible for the lack of progress during this period. Taking everything into account I don't think a further payment for loss of earnings should be made.

As I've said, what happened during this period forms part of the consideration for what would be a reasonable payment to compensate Mr and Mrs J for the distress and inconvenience caused to them.

In most cases, the compensation we award for distress and inconvenience is less than £5,000. Our highest awards, for the most extreme impact we see, go beyond £5,000. I do appreciate that the circumstances have been very difficult for Mr and Mrs J – this matter has been going on for some years. But the compensation is not intended to cover the whole period. I'm only looking at events between December 2018 and August 2020. Mr and Mrs J have already received compensation for delays before then. And if there are any further delays more recently those can be considered separately.

A payment of £5,000 is generally appropriate where the things a business got wrong have caused sustained distress, potentially affecting someone's health, or severe disruption to daily life typically lasting more than a year. That is the case here and in the circumstances I'm satisfied the payment of £5,000 was fair.

My final decision

My final decision is that I uphold the complaint and direct Amtrust Europe Limited to pay to Mr and Mrs J compensation of £11,561.20, together with simple interest at 8% per year on that amount from 1 November 2019 to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 21 June 2022.

Peter Whiteley
Ombudsman