

The complaint

F complains Amtrust Europe Limited hasn't provided a fair settlement for a claim it made on its landlord insurance policy.

Mr M and Mrs R have brought the complaint on behalf of F, which is their business.

What happened

F owns a property that was let to a tenant. Mr M and Mrs R made a claim on behalf of F, after it was found the tenant had damaged the property to facilitate the cultivation of cannabis. Amtrust appointed a loss adjuster.

Mr M obtained two quotes from different contractors. The lowest quote was for £20,230, and this was dated November 2021. The loss adjuster settled the claim for £17,500 (less the £500 policy excess). The settlement was agreed in February 2022 (Mr M signed the acceptance form on behalf of F), and it was paid by Amtrust in March 2022.

Mr M went on to obtain a third quote from a different contractor, which was higher than the first two quotes.

In April 2022, Mr M complained the claim settlement wasn't enough for the repairs. He said the cost of materials and labour had increased. He also complained that F's loss of rent hadn't been paid.

Amtrust noted that in March 2022, Mr M's contractor had offered to honour its original quote for 28 days. Therefore, Amtrust wasn't prepared to increase the settlement. Amtrust said it would consider the loss of rent part of the claim, but Mr M would need to provide the loss adjuster with documentation to evidence the loss.

Mr M and Mrs R were unhappy with Amtrust's response, so they contacted our service. Mr M also noted the loss adjuster had since told him the loss of rent wasn't covered. One of our investigators considered the complaint about the buildings settlement, but she didn't think the complaint should be upheld. She didn't consider the loss adjuster's loss of rent claim decision because she thought Amtrust should respond to that part of the complaint first.

Mr M and Mrs R disagreed with our investigator's outcome, so the complaint was passed to me to decide.

Mr M provided an email exchange with Amtrust, showing he attempted to complain about the loss of rent claim decision, but Amtrust simply referred him back to our service noting we would be considering the matter as part of this complaint.

I issued a provisional decision, explaining I intended to uphold the complaint in part. In my provisional decision, I said:

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

The buildings claim settlement

Amtrust settled the claim based on the most competitive quote, less deductions for the items the loss adjuster said weren't covered. I'll go on to consider whether those deductions were fair, but as a starting point, Amtrust was entitled to settle the claim based on the lowest quote submitted by F.

Whilst the quote was obtained in November 2021, I'm satisfied it was still valid when Amtrust confirmed on 4 March 2022 it would be releasing the payment. I say this because I've seen the contractor confirmed to Mr M in writing, on 7 March 2022, that whilst it couldn't reduce the November 2021 quote, it would honour the quote for a further 28 days. If Mr M didn't accept the quote within that 28-day timeframe, and the quote has since risen, that's not something I can hold Amtrust responsible for.

I'll turn now to the loss adjuster's deductions, from the £20,230 quote.

The loss adjuster deducted a £500 policy excess. I've seen from the policy schedule that a £500 excess applied to claims for malicious damage by tenants. As such, I'm satisfied the deduction was in-line with the policy terms. Once the excess is deducted from the quote, the remaining balance is £19,730.

The loss adjuster explained to Amtrust that a broad adjustment was made for various items on the quote that weren't related to the malicious damage. The only deducted items that were broken down on the quote were the front and back doors, for £1,920. Those doors were damaged by the police to gain entry.

Because the front and back doors weren't maliciously damaged, they aren't covered under the 'malicious acts or vandalism' coverage.

The policy does have an 'emergency services' coverage. That covers damage caused by the police when gaining access due to their concern for the tenant's welfare, or to mitigate loss or damage to the property caused by an insured event. Because the police didn't force entry due to the tenant's welfare or to mitigate loss or damage to the property, the doors aren't covered under the 'emergency services' coverage either. To be clear, the reason for the forced entry wasn't to mitigate loss or damage to the property, but rather, it was to apprehend the tenant and seize the drugs.

I haven't seen any other coverages that would apply to the damage caused to the front and back doors. Therefore, I'm also satisfied the £1,920 deduction was in-line with the policy terms.

Once the £500 excess has been deducted from the £20,230 quote, and a further £1,920 for the front and backs doors, the remaining balance is £17,810. Amtrust only paid £17,000. Overall, I'm not persuaded Amtrust has shown why the further £810 deduction was fair.

The loss adjuster made deductions for the ceilings and walls in the master bedroom, landing, and living room. However, whilst I accept there was likely some damage in those areas that didn't relate to the malicious damage, the loss adjuster's reports note those ceilings and walls would need reinstatement as a result of the malicious damage.

The loss adjuster also made deductions for the loft, in relation to removing materials installed by the tenant for the cultivation of cannabis; replacing struts; and fitting new loft insulation. However, those items appear to relate to the malicious damage, and the loss adjuster's reports note extensive malicious damage in the loft.

The loss adjuster also made deductions for electrical work in the kitchen and bathroom. However, the loss adjuster's reports note a complete rewire is required. This is also supported by the quotes and a letter from one of the contractors who quoted.

I accept the loss adjuster took a broad approach when adjusting the settlement in an attempt to be fair. But based on the information presented, I'm not persuaded deductions beyond the policy excess and external doors should apply.

Therefore, I intend to decide Amtrust should pay a further £810 for the buildings settlement. It would also need to pay 8% simple interest per annum on this amount from 4 March 2022 to the date of settlement.

The loss of rent claim

Amtrust has provided us with its loss adjuster's reasons for declining the loss of rent part of the claim. Having considered those reasons, along with the policy terms, I'm persuaded the loss of rent was fairly declined. I'll explain why.

If the property becomes unoccupied and can't be let as a result of an insured event, the policy covers the rent the tenant would have paid (subject to the policy limit). The policy excludes any loss of rent arising from the tenant leaving without giving notice.

Malicious damage is an insured event. However, F's property didn't become unoccupied as a result of the malicious damage. The tenant didn't leave and stop paying rent because the damage made the property uninhabitable. But rather, the tenant left without giving notice, because they were caught undertaking an illegal activity. So, in view of the cover and the exclusion set out above, I'm persuaded F's loss of rent during the repairs isn't covered.

I accept a new tenant may have been found if it weren't for the malicious damage, but that doesn't change the circumstances of the outgoing tenant's departure or what I've said above.

If Amtrust had unfairly delayed the claim settlement, there may be an argument that it should be liable for any resulting financial losses. However, I've not seen that Amtrust unreasonably delayed the settlement. Mr M submitted two quotes by mid-December 2021. Following some clarification about the work, and a letter from one of the contractors in mid-January 2022, the settlement was agreed in mid-February 2022. Amtrust acted on the loss adjuster's agreed settlement within two weeks. Overall, I don't consider those timescales to be unreasonable."

In response to my provisional decision, Mr M made the following submissions:

- Mr M provided an email from the police which confirmed they were called to the property by a neighbour due to a broken window. Someone was arrested on suspicion of burglary, after being caught running away. The police found the cannabis farm when inspecting the property.
- Mr M explained the tenant hasn't been found by the police. He asked whether the loss of rent should be covered on that basis.
- Mr M said that whilst the broken doors had been reinforced by the tenant for security reasons, they weren't forced by the police. He also provided emails from the police which confirmed it hadn't forced the doors to gain entry. The police noted it had drilled and replaced the locks.

- Mr M again provided the email dated 7 March 2022, which was from the contractor who provided the lowest quote. The email confirmed the quote would be honoured for a further 28 days. Mr M also provided a letter dated September 2022, which was from the contractor who provided the second lowest quote. The letter explained the contractor's original quote would require adjusting to reflect increased material and labour costs. Mr M says it's impossible to get the work done for the settlement amount.

Amtrust's loss adjuster also responded to my provisional decision. The loss adjuster set out why it considered the adjustment to the settlement to be reasonable, with reference to the electrics, ceilings, master bedroom walls, and loft flooring and insulation.

I've since responded to Amtrust, clarifying why I thought those items should be covered. I also explained that in view of the police emails, I can't reasonably conclude the police damaged the external doors. But rather, *on balance*, I'm persuaded the external doors were maliciously damaged by the tenant in their attempts to add additional security.

I told Amtrust I'm now persuaded it should settle the remainder of the £20,230 quote, plus pay 8% simple interest per annum on the remaining amount, from 4 March 2022 to the date of settlement. Amtrust noted it hadn't previously seen the police emails, but it said it didn't disagree with my assessment. Amtrust also highlighted there's a £20,000 policy limit for damage caused by a person lawfully in the building (such as a tenant).

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'll focus on the points made in response to my provisional decision.

The buildings claim settlement

Mr M points towards a letter from the contractor who provided the second lowest quote. The letter explains the quote will need to be adjusted, to reflect the material and labour cost increases since the original quote was provided some nine months earlier.

However, as explained in my provisional decision, Amtrust was entitled to settle the claim based on the lowest quote submitted by F. Importantly, the quote was still valid when the claim settlement was paid. It's not clear why F chose not to use that contractor before its quote expired. But in any event, that's not something I can hold Amtrust responsible for.

Therefore, the only question to be answered is whether the deductions from the lowest quote were fair and reasonable. As noted above, I've already discussed this matter with Amtrust, and it doesn't disagree that the quote should now be paid in full, subject to the policy limit.

The lowest quote was £20,230. Once the £500 excess is deducted, the claim settlement due is £19,730 – which is below the £20,000 policy limit.

£17,000 has already been paid. Therefore, to settle this complaint, I find Amtrust should pay a further £2,730, plus 8% simple interest per annum from 4 March 2022 to the date of settlement.

To be clear, the 8% simple interest isn't subject to the policy limit. The interest payment isn't being made under the policy terms, but rather, it's a payment to reflect the fact F has been deprived of the £2,730 since the claim was originally settled.

The loss of rent claim

Whether or not the tenant has been caught by the police doesn't impact the loss of rent part of the claim. As per the policy terms, for loss of rent to be covered, the property must have become unoccupied as a result of an insured event. Furthermore, the policy excludes any loss of rent that arises from the tenant leaving without giving notice.

Importantly, F's property didn't become unoccupied as a *result* of the malicious damage. In other words, the tenant didn't leave because the damage made the property uninhabitable. But rather, the tenant left without giving notice, because the police had discovered their illegal activities. As such, I remain persuaded the loss of rent was fairly declined.

My final decision

For the reasons I've set out above and in my provisional decision, I uphold this complaint in part. My final decision is Amtrust Europe Limited should:

- pay F a further £2,730 for the buildings settlement, plus 8% simple interest per annum from 4 March 2022 to the date of settlement.

If Amtrust considers it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell F how much it has taken off. If requested, Amtrust should also provide F with a certificate showing the amount deducted, so it can reclaim it from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs R, on behalf of F, to accept or reject my decision before 16 February 2022.

Vince Martin
Ombudsman