DRN-3735967

The complaint

Mr K has complained about Amtrust Europe Limited's decision to decline a claim he made under his Premier Guarantee New Home Warranty.

What happened

The subject of this complaint is a building comprised of eight flats. Damage has been caused to the common parts of the building, which means other leaseholders have been affected, in addition to Mr K. However, this complaint has been brought by Mr K only.

There has been extensive background to this complaint which I don't intend to repeat in full here. Instead, I'll summarise the key issues in dispute which I need to decide. This isn't meant as a discourtesy to either party, rather it reflects the informal nature of our service and my role within it.

There have been several businesses and individuals involved in the complaint – acting as representatives or agents of either Mr K or Amtrust. But for ease of reference, I'll only refer to Mr K and Amtrust in this decision – even when referring to the actions or arguments of their representatives.

In 2018, issues with the roof of Mr K's building were identified and the freeholder, who I'll call B, sought to claim under the warranty. Mr K is now a director of B.

Amtrust has now accepted the claim, but because the issue relates to damage to a common part of the building, the roof, it says one policy excess per policyholder applies.

Mr K has raised several concerns with this position. He's argued that the policy terms specifically state that the freeholder can be a policyholder. He says this claim has been brought by B and so only one excess should apply. He's also suggested that the policy only covers one housing unit, as defined, and so again only one excess should apply. He says Amtrust's interpretation of the policy terms is unfair and essentially means the warranty isn't fit for purpose.

One of our investigators considered Mr K's complaint. She explained while the policy terms envisaged that B *could* be a policyholder, B had no insurable interest in any of the demised flats, and it was the individual leasehold owners, not B, who benefitted from cover for their share of liability for repair of the common parts. But as Mr K was a leaseholder (and so a policyholder), he could bring a complaint in his capacity as an individual policyholder.

Our investigator said that each leaseholder held a policy covering them for their property and their share of the common parts. She said the damage in this case had affected a common part and so it was reasonable for Amtrust to apply one excess per policyholder. Our investigator also agreed that Amtrust had caused Mr K some distress and inconvenience and so recommended it pay him £250 compensation.

Mr K didn't agree. So, because no agreement has been reached, the complaint has been passed to me to decide.

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.

Having done so, I agree with the outcome reached by our investigator. I'll explain why below.

Is B a policyholder?

Mr K has pointed to the definition of policyholder within the warranty booklet which states:

> *"For Sections 3.2,3.3,3.4 and 3.5: The owner acquiring a freehold or leasehold interest, or their successors in title, or any mortgagee in possession or lessor excluding the Developer, Builder, any relatives or associated companies or anyone having an interest in the construction or sale of the Housing Unit."*

Based on this, Mr K argues that B – as the freeholder – is the policyholder bringing a claim. So, as it's one claim brought by one policyholder, Mr K argues that only one excess should reasonably apply.

I've thought about Mr K's point here. But in this case, there is no evidence to suggest that B holds a policy covering its freehold interest. Instead, each leaseholder, including Mr K, has an individual policy which covers them for their demise and their share of the common parts. This is further supported within the policy wording definitions of common parts and the financial limits section relating to common parts, which state:

> *"Those parts of a multi-ownership building (of which each Housing Unit is part), for a common or general use, for which the Policyholder has joint ownership and/or legal responsibility."*

And

> *"The maximum the Underwriter will pay for any claim relating to Common Parts will be the amount that the Policyholder has a legal liability to contribute toward the cost of repairs, rectification or rebuilding works. Claims are subject to financial limits for the individual sections detailed above and the Minimum Claim Value and/or Excess as detailed in the Initial and Final Certificates.*

There are eight flats in Mr K's building, each with a warranty covering the individual flat and their proportion of the common parts. Therefore, I'm satisfied that B is not a policyholder in its own right.

What is a common parts claim?

Mr K's warranty is split into various sections of cover. Section 3.3 "Structural Insurance" is the relevant section to Miss D and Mr R's claim and complaint. This section states:

> *"The Underwriter will indemnify the Policyholder against all claims discovered and notified to the Underwriter during the Structural Insurance Period in respect of:*
>
> 1. *The cost of complete or partial rebuilding or rectifying work to the Housing Unit which has been affected by Major Damage provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Housing Unit to its original specification…."*

The warranty defines *'Major Damage'* as:

"

a) Destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter.

b) A condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter.

in either case caused by a defect in the design, workmanship, materials or components of:

• the Structure; or
• the waterproofing elements of the Waterproof Envelope

which is first discovered during the Structural Insurance Period."

Below are the relevant parts of the definition of *"Housing Unit"*:

"The property described in the Certificate of Insurance comprising:

- *The structure;*
- *…*
- *The common parts…"*

And below are the relevant parts of the definition of *'Structure':*

"The following elements shall comprise the Structure of a Housing Unit:

…
• load-bearing parts of ceilings, floors, staircases and associated guard rails, walls and roofs, together with load-bearing retaining walls necessary for stability;
…
…
• roof covering;
…"

What the above means in practice is that the section of the warranty which applies covers *"… physical damage … caused by a defect in the design, workmanship, materials or components of the Structure."* The policy is covering the damage caused by the defect, not the defect itself. Therefore, it's the location of the damage that determines the type of claim being made, rather than the location of the defect.

If, for example, the damage in this case was located solely within Mr K's demise (flat), then I'd most likely consider it unreasonable for Amtrust to deem this a common parts claim, regardless of the fact the defect was in the roof – because what matters is where the damage is. But in this case, both the defect and the damage are solely affecting the roof of the building.

Mr K's lease sets out his obligation to pay a service charge to B, for the maintenance and upkeep of the structure (including the roof). And the policy definition of a common part is "*Those parts of a multi-ownership building (of which each Housing Unit is part), for a common or general use, for which the Policyholder has joint ownership and/or legal responsibility."*

So, in the circumstances, I consider it reasonable to conclude that the roof is a common part. And as the damage in this case is solely affecting the roof, I think Amtrust can reasonably consider Mr K's claim to be a common parts claim.

The claim decision

As explained above, Mr K's warranty only covers him for the proportion of the common parts he has a responsibility for. I don't know what proportion of the common parts are attributable to each leaseholder, but in the circumstances, I don't think that's important.

I say this because Amtrust has covered the claim for damage to the roof in full. So, as there are eight warranties in place, each covering their proportion of the common parts, it follows that in order for the damage to be covered in full – as it has been – each policyholder effectively has to claim on their warranty for their proportion of the common parts.

The warranty defines the *"Excess*" as:

> *"As noted on the Initial Certificate and Certificate of Insurance the Underwriter shall not be liable for the first part of any payment made in respect of a valid claim under the policy for a Housing Unit."*

It also explains that the excess is subject to indexation:

> *"The Limit of Indemnity and Excess referred to within the Certificate of Insurance will be increased in line with the RICS House Re-Building Index or 10% per annum compound, whichever is the lesser, on each anniversary of the commencement of the period of insurance for Sections 3 2, 3.3, 3.4 and 3.5 of this Policy. For the purpose of settlement of any claim hereunder the Limit of Indemnity, as adjusted in accordance with the foregoing provisions, shall be regarded as the Limit of Indemnity at the time of discovery by the Policyholder of such claim"*

Amtrust is entitled to apply an excess for the first part of each claim. And for the reasons above, I agree that there have been eight claims. So, it follows that by applying eight, indexed linked, excesses, Amtrust has acted in line with the terms of the warranty. And I don't consider that acting in line with the terms of the warranty delivers an unfair outcome in the circumstances of this claim and complaint.

Customer service

Mr K has raised numerous concerns with Amtrust's (and its agents') handling of this claim and complaint. Complaint handling isn't strictly a regulated activity that our service can consider. But I've considered Amtrust's handling of the situation, in the round, and the impact this had on Mr K.

I've carefully considered everything both sides have said about the length of time things took to resolve, the mistakes which were made around the scope of repairs and about the time Mr K has spent dealing with the claim.

I can see that there have been delays and errors caused by Amtrust and that these resulted in Mr K spending additional time and effort on the claim and complaint. But I'm also mindful that Mr K was dealing with Amtrust primarily in his professional capacity as a director of B. That said, I do accept that Mr K has suffered undue distress and inconvenience, in his personal capacity as a leaseholder, as a result of the issues caused by Amtrust.

Having considered Amtrust's handling of the situation, in the round, and the impact this had on Mr K, solely in his personal capacity, I agree with our investigator that £250 compensation is enough to fairly put things right.

My final decision

For the reasons set out, I uphold Mr K's complaint in part.

Amtrust Europe Limited must pay Mr K £250 – for the distress and inconvenience it has caused him – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 December 2022.

Adam Golding
Ombudsman