

## **The complaint**

Mr D complained that his claim for damage under his home warranties / sofa care policy was unfairly declined by Amtrust Europe Limited ("Amtrust").

## **What happened**

When Mr D bought two sofas around three years ago, he bought a protection policy for them which was provided by Amtrust. Mr D said his twins accidentally spilt a whole pot of curry over one of the sofa's whilst eating. Mr D noticed he'd damaged the back of one of the sofas when he moved it to clean it.

Mr D made a claim to Amtrust. Initially Mr D was provided some cleaning materials, but when these didn't work Amtrust sent an assessor to review the damage.

Amtrust decided to decline the claim based upon the assessor's report. It said there were many stains which had occurred over time. Amtrust said the damage to the back of the sofa had been caused by the sofa rubbing up against the wall. Amtrust said the claim wasn't covered by the policy as the policy doesn't cover gradually occurring stains or damage.

Our investigator decided to uphold the complaint. He agreed there were other stains on the sofa but said Mr D was only claiming for the curry stain and the damage to the back of the sofa. He didn't see any evidence to suggest there wasn't a curry stain. As this was a single incident, he thought Amtrust should cover this claim in line with the terms and conditions of the policy. Amtrust disagreed, so the case has been referred to an ombudsman.

## **My provisional decision**

I issued a provisional decision on this on 13 September 2022. I said:

*"I have reviewed what Amtrust said when it declined the claim. It said:*

*"The insurance you have purchased is designed to cover for sudden and unforeseen damage that occurs in a single incident of staining and accidental damage defined as sudden and unintentional damage to the product as shown in the Coverage section on the front of your certificate. We do not cover any gradually occurring stains or damage(s).*

*They have advised that there are large areas of staining across all sofas, worst staining is present across all arms and seats which have dark patches which feel greasy to the touch but further staining also present on back cushion panels. In addition to the dark greasy type stains there are multiple other stain types including coloured pen, whiteish staining and liquid type marks. There are multiple areas of stain upon stains. Various areas of stains upon stains and wear/fading of some stains support this.*

*We do not cover any gradually occurring stain or damage, any gradually occurring general soiling which results in build up or any multiple stains occurring over a period of time as detailed in Section 4 of your protection plan certificate as this prejudices our ability to remove the stain successfully".*

*I have considered what Amtrust has said and its based upon the report of its assessor. The report is consistent with the photographs that have been provided of the sofa. The commentary is consistent with what I can see in the photographs. However, I don't think Amtrust's reasoning to decline the claim is consistent with what has been claimed for.*

*Amtrust has said there are multiple stains on the sofa, which it says provides evidence that they have occurred gradually over time. If this was the case, then I'd say there conclusion to decline the claim is fair as the policy does exclude "any stains or damage arising over time, gradual wear and tear, or your product becoming gradually dirty and out of condition over time".*

*However, Mr D explained the curry stain happened in a one-off incident with his children and this had happened recently. I have checked the policy and it says the policy covers "Accidental Staining – in this Plan this means sudden and unintentional spills of food". I think the claim Mr D has made is consistent with Amtrust's definition of accidental staining. The assessor's report doesn't specifically state whether a curry stain is or isn't present on the sofa. It's quite vague in this respect which isn't useful. However, it does refer to "dark patches which feel greasy to the touch". I think it's likely this is from a recent food spillage as its still greasy, so it's likely it's the food spillage that Mr D claimed for.*

*Therefore, I don't think Amtrust has been fair in declining the claim for the curry spillage, as this is covered by the policy under Accidental Staining. Therefore, I intend to require Amtrust to settle this claim (for the curry spillage) in line with its remaining terms and conditions.*

*Mr D's claim was also for the damage he noticed on the back of his sofa when he moved it. Mr D said he thought this happened when he tried to move the sofa to clean it following the spillage. Amtrust said "damage appears to be caused from rubbing on wall and radiator behind sofas - visible damage present to wall behind manual sofa, white paint on manual sofa suggests this was once placed in front of radiator on other side of the room. Not consistent with a single incident."*

*The photographs do support what the assessor wrote in his report, there is definite and clear gradual damage along the top of the sofa running from one side to the other where the top of the sofa looks like it may have rubbed or pressed against the radiator. However, the tear itself looks to be in a different area to the rubbing and I think it's more likely it was caused in one-off incident, rather than gradually over time. I have no reason to think this tear didn't happen when Mr D said it had - when he moved his sofa to clean it. Therefore, I uphold this part of the complaint, I intend for Amtrust to cover this claim in line with the remaining terms and conditions.*

*It's unlikely Mr D will have been able to use the sofa properly since the curry spill due to the greasy nature of the residue. Therefore, I think the delays in Amtrust repairing this will have inconvenienced Mr D, so I intend to award £75 in compensation for the distress and inconvenience caused".*

## **Responses to my provisional decision**

Amtrust didn't have anything further to add following my provisional decision. It didn't comment on whether it accepted my provisional decision.

Mr D didn't respond to my provisional 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.

Given neither party has provided any new information, I see no reason to change my provisional decision.

### **My final decision**

My final decision is I uphold this complaint. I require Amtrust Europe Limited to:

- Settle the claim in line with the remaining terms and conditions (for the curry stain and tear)
- Pay Mr D £75 compensation – for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 November 2022.

Pete Averill  
**Ombudsman**