

The complaint

Mr and Mrs D are unhappy with the way Amtrust Europe Limited dealt with a subsidence claim they made under their home insurance policy.

Mr D has primarily dealt with the claim and complaint. So, for simplicity, I'll refer to him only.

Reference to Amtrust includes its agents and representatives.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mr D got in touch with Amtrust in 2018 after noticing cracking to his property. Amtrust appointed a loss adjuster, who inspected the damage. They accepted it was caused by subsidence and covered by the policy.
- After carrying out investigations, the loss adjuster said the movement was caused by a nearby tree owned by a third party. They also noted a drain was leaking and that was repaired. After monitoring the movement of the property, the loss adjuster said the property was stable and the degree of subsidence had been very slight.
- Bearing in mind the minimal movement and the potential heave risk of removing the tree, the loss adjuster recommended leaving the tree in place and carrying out superstructure repairs with reinforced ties to strengthen the structure.
- These repairs went ahead and were completed in November 2021. The claim was closed at that time.
- In September 2022, Mr D got back in touch with Amtrust after he noticed the reappearance of the cracking. The loss adjuster said the damage was in the same area and the same tree was the cause of the problem.
- By this time, Amtrust no longer provided Mr D's home insurance. It said the recent cracking was a 'new episode of movement' caused by the hot summer in 2022, so it should be referred to Mr D's current home insurer.
- Mr D complained. He thought Amtrust should take responsibility for the return of the damage. And he said he'd been at an advanced stage of the property sale when the return of the cracking was discovered, but that sale had since fallen through.
- Our investigator thought the complaint should be upheld. She didn't think Amtrust had carried out a lasting and effective repair during the claim because it hadn't taken any steps to stop the cause of the subsidence movement. As the damage had returned in similar places, for the same reason, and in a short space of time, she thought the current damage should be treated as a continuation of the claim. She asked Amtrust to consider the claim and pay £500 compensation. But she wasn't

persuaded Mr D had shown the loss of the sale had been caused directly by the way Amtrust had acted.

- Mr D accepted this. Amtrust didn't. It said it had made the right decision at the time, bearing in mind the information available then. Noting the risk of heave if the tree had been removed and the minimal movement shown in the monitoring, it didn't think stabilisation work was warranted at the time.

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.

- In part this problem has arisen because Amtrust stopped providing Mr D's home insurance in October 2019. I understand this decision was made by Mr D's insurance broker, rather than Amtrust, so it's not something I can hold against Amtrust. Mr D is entitled to raise a separate complaint with the broker if he wishes.
- I would expect an insurer to ensure that any repairs it carries out are effective and lasting. In a subsidence claim, that includes ensuring the structure has been stabilised and is likely to remain stable for a reasonable period of time.
- It's agreed there's subsidence damage in the same place as before. That means the structure hasn't remained stable. And this has happened in under a year. I'm not satisfied that's a reasonable period of time. So, on the face of it, Amtrust has failed to carry out a lasting and effective repair and it should deal with the current damage as a continuation of the 2018 claim.
- But Amtrust has argued two main points against that. Firstly, that the cause of damage is different now than it was before. And secondly, that it took the right course of action before, so it's not responsible for the new damage. I'll look at each point.
- Amtrust suggests the cause of damage in 2022 is different to that in 2018. It says the dry summer of 2022 is the cause of the recent damage. Were there a new, distinct cause of damage since the repairs were carried out, then I may not think it fair for Amtrust to be responsible for the new problem.
- But the cause of subsidence in 2018 was accepted to be the nearby tree. And the loss adjuster has been clear that the cause of subsidence in 2022 is also that tree. They said, "the willow tree is again implicated".
- Whilst the loss adjuster noted that 2022 was a particularly dry summer, they didn't say that was the underlying cause of the new damage. I think those weather conditions have simply highlighted that the tree remains an influence on the subsoil, and therefore the stability of the property. So I'm satisfied the tree is the cause of the current damage, as well as the earlier damage.
- Amtrust says it acted reasonably based on what it knew at the time. It points to the monitoring, which it says showed stability after nearly two years of readings. I can understand how that would have given the impression the property had stabilised. And given the concerns about heave, there was a case for not removing the tree.
- But that meant Amtrust had identified the cause of the subsidence movement – and not taken steps to remove it. With the cause of movement remaining in place, the risk

of further movement also remained. Although Amtrust added strength to the superstructure during repairs, and that was intended to mitigate the minimal movement it had observed, that wasn't sufficient to resist the movement in 2022.

- So I'm not satisfied Amtrust did act reasonably based on what it knew at the time. But even if I found that it did act reasonably, the point remains that the damage has returned in the same place, due to the same cause, within a year. In my view, it isn't fair and reasonable to treat the new damage as a new claim in these circumstances.
- To put things right, Amtrust should consider the new damage as a continuation of the 2018 claim. That means not recording a new claim or asking for a new excess. Aside from that, the previous policy terms and conditions apply. And Amtrust should keep in mind its obligation to carry out a lasting and effective repair.
- Amtrust should also pay compensation. It would have been distressing for Mr D to see the damage return so soon after the work was complete. And almost a year has elapsed since then without Amtrust taking steps to put it right. Because the property hasn't been sold, it's not clear that the break down of the sale has led, or will lead, to a financial loss for Mr D. But I have no doubt it would have added to his distress.
- I'm satisfied £500 compensation is reasonable in the circumstances.

My final decision

I uphold this complaint. I require Amtrust Europe Limited to:

- Consider the new damage as a continuation of the claim.
- Pay £500 compensation*.

*Amtrust must pay the award within 28 days of the date on which we tell it Mr and Mrs D accepts my final decision. If it pays later than this, it must also pay interest on the award from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 25 August 2023.

James Neville
Ombudsman