

## **The complaint**

The estate of Ms D complain that Amtrust Europe Limited unfairly declined a claim under their residential property owner insurance policy.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

The estate of Ms D owns a property which is let out. In June 2022, the property was rendered uninhabitable following a fire. A claim was made to Amtrust, which it accepted and paid including loss of rent.

In September 2022, whilst the property was still undergoing repairs, the tenants served notice on their lease.

The property was deemed habitable in November 2022, at which point it was immediately put back on the rental market and new tenants were found within a few days.

The new tenants were due to move into the property on 29 December 2022. But one week before, a water leak occurred causing extensive damage and the tenants were unable to move in.

A further claim was made to Amtrust, but it was declined on the basis that the policy doesn't cover escape of water claims where the property is unoccupied for a period of 60 days or more.

The estate of Ms D raised a complaint. But as Amtrust maintained its decision, the complaint was brought to our service.

Our Investigator didn't think Amtrust had acted fairly in declining the claim. She said the property was occupied by contractors working on the repairs during the time it was uninhabitable. She also didn't think Amtrust had made it sufficiently clear to Ms D or her estate that cover under the policy would be restricted going forwards when the fire claim was made. She recommended that Amtrust accept the claim.

Ms D's estate agreed with our Investigator, but Amtrust didn't. It said the property was a building site and couldn't be considered as occupied by contractors when they wouldn't be working evenings, nights, or weekends.

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.

When doing so, I've taken into account the relevant rules and regulations, and good industry practice. In particular the Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) which requires businesses to handle claims promptly and fairly, and to not unreasonably reject a claim.

The insurance policy in place at the time of the claim included the following endorsement, which was set out in the renewal documents dated January 2022:

*"Unoccupied properties (becoming vacant during the policy period)...once the property is considered to be unoccupied cover under this policy excludes the following...damage arising from insured perils h, i, j, k and n."*

The renewal documents provided a change of definition of 'unoccupied' as follows:

*"Any building or part of building or flat which is empty, disused, unoccupied, unfurnished, untenanted by you or your tenants and has been so for a period of 60 days or more."*

Amtrust say that as the property was unoccupied, unfurnished, and untenanted for a period of 60 days there was no cover for insured peril 'h' – escape of water.

The key issue in this case is the definition of 'unoccupied'. In my view, it's not helpful to have a circular definition of "unoccupied" as being a building "which is unoccupied". It's also not clear what it means by "disused" and "empty" in this context.

The property wasn't empty, it had contractors in and out doing repairs, and I would assume there were materials and tools left there at times. The property certainly wasn't disused either, taking account of the general definition of not being used; it may not have been lived in, but the definition doesn't say that it needs to be.

On a strict interpretation of the policy terms, it's arguable that it was unfurnished and, from September 2022, it was untenanted.

But my role is not only to determine whether Amtrust's decision was in line with the policy terms, but also whether the way the policy terms were applied was fair and reasonable in the circumstances of the claim. And I don't think it is. I'll explain why.

The usual purpose of this kind of exclusion is to limit an insurer's risk when a policyholder leaves a property vacant for an extended period of time. And had that been the case here, I'd likely agree it was fair to rely on the term. But the reason why it became unoccupied was to put right damage caused by a claim accepted under the policy and to take the necessary steps to occupy it again, which Ms D and her estate did as soon as reasonably possible.

It would be very unusual for an insurer to take the policy literally in these circumstances and I don't think it would be fair to do so, because not only was it outside Ms D's control, but as a direct result of a successful claim under the policy. It would effectively mean an insurer accepts a claim but withdraws cover whilst the claim is being dealt with, which doesn't feel fair or in line with what the industry usually does or Ms D and her estate would expect.

At the time the escape of water occurred, the property had been signed off as habitable and a contract was in place for new tenants to move in the following week. Had the tenants wanted to move in seven days earlier or if the original tenants hadn't given notice but instead moved back in, I think it's likely the escape of water still would've occurred. But, in those circumstances, the claim would've been covered. I don't consider it fair or reasonable to decline a claim based solely on a technicality.

I've also thought about whether Amtrust made it sufficiently clear to Ms D that policy cover would be restricted after the fire claim was made. I'm satisfied the policy renewal documents sent in January 2022 explained that cover would be restricted if the building became vacant during the policy period. But Ms D was elderly and in poor health during 2022 and she sadly passed away shortly after the leak claim was made.

So taking into account the individual circumstances of its policyholder and her vulnerabilities, I think it would've been appropriate for Amtrust to ensure Ms D knew that cover had reduced when the fire claim was made, despite what information it had given beforehand. And I can't see that it did that.

Overall, I'm not satisfied Amtrust has acted fairly and taken into account the specific circumstances of this case when declining the claim. So, on a fair and reasonable basis, I'm directing it to accept the claim under the remaining policy terms and conditions.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Amtrust Europe Limited to accept the escape of water claim in line with the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms D to accept or reject my decision before 4 July 2024.

Sheryl Sibley  
**Ombudsman**