

The complaint

Mr O complains that Amtrust Europe Limited ("Amtrust") unfairly declined a claim made under his building warranty.

What happened

Mr O's property suffered a leak in July 2021. There was substantial damage to Mr O's contents as well as the building itself. Mr O arranged for a leak detection survey to be carried out to determine the cause of the problem.

Following the investigation, the surveyor concluded that the workmanship of the roof and the materials used had caused the water ingress. So in January 2022, Mr O made a claim under his building warranty with Amtrust.

Amtrust declined Mr O's claim, saying the leak was a direct result of poor maintenance of the roof. Mr O disagreed and made a complaint. He said Amtrust had caused delays and hadn't treated him fairly. He also said he had to incur costs of over £76,000 to repair the damaged part of the roof and that he should be reimbursed for this. Amtrust offered him £600 in compensation for the distress and inconvenience it caused, in response to his complaint, but Mr O didn't feel this was sufficient, considering his substantial financial losses. So he referred his complaint to this service.

Our investigator considered all the information from both parties, but didn't think Mr O's complaint should be upheld. He said that despite there being structural issues with the roof, the evidence indicated that the water ingress was the result of maintenance issues and not the defective roof itself.

Mr O didn't agree with our investigator's assessment, so the complaint has now come 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've decided not to uphold this complaint. I'll explain why.

Mr O's warranty covers him for Major Damage to the property which is covered under section 3.3 of the warranty terms.

Section 3.3 says the underwriter will indemnify the policyholder against claims in respect of the cost of rebuilding or rectifying the Housing Unit which has been affected by Major Damage. Major Damage is defined in the policy wording 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*

This means that the warranty doesn't provide cover to rectify structural problems alone, nor does it cover every instance of Major Damage irrespective of the cause. What it does cover is Major Damage that is specifically caused by a structural defect.

So I've thought about whether the evidence in this case shows that the water ingress was caused by the structural defects with the roof or not.

It's not in dispute that there were structural problems with the roof, as identified by the expert reports that have been provided in this case. Both the first report dated 26 November 2021 and the second report dated 4 July 2022 say *"the roof does not comply with British Standards or Building Regulations"*. So I'm satisfied that the roof can be described as having a structural defect as defined in the policy.

I've then considered whether the structural defect was the main cause of the water ingress, as this would give rise to a valid claim under the terms of the policy.

The expert report dated 4 July 2022, says that *"the drainage system relies on well maintained and functioning sumps and sump pumps and we have not seen any evidence that regular maintenance was undertaken on these vital pieces of equipment."*

It goes on to say that rainwater wouldn't be removed from the sumps and would back up on to the roof if the sumps and sump pumps weren't working correctly at the time. And in my view there is enough evidence to show that they weren't functioning as they should. I say this because the letter to Mr O from the same experts, dated 26 October 2023 says *"the lack of functioning sump and sump pumps led to the surcharging of the downpipes to the roofs leading to a build up of water on the roofs which overflowed via the roof lights into the property."*

I find this explanation regarding the likely cause of the water ingress plausible, because the report dated 4 July 2022 also explains how the drainage from the lower ground floor is taken to a rear pumped collection system under the rear patio and is pumped up to drainage level by sump pumps. I think if the sumps and sump pumps had been working correctly, the residual rainwater would've been adequately removed from the surface during the storm, thus preventing water ingress through the roof.

I've considered what Mr O has said about this. He's argued that the policy provides cover for Major Damage and that the relevant definition of Major Damage within the policy is *"a condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the housing unit 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"*.

I appreciate Mr O feels strongly that the claim should be honoured. However, the fact still remains that there is evidence to suggest that the defect in the roof was *not* in fact the predominant cause of the water ingress, due to the apparent lack of maintenance of vital equipment, namely the sumps and sump pumps. This would mean the definition Mr O has quoted above still would not give rise to a valid claim under this policy – because a valid claim relies on direct causation. And for the reasons I've explained, I can't fairly say that the defective roof was the main cause of the damage.

I've considered the delays that Amtrust caused throughout the claim journey, and I can see that initially there was a delay in Amtrust reaching a decision regarding the outcome of the claim. The claim was made in January 2022 and it wasn't until October 2023 that a decision was communicated to Mr O. I find this length of time to be unreasonable and the impact on Mr O would've been significant. There were also delays in Amtrust responding to Mr O's complaint, as it gave updates but was unable to provide Mr O with a response to the complaint within the timescale required. I think £600 compensation is in the region of what I would have awarded for all the delays, had no offer been made by Amtrust.

I realise Mr O will be disappointed with my decision. He has paid for repairs himself, and suffered distress and inconvenience throughout the process. But unfortunately, building warranties are not always designed to pay out for any structural defect found within a property. The terms of each policy dictate when a valid claim arises, and I'm afraid that for the reasons I've given above, although there were defects, I don't consider a valid claim to have arisen in this case.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 29 May 2024.

Ifrah Malik
Ombudsman