

The complaint

Mr S complains about Amtrust Europe Limited's (Amtrust) handling of a claim made under a building warranty which covers his apartment and his share of common parts.

What happened

The subject of this complaint is a development of apartments. Mr S is the leaseholder of one of the apartments, and the holder of a building warranty covering his apartment and his share of common parts.

Mr S' claim is for remedial work to the common parts of the building, relating to fire safety issues and he complains about the delays in these works being carried out. As the defects are in common parts, this means that other leaseholders, in addition to Mr S, will have been affected. But this complaint has been brought by Mr S, and so I'm only considering the impact to him individually.

The claim dates back to 2020 when the managing agent of the development approached Amtrust with concerns about the fire safety of the cladding on the exterior of the development. Following this, multiple investigations have taken place, and various parties have been involved in the claim to establish the defects, what is required, and who is responsible for putting things right.

Mr S complained to Amtrust in August 2023 that repairs still hadn't been completed and that this was impacting him (and the other leaseholders).

Amtrust issued a final response to Mr S' complaint in October 2023. In this, they accepted they'd prematurely declined the claim when they were first contacted by the managing agent. They said that since then they'd reviewed things and were engaging with the developer to carry out remedial works. Amtrust also said that if the developer failed to engage further, they would fund a Building Liability Order to progress matters, but at that point in time the developer was due to carry out an inspection. Amtrust offered Mr S £550 compensation for any delays they'd caused.

Mr S remained unhappy and approached the Financial Ombudsman Service. He says that whilst the claim and works are outstanding, he's unable to sell his apartment. And he says that via the service charge he pays, he and the other leaseholders have incurred costs including increased insurance premiums, legal representation fees, and costs associated with preparing and investigating the claim.

One of our investigators looked into things but he didn't recommend Amtrust do anything further. He recognised (as had Amtrust already) that the claim was declined prematurely, but he said in any event it couldn't have progressed until evidence of the defects had been provided by the managing agent, which didn't happen until later. So, he didn't think prematurely declining the claim had impacted the timescale overall.

The investigator said that claims of this nature are complex, there have been various parties involved and there have been changes in legislation since the claim was made. And all these

things factored into the complexity and the claim inevitably taking time. And he recognised that Amtrust had also agreed to fund a Building Liability Order to move the matter forward with the developer if required, and negotiations were still ongoing. The investigator recognised progress had been slow, and there were some avoidable delays, but he said Amtrust had been taking appropriate steps to move the claim forward, and even without these avoidable delays, he said it is unlikely remedial works would have been completed by now. So, he didn't think the overall position would have been different.

The investigator didn't recommend Amtrust pay the costs Mr S was seeking (via his service charge contribution) for legal representation as he said this wasn't arranged at Amtrust's request or required specifically because of their actions. And he also noted that Mr S hadn't evidenced the other costs either, such as the insurance premiums increasing as a result of Amtrust's actions. He also didn't recommend Amtrust pay Mr S' conveyancing costs as he thought Mr S would have been reasonably aware that a buyer would struggle to secure a mortgage on the property, and he couldn't hold Amtrust responsible for that.

Whilst the investigator acknowledged there had been poor communication, and the timescale itself was impacting Mr S, he thought the £550 compensation offered by Amtrust was fair and reasonable for any avoidable shortfalls Amtrust were directly and solely responsible for. Therefore, he didn't recommend Amtrust do anything further.

Mr S didn't agree overall, and he also provided details of costs he said have been paid from the service charge, which he has effectively partly paid for via his service charge contributions. Mr S also detailed the conveyancing costs he'd incurred too.

The case was reassigned to another investigator who considered things again, along with the additional information Mr S had provided. But ultimately the outcome remained the same and he also didn't recommend Amtrust do anything further.

The second investigator noted the costs Mr S said had been incurred (via his contributions to the service charge), but he said the policy excluded costs associated with preparing or investigating a claim, so he didn't recommend these be paid by Amtrust. He also said that he didn't think the claim could've been resolved any sooner, or that this would have reduced the insurance premiums, so he didn't recommend this be paid by Amtrust either.

As an agreement couldn't be reached, the case was passed to me for a final 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.

Having done so, whilst I appreciate it'll come as a disappointment to Mr S, I've reached the same overall outcome as each investigator.

Firstly though, I do recognise that the unexpected identification of fire safety issues would be distressing for Mr S, and this is impacting him. He is unable to sell his apartment as prospective buyers are unable to obtain a mortgage whilst the fire safety issues are outstanding and ongoing, the building doesn't have a fire safety certificate, and the claim is taking some time. And I recognise this is through no fault of Mr S that he has found himself in this situation.

However, I do need to take into account that claims of this nature are complex. As Mr S is aware, the claim was made in 2020 by the managing agent for the development, when they contacted Amtrust to raise concerns about the cladding. Amtrust accepted they prematurely declined the claim at that point. But I agree with what our investigator said about this, that only very limited information had been provided by the managing agent at that point to Amtrust, there was no detail, or evidence of investigations to demonstrate what the managing agent thought the issues or defects specifically were. Therefore, even though the claim was declined prematurely, the claim wouldn't have been able to be accepted or to proceed any earlier than it did, which is when the managing agent later provided evidence of the defects, after detailed investigations and reports had been arranged and obtained by them.

Since that point, various investigations have been undertaken at the development and numerous parties have been involved. This includes the managing agent, fire safety consultants and experts, loss adjusters, surveyors, specialists, the original developers, contractors, and building control. And unfortunately, due to the nature and complexity of these types of claims, especially for larger developments with multiple properties, these types of claims do often take lengthy timescales (sometimes several years) to resolve, even if things go entirely smoothly. Amtrust has also needed to take into account legislation changing during this time, which ultimately impacts on things such as who is responsible for rectifying the defects, whether materials or methods comply, and whether that is retrospective.

Amtrust has been engaging and negotiating with the developer in order to progress matters. And I do recognise it has taken a considerable amount of time to get to this point, but unfortunately the very nature of this type of claim, and the amount of parties involved, has meant a lengthy timescale was always very likely.

Amtrust accepts at some points they could have been more proactive, but they were also reliant on other parties, such as the developer engaging. And I also note that when progress slowed and the developer stopped engaging, they agreed to fund a Building Liability Order to try to move the matter forward with the developer.

I agree that the timescale has been lengthy, and Amtrust has made some errors in declining the claim prematurely, there have been some points of avoidable delays, and communication at times has been poor. But even taking into account areas where Amtrust fell short, I don't think, on balance, remedial works would have been completed by now given the complexity of the claim, even if these errors or shortfalls hadn't occurred.

I can only consider Amtrust's failings in the claim and award compensation to Mr S for the impact those failings had on him, rather than for the fact Mr S has found himself in a claim situation, through no fault of his own, in a flat that he is unable to sell due to fire safety issues, which would always take time to resolve. And I think the £550 compensation Amtrust has already offered for those failings they are directly and solely responsible for is fair and reasonable.

As outlined, I do sympathise with Mr S' situation and that a claim of this nature is complex and takes time which is directly impacting him individually in the interim. I understand from a more recent update provided to our investigator, the leaseholders solicitor is currently in discussion with Amtrust surrounding the remedial works and progressing the claim in order to bring things to a satisfactory resolution, which will hopefully enable Mr S to move forward.

Additional costs claimed for

Mr S has said that during the claim, he, and the other leaseholders, have incurred costs, which have been paid for via their service charge contributions. And Mr S says Amtrust should be covering these costs. However, I've reached the same outcome on those costs as our investigator. I'll address each separately.

Legal costs

Mr S says the development has incurred legal fees for solicitors representing the development in the claim, and by extension a proportionate amount has been paid by him (via his service charge) and he says Amtrust should be covering these costs.

However, I can't see that Amtrust required the appointment of solicitors by Mr S or the development. This is a decision that was taken, presumably, by the managing agent on behalf of the development. I'm not persuaded, on balance, that the sole reason this occurred was because of Amtrust's actions, or that it would never have occurred but for Amtrust failings, rather than because the development found itself unexpectedly in an unforeseen complex claim for fire safety issues.

With this in mind, I'm not going to direct Amtrust to reimburse Mr S his proportion of the legal costs the development has incurred.

Costs of reports and investigating the claim

Mr S says the development has incurred costs for investigations, reports and preparing the claim, and by extension a proportionate amount has been paid by him (via his service charge contribution) and he says Amtrust should be covering these costs.

Generally, it is the responsibility of a claimant in an insurance claim to demonstrate their position in the first instance, i.e., that an insured event or valid claim has arisen. And the development has incurred costs in identifying a potential fire safety issue and defect to pursue their claim, which they then presented to Amtrust.

Amtrust has also subsequently arranged (and paid for) their own investigations and specialists to provide reports too.

I can't see that Amtrust agreed to cover the costs of the investigations or reports carried out by the development when presenting their claim before or after those costs were incurred. The policy also excludes the costs or fees incurred by the policyholder in investigating and preparing a claim:

“4. ADDITIONAL EXTENSIONS

In addition, in the event of a valid claim under Sections 3.2, 3.3, 3.4, or 3.5, the Underwriter will pay within the Limit of Indemnity:

C. FEES

Such Architects’, Surveyors’, Legal, Consulting Engineers’ and other fees as are necessarily and reasonably incurred , by the Policyholder in relation to the complete or partial rebuilding or rectifying work to the Housing Unit but shall not include costs or fees incurred by the Policyholder in investigating and/or preparing a claim.”

With this in mind, I’m not going to direct Amtrust to reimburse Mr S his proportion of the costs the development has incurred in investigating and presenting their claim.

Insurance premiums

Between 2021 and 2024, Mr S has said that the development has incurred increasing insurance premiums as a result of what has happened, and a proportionate amount has been paid by him (via his service charge). Mr S says Amtrust should be covering (his share of) the costs.

Amtrust says that the premiums will have increased over this time due to the changing legislation and guidance which resulted in the withdrawal of the building’s fire safety certificate.

I’ve not been provided with details of the development’s full policy renewal by Mr S, or why the premiums have specifically increased each year. And I’d assume that the managing agent arranges the policy each year for the development on behalf of the leaseholders. But, to say that Amtrust should cover these increased costs, I’d need to be satisfied that they have increased solely because of Amtrust’s actions and failures. That is, for example, if I was persuaded that but for Amtrust’s failures, the claim would have been resolved by the last renewal, and the premiums would then have reduced.

But as outlined above, whilst there were some failings by Amtrust at points, I’m not persuaded that the claim would’ve been fully resolved by now, and no other evidence has been provided that demonstrates Amtrust is solely responsible for the increase in premiums for any other reason either. So, I won’t be directing Amtrust to pay these costs.

Conveyancing fees

Mr S says he lost conveyancing fees during the claim. He says potential buyers weren’t able to purchase his property due to the fire safety issues and lack of fire safety certificates, and the sales fell through which left him incurring conveyancing costs.

However, I won’t be directing Amtrust to reimburse these costs. Mr S has been aware of the issues with the fire safety defects in the development and would likely have been reasonably aware that a buyer may have difficulty in securing a mortgage. And as I say, I’m not persuaded the claim would have been fully resolved by now with all remedial works completed but for Amtrust’s failures. So, I can’t hold them responsible if Mr S was unable to sell his property and incurred costs attempting to do so during this time whilst the claim was ongoing.

With this in mind, I won’t be directing Amtrust to reimburse Mr S’ conveyancing costs.

My final decision

Amtrust Europe Limited has already made an offer to pay Mr S £550 to settle the complaint and I think this offer is fair in all the circumstances.

So, my final decision is that Amtrust Europe Limited should pay Mr S the £550 offered, if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 June 2024.

Callum Milne
Ombudsman