

The complaint

Mr and Mrs M complain that the terms and conditions of their Amtrust Europe Limited (Amtrust) landlord buildings insurance policy are ambiguous.

What happened

Mr and Mrs M own a property which is let out to tenants. They also have a landlords building insurance policy underwritten by Amtrust.

Mr and Mrs M became aware of a potential hidden leak at the insured property based on the water usage. So, they tried to make a claim for sourcing and repairing the hidden leak.

Ultimately Mr and Mrs M were told by Amtrust that they had trace and access under their policy which would cover (subject to limits) sourcing the leak and repairing any damage caused when sourcing the leak. However, they were also told that repairing the leak itself wouldn't be covered.

Mr and Mrs M complained to Amtrust that the policy wording was ambiguous as they said, in their view, that it implied repairing the leak would be covered too. Amtrust didn't agree.

As Mr and Mrs M remained unhappy, they approached the Financial Ombudsman Service.

One of our investigators looked into things but she didn't uphold the complaint. She said that trace and access cover is for finding a leak and repairing damage caused whilst doing that, but she said repairing the leak itself wasn't covered under Mr and Mrs M's policy.

Mr and Mrs M didn't agree and asked for a final decision from an ombudsman.

I reached a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’m issuing a provisional decision. I’ve reached a different outcome to our investigator, so I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Mr and Mrs M tried to claim under the trace and access section of their landlord insurance policy for finding and repairing a hidden leak. Amtrust said that trace and access only covers sourcing the leak and repairing the damage associated with that, but not the leak itself. So, Mr and Mrs M say the policy is ambiguous, as they don’t agree with Amtrust’s interpretation.

Having considered the policy terms and all the information and arguments presented, I’m minded to uphold the complaint. I’ll explain why.

Mr and Mrs M’s policy covers a number of insured events such as fire, escape of water and subsidence. The policy also has a separate section, titled Extra Benefits, which includes trace and access cover. This doesn’t say that the trace and access Extra Benefit needs to be linked to, or dependent on, a claim being made for one of the other insured events (such as escape of water). So, from my interpretation of the policy, it is an insured event in its own right.

The trace and access cover provided is outlined as follows:

<i>What is covered</i>	<i>What is not covered</i>
<i>g. trace and access If there is a leak from your fixed water or oil tanks, apparatus or pipes we will pay for the necessary and reasonable expense you incur in locating the source of the leak and making the necessary repairs.</i>	<i>a) amount in excess of £2,500 in total during the period of insurance b) for loss or damage while the home is unoccupied</i>

So, this says that if there is a leak Amtrust will pay for the reasonable expenses (up to the limit of £2,500) in locating the source of the leak, and importantly - making the necessary repairs.

I don’t agree with Amtrust’s view that this says only the repairs associated with sourcing the leak is covered, and not repairing the leak itself. Instead, it says finding the leak and making the necessary repairs, without specifically stating these repairs are limited to the repairs associated with finding the leak only. So, I agree with Mr and Mrs M’s interpretation that once the leak is sourced, making the necessary repairs – to the leak – and the damage caused whilst sourcing it, is what is implied is covered under trace and access (subject to policy limits and exclusions) based on the policy wording.

Across the insurance market, trace and access cover isn't uncommon. But different policies have different definitions of what this means and what it covers, and that depends on what is contained in the associated policy wording itself. Whilst Amtrust may have intended only to cover sourcing the leak, and repairing damage associated with that, that's not what the policy terms say. So, it isn't fair for Amtrust to now try and apply that limitation, when that isn't what the policy says.

Amtrust has also said that there is a specific exclusion for:

"We will not pay for:

d) the appliance or system from which the water escaped"

So Amtrust says this shows repairing leaks are excluded. However, that exclusion is under the escape of water insured peril. And that isn't the section of the policy that is being claimed under. And it's not a wider exclusion applicable to all sections of the policy. If Mr and Mrs M were claiming for damage caused by an escape of water, then Amtrust could potentially rely on that exclusion. But they aren't claiming for damage caused by an escape of water and are instead claiming under the separate Extra Benefits section and trace and access – which doesn't have that exclusion.

With this in mind, unless anything changes as a result of the responses to my provisional decision, I'm minded to conclude that Amtrust has unfairly reached the decision that trace and access doesn't include repairing the leak itself, and therefore isn't able to exclude repairing the pipe under this section of the policy specifically.

However, Mr and Mrs M arranged for specialists to try to determine the cause of the leak. They said:

"There is a leak on the water supply pipe feeding this property which is not showing and cannot be pinpointed from the surface. The water supply pipe runs from the external stop tap which is located right at the point where the pipe enters the house and runs under the house for approximately 15 metres, underneath concrete and tiled floors. You have asked us to provide you with a quote to rectify the water leak and as the pipe is inaccessible for repair we recommend replacing the supply to prevent any future leakage."

So, they identified that whilst there was a leak, the exact location couldn't be pinpointed from the surface as it is underneath concrete and tiled floors. So rather than invasive excavation to locate and repair it, they provided a quote to re-run the pipe instead. So, at this stage it isn't known where the leak is or what caused it and that would only be determined once trace and access is carried out.

Mr and Mrs M have asked for Amtrust to pay this quote. However, trace and access covers sourcing and repairing a leak (in relation to the leak itself - for the reasons I've outlined) and associated damage, not rerouting a pipe to avoid needing to source or repair a leak.

As I understand it, Mr and Mrs M haven't yet had the rerouting work done. I'd invite them to confirm this in response to my provisional decision. Depending on the current position of things, and unless anything changes as a result of the responses to my provisional decision, I intend to direct Amtrust to do one of the following depending on this.

If works haven't been completed

I'll be directing Amtrust to reconsider the trace and access claim, in line with the remaining policy terms. After the leak has been sourced and what caused it has been identified, Amtrust can then consider whether any other insured events, terms or exclusions apply.

If works have been completed

As outlined, I'm persuaded Amtrust unfairly told Mr and Mrs M that repairing the leak wasn't covered under trace and access. And if they've gone ahead with rerouting instead, this is likely to have been a less disruptive option than invasive excavation and putting that right – which is what the trace and access would've covered. And this option would only have been done in any event on the basis of the unfair decision given by Amtrust surrounding trace and access and the extent of cover.

So, if Mr and Mrs M have gone ahead with this due to Amtrust's earlier, unfair, trace and access decision, whilst not strictly covered under trace and access, on a fair and reasonable basis I'll be directing Amtrust to reimburse Mr and Mrs M for the rerouting, up to the policy trace and access limit subject to a paid invoice being provided. 8% simple interest would also need to be added from the date the invoice was paid to the date of settlement.

Either way though, I also think Amtrust reached an unfair decision regarding the extent of trace and access cover and unless anything changes as a result of the responses to my provisional decision, I'll be directing Amtrust to pay Mr and Mrs M £150 compensation."

So, I was minded to uphold the complaint and to direct Amtrust to either:

- Reconsider the trace and access claim, in line with the remaining policy terms

or:

- Reimburse Mr and Mrs M up to the policy trace and access limit, subject to a paid invoice being provided. With 8% simple interest added from date of payment of the invoice to date of settlement

and:

- Pay £150 compensation

The responses to the provisional decision

Amtrust responded and said they accepted the provisional decision and had nothing further to add.

Mr and Mrs M responded and confirmed they had the works completed and provided a copy of the invoice and payment confirmation. They said they had no further comments.

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.

And I've thought carefully about the provisional decision I reached and the responses to it.

As requested in the provisional decision, Mr and Mrs M confirmed they have had the works completed. They also provided a copy of the invoice and confirmation that it was paid.

As neither party has provided anything else in response to the provisional decision which would lead me to depart from the initial findings I reached, my final decision remains the same as the provisional decision in relation to what I said I'd be directing if the works had already been completed.

My final decision

It's my final decision that I uphold this complaint and direct Amtrust Europe Limited to:

- Reimburse Mr and Mrs M up to the policy trace and access limit, subject to a paid invoice being provided.
- Add 8% simple interest* from the date the invoice was paid to the date of settlement
- Pay Mr and Mrs M £150 compensation

* If Amtrust Europe Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs M how much it's taken off. It should also give Mr and Mrs M a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 5 September 2024.

Callum Milne
Ombudsman