

## **The complaint**

Mr and Mrs M have complained that Amtrust Europe Limited declined a claim they made under their new home insurance policy.

Reference to Amtrust includes its agents and representatives.

## **What happened**

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

- Mr and Mrs M bought a property that benefitted from a new home policy, insured by Amtrust. In 2023, they got in touch with Amtrust about a problem within the roof area and provided a report from a roofer, N.
- In summary, N said there was a lack of ventilation and airflow in the roof area. This was causing condensation and resulting in mould growth. No other damage was reported.
- Amtrust appointed a loss adjuster, who arranged for a roofing consultant, M, to inspect and report. M reached a similar conclusion to N.
- Amtrust declined the claim by relying on a policy term which said, in summary, that it doesn't cover damage arising from mould or similar.
- Mr and Mrs M thought this was unfair and complained. Amtrust responded in January 2024. It said the claim would be re-opened and the next steps taken. It offered £250 compensation for the way it had been handled.
- Amtrust surveyed the property again and reverted to its position that the claim was declined because of the mould policy term.
- Our investigator thought Amtrust had fairly declined the claim. She didn't think Amtrust had handled the claim fairly but the £250 compensation it had offered was reasonable in the circumstances. She also explained this Service doesn't have the power to consider complaint handling.
- Mr and Mrs M disagreed and asked for an Ombudsman to consider their complaint, so it's been passed to me.

## **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.

There are a number of different points to consider, so I'll take each in turn.

### *Scope of complaint*

- I understand the complaint is about a broad range of issues, including the way Amtrust handled the claim, its decision to decline the claim, the way it handled the complaint, and matters related to the sale of the policy. This Service can't consider all of these issues, so I'll begin by explaining what I can and can't consider – and why.
- The Financial Conduct Authority sets out rules about the circumstances in which we can consider complaints. These are contained in the Dispute Resolution Rules (DISP). DISP 2.3.1 sets out the types of complaints we can consider. In summary, the part relevant to this complaint is within 2.3.1 (1) where it says we can only consider complaints about regulated activities. The list of these activities includes 'carrying out contracts of insurance'. This activity includes handling and declining claims under insurance policies. So I can consider how Amtrust has done that.
- Amtrust plays a role in setting standards for builders, and ensuring they're met, in order for a policy to be issued for the property. When it does so, it's not acting as an insurer, nor carrying out a contract of insurance or performing any other regulated activity. So I can't consider how Amtrust acted when it performed that role, including whether it took sufficient steps to ensure the builder met the relevant standards. Put simply, I don't have the power to do so.
- Similarly, I can't consider any role Amtrust or the builder may have played in the marketing and sale of the policy and the property. Only Amtrust's sale of the policy could be a regulated activity. But Amtrust didn't sell the policy to Mr and Mrs M. The policy was sold to the builder and passed on to them when they bought the property. So they aren't eligible to complain about the policy sale in any event.
- As our investigator has explained, complaint handling isn't a regulated activity in its own right. So we can't consider it. However, as I've noted above, we can consider claim handling. And that can include complaint handling insofar as it directly impacts the claim.
- In summary, in this case, I can only consider how Amtrust acted when performing the role of an insurer handling a claim under the insurance policy – which I'll do below. I can't consider how it acted in the other respects as they fall outside the jurisdiction of this Service.

### *Claim declined*

- The main point of the complaint is that Amtrust declined the claim.
- Based on when the damage was discovered, the claim was rightly considered under the 'structural insurance' section of the policy. In summary, that section covers 'major damage'. That phrase has a long definition, with sub-definitions, but as it's not in dispute, I won't set it all out here. Relevant to this complaint, it broadly means two things are covered, both subject to the terms and conditions of the policy:
  - Damage to certain parts of the property caused by a construction defect to the structure or waterproof envelope.
  - A condition requiring immediate remedial action to prevent the first point.
- In this case, there's damage in the form of mould. I don't think a separate condition has been identified that would fulfil the second point. So I'll focus on the first point.

- The policy is clear it's the damage that's covered. And, in order to put that right, the defect is put right too. But a defect in isolation isn't covered. So if there's no damage, or the damage isn't covered, there's no obligation on Amtrust to deal with the defect. This is important because it shows the focus of the policy is on putting right the damage – not the defect.
- The professionals N and M agree the mould has been caused by a lack of ventilation and airflow – and they agree that's not how the roof should have been built. Amtrust has accepted this too, so there seems to be no doubt about the cause or nature of the damage – or that it amounts to major damage because the damage has been caused by a construction defect to the structure. So, I can understand why Mr and Mrs M may expect the claim to be covered.
- But the policy doesn't cover every eventuality that arises from the way the property was built. It has a number of policy terms which limit cover, including the policy term Amtrust has relied on, which says it doesn't cover:

*“Loss, damage or bodily injury arising out of any pathogenic organisms regardless of any other cause or event that contributed concurrently or in any sequence to that liability.*

*Pathogenic organisms means any bacteria, yeasts, mildew, viruses, fungi, mould or their spores, mycotoxins or other metabolic products.”*

- The only pathogenic organism listed which is relevant to this complaint is mould. And there's been no mention of bodily injury, or loss beyond the damage. So I'll keep all of this in mind to simplify the term and keep it relevant to this complaint.
- The term is broad and comprehensive. It says damage isn't covered if it *arises* from mould. I think that means damage isn't covered if it's the result of, or related to, mould. The term explicitly says this limitation exists *regardless* of any other cause.
- As a result, I consider the term means any damage resulting from or relating to mould – however caused – isn't covered. That means even mould that amounts to major damage, i.e. damage caused by certain construction defects, isn't covered.
- Because of that, I consider Amtrust was entitled to rely on this policy term to decline the claim for the mould damage. It follows that Amtrust doesn't have to put right the defect(s) that led to the mould damage. I haven't seen any suggestion there's any such damage to Mr and Mrs M's property.
- If there were other major damage, unrelated to mould or any of the other causes mentioned in that list, then that damage *may* be covered – depending on what it is and subject to the other terms and conditions of the policy.
- Overall, I'm satisfied Amtrust acted in line with the policy terms, and fairly and reasonably, when it declined the claim. So I won't require it to take any further action in relation to the claim at this time. If Mr and Mrs M were to provide further evidence to challenge Amtrust's position, I would expect it to consider whether that changes the outcome at all.

*Claim handling*

- The complaint is also about the way the claim was handled. As explained above, that includes the complaint handling insofar as it directly impacted the claim.
- I understand Mr and Mrs M consider Amtrust accepted the claim after the first complaint. So it should be bound to that position, regardless of what followed.
- When responding to the first complaint, Amtrust agreed to look into the claim further. But I don't think it went so far as to commit to accepting the claim. I'm not persuaded it made an agreement that it later went back on as Mr and Mrs M have suggested. As a result, I won't require Amtrust to accept the claim based on its first complaint response.
- Amtrust has conceded it should have handled the claim better and has offered £250 compensation. I think it's clear there were times when it was slow to progress matters and that caused an avoidable delay reaching an outcome to the claim. This is an important matter and Mr and Mrs M were entitled to have it considered more promptly than it was. And I think Amtrust ought to have been clearer about what it was agreeing to do in its first complaint response to avoid the misunderstanding that's arisen.
- I take into account that even if Amtrust had reached the claim outcome sooner, it's likely Mr and Mrs M would still have thought it unfair. And I don't consider the delay was significant. Similarly, even if Amtrust had been clearer in its first complaint response, it's likely Mr and Mrs M would still have found it unfair for the claim to be declined. So the majority of the distress they've suffered has resulted from the claim outcome, not the way it was handled. As a result, I'm satisfied £250 compensation is reasonable in the circumstances and I won't require Amtrust to pay anything further.

### **My final decision**

I don't uphold this complaint.

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

James Neville  
**Ombudsman**