

## **The complaint**

Ms G complains that Amtrust Europe Limited (“Amtrust”) mishandled a claim she made under her Premier Guarantee Policy and declined it unreasonably.

## **What happened**

Ms G owns two adjacent properties – both covered by the Premier Guarantee with Amtrust. Issues with the window frames first emerged in 2017 when the properties were only 30 months old and the paintwork began to peel.

Ms G arranged for the properties to be professionally repainted in 2017 but said the damage had already been done as some of the windows eventually failed and the bases of some of the frames had rotted. The rot had also caused water ingress into the property. So she made a claim under her policy.

Amtrust said in its response in April 2023 that the issue wasn’t covered by Ms G’s policy as she’d said on her claim form that the issue had become apparent in February 2022 but she didn’t claim until the end of March 2023. It said this was in breach of the requirement in the policy to notify Amtrust of any damage as soon as reasonably possible. In addition, it said that inadequate maintenance was an issue and that wear and tear and normal deterioration were excluded under the policy terms.

Ms G didn’t accept Amtrust’s response, so she referred her complaint to this service. Our Investigator considered it and upheld it, saying Ms G had shown she had a valid claim and Amtrust needed to respond to that claim, having not done enough to evidence that the exclusions applied. The Investigator recommended Amtrust reconsider the claims, so it visited the properties to conduct further investigations.

Amtrust then issued a report following the visit, dated January 2024, and based on this, it provided a final response to Ms G which said the claim wasn’t covered. It explained that this was due to the exclusion relating to wear and tear in the policy, as its loss adjuster had reported that the crumbling paintwork and deteriorated frames were due to inadequate maintenance of the property, not due to any structural defect in the workmanship or design of the properties.

Ms G didn’t agree. So she referred a second complaint to this service. She said she’d had to carry out a full replacement of the rear windows of both houses and would also incur the cost of remedying the damage caused by the water ingress. She also said she’d experienced poor customer service and had put in a lot of extra time and effort to try to sort things out.

Our Investigator considered the second complaint, but didn’t think it should be upheld. He said that the report Amtrust had provided was now sufficient to show that it had relied on the lack of adequate maintenance exclusion fairly.

Because Ms G didn’t accept our Investigator’s view and wanted an Ombudsman to look at the complaint again, the matter has now 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.

As this is an informal service, I'm not going to respond here to every point or piece of evidence Ms G and Amtrust have provided. Instead, I've focused on those I consider to be key or central to the issue. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm not upholding this complaint. I'll explain why.

Ms G's policy covers:

*"The cost of complete or partial rebuilding or rectifying work to the Housing Unit which has been affected by Major Damage provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Housing Unit to its original specification"*

"Major Damage" is defined in the policy 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 which is first discovered during the Structural Insurance Period.*

*For the purpose of this Policy the definition of Major Damage is deemed to include any physical loss, destruction or damage to the Housing Unit caused by contamination or pollution as a direct consequence of a defect in the design, workmanship, materials or components of the Structure of the Housing Unit.*

"Structure" is defined as:

- foundations;*
- load-bearing parts of ceilings, floors, staircases and associated guard rails, walls and roofs, together with loadbearing retaining walls necessary for stability;*
- non-load bearing partition walls;*
- chimneys and flues;*
- roof covering;*
- any external finishing surface (including rendering) necessary for the water-tightness of the external envelope;*
- floor decking and screeds, where these fail to support normal loads;*
- wet applied plaster;*
- double or triple glazed panes to external windows and doors;*
- underground drainage that the Policyholder is responsible for maintaining.*

The above definition includes damage caused by a defect in the waterproofing elements of the Waterproof Envelope, and it's clear in this case that the issue is causing an ingress of

water, with the windows being necessary for the water-tightness of the external envelope. So I'm satisfied the damage claimed for is covered by the warranty.

However, Amtrust has relied on the following exclusion to decline the claim, which says the policy doesn't cover:

*"Inadequate maintenance of a Housing Unit or the imposition of any load greater than that for which the Housing Unit was designed or the use of a Housing Unit for any purpose other than that for which it was designed unless the Underwriter has been informed, the Policy endorsed and any applicable additional premium paid to the Underwriter."*

Ms G provided a report which said the windows began to peel in 2017 which was earlier than should've been necessary for a brand new home. Amtrust said Ms G compiled the report herself as an expert, and it provided compelling evidence to counter what she had said. I've considered all the evidence in order to determine whether Amtrust has acted fairly in applying the exclusion it's applied, and declining the claim on that basis.

I should clarify that I can only consider events that took place between 26 October 2023 and 16 February 2024, which is the period of time since the previous complaint was looked at by this service, up to the date of the latest final response letter from Amtrust.

And I can see that during that time, Amtrust visited the properties and conducted its report. So I've weighed that report up against the evidence provided by Ms G. Amtrust has sent us photos of what the paintwork would look like if the rot on the window frames was caused by a structural defect. These images show paintwork that's still intact whilst the wood shows signs of decay due to a structural problem – and Amtrust has provided further commentary to show that no amount of repainting or maintenance would be able to rectify the issue as it would be structural. In Ms G's pictures however, the paintwork is peeling which indicates that the issue is more likely due to insufficient maintenance, compared to the photos Amtrust has provided, which clearly show a structural defect with well-maintained paintwork.

Ms G has accepted that the paintwork was redone in 2017 but most of the evidence indicates it hasn't been carried out since. Regular painting schedules are recommended for coastal properties to deal with the potential damage to rendering, brickwork, timber window frames and doors or cladding that could succumb more easily to the elements. So I'm persuaded by the evidence provided, that had the window frames been maintained more regularly, the timber underneath the paint would not have been as easily exposed, as the paint would've likely provided adequate protection. It follows therefore, that I consider Amtrust to have applied the policy exclusion fairly in the circumstances.

Ms G has now provided further evidence including invoices and quotes from 2020, and although the information does show more maintenance was carried out, the quotes for the repainting of the windows do not appear on the invoice, which is itemised. This indicates to me that Ms G did obtain quotes for the window repair, but this wasn't included on the list of the repairs ultimately carried out. And all the previous evidence I've received, including Ms G's complaint form, says the windows were repainted in 2017 and that she was preparing to organise this again after five years when she noticed the rotting and made the claim. Amtrust has also quoted Ms G as saying, "They have been professionally painted after five years and I was about to arrange for the second cycle of painting but they are in such poor condition and not fit for purpose". Furthermore, in Ms G's report dated 1 June 2023 she's said, "Both the properties were professionally repainted in 2017" and makes no mention of further paint work in 2020. So I've found the earlier evidence provided about the maintenance schedule to be more consistent and therefore more reliable.

I've looked at the photos Ms G has sent of the timber rotting in 2015 – but it's not clear from the image where it's from (despite the image location information Ms G has sent to accompany it) or what this deterioration was caused by, as it's too close up to show anything other than the timber itself. I don't doubt what Ms G has said about this, but if this was the condition of the windows in 2015 then Ms G will need to provide further evidence to Amtrust that she met the notification requirements set out in the policy, ie. that she reported these issues within the "Defects Insurance Period" to the relevant parties. The policy states this period runs from the date specified in the Certificate of Insurance, for two years. And the policy says it will cover any defined Defect in the Housing Unit which is *"discovered and notified to the Developer during the Defects Insurance Period and which is notified to the Underwriter within 6 months of the expiry of the Defects Insurance Period"*.

Ms G has said the developer *"was asked to address the defects identified"* and that it *"addressed defects identified following inspection"*, but I haven't seen any supporting evidence of this, and the requirement goes further than asking the developer to address the problem as the policy *also* says the underwriter (Amtrust) should be notified of the issue within six months of the expiry of the Defects Insurance Period, for any defects discovered during those first two years. Ms G says the problem was seemingly rectified by the developer at the time, so there was no need for her to do anything further. But in order for Amtrust to be liable to provide cover, it would have needed to be notified in line with the requirements in the policy.

So whilst I have a great deal of empathy for Ms G due to the difficulties she's had and the costs she's incurred, I'm afraid there isn't enough evidence in this case to show that there is a structural defect for which the policy provides cover, nor is there enough evidence for me to safely conclude that Ms G met the notification requirements as set out in Section 3.2 of her policy.

I'm very sorry to disappoint Ms G, but I'm afraid that for the reasons I've explained, I'm not going to require Amtrust to do anything differently here at this time. If Ms G can provide further evidence to demonstrate that she met the notification requirements during the first two years of cover regarding a Defect, then this evidence should be sent to Amtrust. I'd then expect Amtrust to consider the evidence in line with the policy terms and conditions, and either provide Ms G with a timely response as to why it doesn't change its position, or reconsider the claim.

### **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 Ms G to accept or reject my decision before 4 February 2025.

Ifrah Malik  
**Ombudsman**