

## **The complaint**

Mr F has complained that Amtrust Europe Limited declined a claim he made under his 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 F bought a property that benefitted from a new home policy, insured by Amtrust. In 2023, he got in touch with Amtrust about a problem within the roof area.
- Amtrust appointed a loss adjuster, who arranged for a roofing consultant, M, to inspect and report. In summary, they said there was a lack of ventilation and airflow in the roof area. This was causing condensation and resulting in mould growth. In addition, vent pipes weren't connected to an external vent, which was contributing to the problem. No other damage was reported.
- 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 F thought this was unfair and complained. Amtrust maintained its position that the claim was declined because of the mould policy term. It also said the cost of connecting the vent pipes was below the excess and not covered.
- Our investigator thought Amtrust had fairly declined the claim. Mr F disagreed and asked for an Ombudsman to consider his 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 F. The policy was sold to the builder and passed on to him when he bought the property. So he isn'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.
- M's professional opinion was clearly that the mould has been caused by a lack of ventilation and airflow – and 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 F 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.
- 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.
- The only such damage I've seen is the unconnected vent pipes. Amtrust seems to accept this is major damage, based on the professional opinions, but it has declined to pay for putting it right as it says the cost to do so would fall below the excess. Based on the costs I've seen for this kind of work, this does seem to be the case.
- 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 F 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 F considers Amtrust accepted the claim during the complaint process, so it should be bound to that position, regardless of what followed. But I don't think Amtrust ever 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 F has suggested. As a result, I won't require Amtrust to accept the claim based on this.

- I think Amtrust ought to have been clearer about its position to avoid the misunderstanding that's arisen. But even if it had been, it's likely Mr F would still have found it unfair for the claim to be declined. So the majority of the distress he's suffered has resulted from the claim outcome, not the way it was handled. Overall, I don't think the way Amtrust handled his claim was sufficiently unreasonable or unclear as to warrant compensation. So I won't require Amtrust to pay any.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 December 2024.

James Neville  
**Ombudsman**