

The complaint

Mr S complains about how AmTrust Europe Limited dealt with a claim he made for accidental damage to his furniture.

What happened

In 2019 Mr S purchased a three seater sofa from a company that I'll refer to here as "D". He also purchased a five year policy of insurance, which commenced on 1 June 2019 and was due to expire on 1 June 2024. This policy was provided by Amtrust and covered the upholstery Mr S had bought against staining and accidental damage to the exterior surface.

On 24 April 2024, Mr S stated he was undertaking general cleaning within his home. He removed the seat cushions from his sofa and accidentally stepped on the seat cushion platform while cleaning the sofa. He said this caused the lining of the seat cushion platform to tear and two springs to become detached.

Mr S reported the damage to AmTrust and completed a claim form confirming the circumstances of how the damage had occurred. He wanted it to either repair or replace his sofa.

AmTrust appointed a technician to inspect the damage. They attended Mr S' property on 7 June 2024 and undertook a partial repair by supplying and fitting replacement spring clips and resealing the springs. Mr S said the technician took a sample of the torn fabric away and informed him that he'd return on a later date to repair the seat cushion platform lining.

Following the technician's visit, AmTrust wrote to Mr S to explain that it had decided to decline his claim. It confirmed this decision had been reached due to the location of the damage, which it stated wasn't covered by the policy terms.

Mr S contacted AmTrust to lodge a complaint. He was unhappy that his claim had been repudiated and didn't agree with the reason provided. He thought it was unfair that this decision had been taken in light of the technician informing him that his claim would be met.

AmTrust provided its final response to Mr S in correspondence dated 24 June 2024 in which it explained that its decision not to settle his claim had been the correct outcome. And it told Mr S its technician wasn't authorised to provide information to policyholders about whether a claim would be settled as this decision wasn't theirs to make.

Being unhappy with AmTrust's response to his complaint, Mr S referred it to our service. Our investigator empathised with Mr S. But they didn't recommend upholding this complaint as they were persuaded AmTrust had fairly applied the policy terms in declining the claim. They recognised that the technician shouldn't have informed Mr S that his claim would be met. But they didn't think AmTrust needed to take action in relation to that to resolve this complaint.

AmTrust accepted our investigator's view of this complaint. But Mr S disagreed. He requested an ombudsman's decision and I've been asked to decide how this complaint should be resolved.

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.

My role is to assess whether I think AmTrust made a mistake, or treated Mr S unfairly, such that it needs to now put things right. And, having thought carefully about everything he and AmTrust have said, I'm afraid to say that I don't think it did. I appreciate Mr S will be disappointed by this outcome. But I hope he can understand the reasons behind my decision.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I must base my decision on the balance of probabilities. I've read and considered all the information provided by Mr S and AmTrust, but I'll concentrate my decision on what I think is relevant to decide the complaint. If I don't comment on any specific point it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

There's no dispute that damage occurred to Mr S' sofa. But there's a dispute between him and AmTrust about the correct outcome of this claim.

I can see that AmTrust initially informed Mr S that it had declined his claim because it thought the damage had been caused because of a structural fault, which it said was excluded under the policy terms. This was confirmed in correspondence sent to Mr S, dated 10 June 2024. Three days later, however, AmTrust sent further correspondence to Mr S in which it explained that *"as internal damage (springs broken) has caused damage to the platform lining cloth, none of those damages are covered under this policy"*. As this reasoning differed to the previous letter AmTrust sent to Mr S confirming that his claim had been declined, I can understand why he may have been caused confusion.

Mr S has provided a clear and consistent account to AmTrust and our service in relation to how the damage to his sofa occurred. I'm satisfied that, as a result of him removing the seat cushions during the process of cleaning his sofa, he accidentally stepped through the seat cushion platform lining causing it to tear. Stepping on the lining resulted in two of the springs becoming detached.

I've seen photographic images of the damage to the sofa, which is in keeping with Mr S' account and the report from AmTrust's technician who hasn't disputed the cause of damage here. I'm satisfied the springs didn't cause damage to the lining of the seat cushion platform as AmTrust initially suggested to Mr S. But I'll explain why I don't think this makes a material difference to the outcome of this claim.

I've carefully reviewed the policy terms to assess whether AmTrust acted fairly in declining this claim bearing in mind how the damage occurred.

Mr S' policy covers the furniture he purchased from D for sudden and unintentional damage caused by staining and accidental damage, which is defined as *"sudden and unintentional damage resulting in rips, punctures, scuffs, burns, chips or scratches to the external surface"* of his sofa.

Here, AmTrust accepts that the damage to the seat cushion platform lining was caused accidentally, when Mr S stepped on this part of his sofa. However, the inclusion of the term *"external surface"* within the policy is critical in terms of the determination of this claim. I say

this because, for a claim to be met under the remit of the policy, the damage must be to the external surface of the sofa.

AmTrust has argued that the seat cushion platform lining is not part of the external surface of the sofa. But Mr S disputes this. As our investigator explained in their view, the standard definition of 'external' would mean any visible surface. I agree with that comment.

Here, the sofa seat cushions are detachable as they can be removed – as they were here for the purposes of cleaning. The damage to Mr S' sofa is located in the area underneath where the seat cushions would be positioned. I'm satisfied that, when the sofa is used as it's designed to be, the seat cushions would be in situ. The tear to the lining of the seat cushion platform wouldn't be visible when the seat cushions were placed on it.

In the overall circumstances, I'm persuaded that the area where damage is located wouldn't be considered to be the external surface of the sofa. It follows that I'm satisfied AmTrust fairly concluded that the location of the damage is excluded from the remit of the policy. And I'm therefore persuaded that AmTrust hasn't acted unfairly in declining Mr S' claim. So, I'm not going to direct it to settle this claim.

AmTrust hasn't disputed Mr S' contention that the technician that attended his home address to inspect the sofa on 7 June 2024 informed him that a full repair would be undertaken. AmTrust has, however, explained that the technician wasn't authorised to determine the correct outcome of the claim and it's correct to say that.

I think AmTrust's technician created a false expectation in Mr S' mind that his claim would likely be settled; that was unfair given that the claim was declined. But I can see that AmTrust quickly informed Mr S that his claim had been declined following that visit. I say this because he was notified that his claim had been repudiated on 10 June 2024. So, the expectation that he had was promptly corrected with an explanation of why the damage was excluded under the policy.

As I've already explained, I'm satisfied that the decision to decline the claim wasn't unfair or unreasonable. I'm not persuaded that the error made by the technician warrants an award of compensation due to AmTrust's prompt action in confirming the outcome of Mr S' claim.

The technician erred during their visit to Mr S' home not only because of what they told Mr S but also because they undertook a partial repair. They supplied and fitted replacement spring clips and resecured the springs. This isn't something that the policy covers as these parts aren't part of the exterior surface. So, I wouldn't have directed AmTrust to undertake that repair had it not already been done so as part of this decision.

AmTrust has acknowledged the error the technician made in effecting a partial repair. It's confirmed it isn't seeking to recover the cost of the repair undertaken from Mr S and I'm satisfied that's a fair and reasonable approach in the overall circumstances.

I realise Mr S will be disappointed with this decision. But I'm persuaded overall that AmTrust has dealt with his furniture claim fairly. It follows that I won't be asking AmTrust to take any further action to resolve this complaint. This now brings to an end what we, in trying to resolve Mr S' dispute with AmTrust, can do for him. I'm sorry we can't help Mr S any further with this.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 January 2025.

Julie Mitchell
Ombudsman