

The complaint

Mr O and Ms S are unhappy with how Amtrust Europe Limited (Amtrust) handled a claim made under a Premier Guarantee New Home Warranty (the warranty) for damage to their flat.

Any references to Amtrust include their agents. As Mr O has been the primary contact for this matter, I'll refer to him directly.

What happened

The subject of this complaint is a building made up of nine flats (the "block"). Mr O owns a flat within the block. There are eight other leaseholders who have also referred a complaint to this service about the same claim which are still at the investigation stage of our process.

Mr O's flat was purchased in 2016 with a 10-year Premier Guarantee which came into effect in January 2016. In July 2017, there was a leak into one of the flats and Mr O says over the next seven years, eight of the nine flats in the block suffered some degree of water ingress.

In 2022, Amtrust carried out some remedial works but by September 2022, the block experienced further water ingresses. Amtrust responded to a complaint about their handling of the claim on 31 March 2023. In April 2023, Mr O said two first floor balconies had partially separated from the building because the timber cantilever supports had rotted due to water penetration.

Mr O says the leaseholders were told by Amtrust there shouldn't be a problem getting things moving quickly. But by November 2023, while a new surveyor had been instructed to assess the block, no further repairs had been undertaken and Mr O made a formal complaint. He said Amtrust shouldn't charge any further excesses, reiterating all the damage had been caused by defects with the waterproof envelope of the building. He also complained about Amtrust's refusal to share reports outlining the surveyor's finding and with what he considered to be further unnecessary delays.

Amtrust responded to the complaint in February 2024 and said there were three clearly identified defects to the block, two of which had been the subject of previous repairs so no excess would be charged. But they considered an excess for the third defect was appropriate. As for the reports, Amtrust said they could provide a summary of the findings and acknowledged there had been some delays, though maintained the situation was complex. They offered £200 compensation.

Mr O remained unhappy and referred his concerns to the Financial Ombudsman Service. One of our investigators looked into what had happened and said Amtrust was able to apply one further excess in respect of the tanking, as this was a separate issue which had caused separate damage to the other water ingresses experienced. She said Amtrust should consider reimbursing costs incurred by the leaseholders, which should be submitted and if any are covered under the policy these should be refunded, along with appropriate interest. She also said Amtrust's offer to provide a summary of the reports was reasonable as it

wasn't required to provide a full copy, but recommended the compensation be increased to £600.

Amtrust accepted the investigators' conclusions (which also set out that they applied to the other leaseholders who had brought complaints to this Service about the same claim). But Mr O didn't. He said the leaseholders remained of the view no further excesses should be applied. He also asked the ombudsman to order the full reports to be disclosed, that previously incurred costs to be reimbursed and for the compensation to be increased.

Our investigator clarified that she considered one further excess could be applied, in relation to the tanking issue in the ground floor flat. But she didn't reach a different conclusion. And as Mr O didn't agree, this matter has 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.

First, I'd like to reassure Mr O that while I've summarised the background to this complaint and his submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

And I think it's also helpful for me to set out the timeframe that's under consideration in this decision. I'm considering the period starting from 31 March 2023, which is the date of Amtrusts' earlier final response letter, until the date of the final response letter referred to us, which was dated 23 February 2024. I'm unable to consider Amtrust's earlier actions because any complaints made by Mr O to Amtrust weren't referred to this Service within six months of any final response letter.

How many excesses should be applied?

In the first instance, it's accepted there are defects and these defects caused major damage to the structure. I don't consider that I need to set out the policy terms here, in relation to defects and major damage, as this isn't in dispute. But I have set out below what the policy says about how an excess will be applied. On page four of the terms and conditions, the policy terms say:

"12. EXCESS

...

*A separate **Excess** shall apply to each separately identifiable cause of loss or damage for which a payment is made under the Policy by the **Underwriter**, regardless of whether more than one loss is notified at the same time."*

Mr O says Amtrust indicated in 2022 that the water ingress would be considered as one incident and only one excess was applied. However, this occurred in a timeframe that we don't have any powers to consider, for the reasons set out above. So, my consideration of this matter is limited to what Amtrust has said between 31 March 2023 and 23 February 2024.

The surveyor's report from September 2023 identified three areas where defects had caused damage and further repairs were required. I've set these out, along with the key findings of the recent surveyors report in respect of each defect, below:

- Defective balcony construction to the first-floor flats.

In terms of the balconies, the surveyor said *"The balcony gulam beams were clearly water damaged, they were wet to the touch and appeared to have been saturated for a long time... No thermal breaks were evident where the main supporting gulam beams back-spanned into the internal flat. It is thought that moisture will be tracking along water ingress into the flats below..."*.

- Defective upstand on the second-floor flat which caused the water ingress to the first-floor flats.

With regards to the upstand, the surveyor said: *"We stripped back the back the recycled plastic boarding on the right-hand side of the door to flat (number). This is exposed the timber upstand with the roof and the underlay and battens for the recycled plastic cladding. There was dampness evident in between the frame and the building at low level... We then preceded to remove some of the GRP liner and timber batten, at the upstand/ cladding junction. And this revealed a rack of dampness that was wet to the touch. We removed a small section of the GRP liner, and the timber behind and underneath this was completely decayed."*

- Defective tanking the ground floor flat.

The surveyor made the following findings about the damp to the ground floor flat: *"Reports of damp to the flat from the raised planter on the external elevation. No tanking was seen on the external below ground elevation, the membrane evident was only shallow below the near surface gravels."*

Amtrust says they don't intend to charge further excesses for the defects identified where repairs had previously been carried out. In their final response letter, Amtrust said repairs had been carried out to the balconies and the upstand by their previous claims handler, but those repairs had not been lasting and effective. Amtrust said no further excesses would be applied in relation to these issues and I consider that is fair given they've accepted previously attempted repairs failed. I don't need to make any further findings on these excesses.

So, the issue for me to decide is whether it's fair for Amtrust to apply an excess in relation to the defective tanking which resulted in damage to the ground floor flat. And I consider it is.

Mr O says that there is not more than one *"separately identifiable cause of loss or damage"*. This is because all the damage to the block has occurred because of water ingress and one cause of damage. However, I don't agree. The cause of the damage to the ground-floor flat has been identified as an issue with the tanking. The surveyor made the finding there was no tanking seen on the external below ground elevation, and the membrane seen was shallow below the surface gravel.

I don't consider it likely that the issue with the defective tanking could have been responsible for the damage caused to other first and second floor properties. The surveyor has set out persuasive findings that the tanking issues caused a separate water ingress and, as it is a *"separately identifiable cause of loss or damage"* (as set out in the policy terms), I don't consider it is unreasonable for Amtrust to apply an excess here if they chose so. I consider applying an excess in line with the policy terms would not be unfair.

I can't make a finding that Amtrust shouldn't apply any further excesses. This is because it's not possible to know what might happen with the block. Our powers don't enable me to make a direction for something that hasn't happened or may not happen. But in within the

timeframe I've set out, I'm satisfied Amtrust can apply an excess for the water ingress which occurred as a result of the defective tanking.

The reports Amtrust relied on

I appreciate Mr O feels strongly the reports should be provided in full. As our investigator said, it's not our role to provide a legal opinion on litigation privilege – our remit is to reach a conclusion that we consider to be fair and reasonable in the circumstances of the case.

However, I'm not going to require Amtrust to provide a full copy of the reports for the same reasons our investigator didn't. Amtrust instructed a loss adjuster and surveyor to carry out a number of inspections at the block. A report outlining the defects was completed. Amtrust has agreed to share a summary of the material findings of that report with Mr O.

Mr O feels this approach isn't sufficient because it leaves Amtrust to decide what is material in the report. I understand his lack of trust given the long running of this matter. However, Amtrust is entitled to rely on reports that they've arranged and paid for and I'm not going to require them to provide Mr O with a full copy. I'm satisfied providing a summary is appropriate and here, with the principles of natural justice in mind, I've quoted some of what I consider to be the key points from the report in this decision.

That being said, it's clear Mr O has been requesting a summary of the report for some time and given the report from the surveyor was issued in September 2023 with Amtrust accepting the findings in November 2023, I consider they've had sufficient time to provide Mr O with a summary. If they've not yet done so, Amtrust should provide that summary to Mr O within one month from the date of this decision. If they don't provide a summary within one month, Amtrust should provide a redacted copy of the report to Mr O.

Recovering costs

I can understand why Mr O considers Amtrust ought to have already considered evidence of costs he says the leaseholders incurred. I can see that this has been mentioned in previous correspondence by Mr O, though some of this predates the timeframe I'm able to consider. This issue wasn't addressed in the final response letter issued by Amtrust in February 2024.

Mr O says the leaseholders have incurred costs they consider should be covered by the warranty. If incurred during the timeframe I am able to consider, these costs should be presented by the leaseholders and considered by Amtrust. If Amtrust agrees the costs are covered by the policy, they should reimburse evidence the leaseholders along with simple interest at 8% per annum from the date of the payment to be reimbursed until the date of settlement.

If Mr O remains unhappy with Amtrust's response to his request for reimbursement for costs he says should have been covered by the policy, he may seek to refer any concerns back to this Service as a separate complaint.

Delays

I appreciate this matter has been ongoing for a lengthy period of time, and for the reasons previously set out, this decision focuses on the timeframe from 31 March 2023 until the most recent final response letter was issued on 23 February 2024. Amtrust accepts there were times when the claim could have progressed more quickly, and Mr O has set out where he considers delays could have been avoided. These were a three-month timeframe where

copies of insurance certificates were requested from the leaseholders and a two-month timeframe Amtrust took to review and agree the recommendations from the surveyor.

This has been a long running situation at the block, and I can see it's been very frustrating for Mr O. He's particularly concerned about the potential for future delays or repairs not being completed within agreed timeframes. Against the long-running nature of the damage to the block, I can understand his concerns.

But our role is to resolve disputes informally and independently and set out how things should be put right. That doesn't extend to setting out timeframes for carrying out repairs because there are a number of factors that could impact this. And it also doesn't extend to levying fines against a business when timeframes aren't met or if further distress is experienced. Any enforcement action against a business would be taken by the regulator. Here, I'm satisfied a compensation award of £600 is appropriate to reflect the distress and inconvenience experienced by Mr O between 31 March 2023 and 23 February 2024.

Putting things right

To put things right for Mr O, Amtrust should:

- Review any costs Mr O says he's incurred as a result of this claim and consider if these are covered by the warranty. If these costs are covered by the warranty Amtrust should refund these, along with simple interest at 8% per annum from the date of payment until the date of settlement *.
- Provide a summary of the surveyors' report within one month from the date of this decision (if one has not already been provided to Mr O).
- Pay Mr O and Ms S £600 compensation for the distress and inconvenience he's experienced as a result of Amtrust's handling of the claim.

Amtrust must pay the compensation within 28 days of the date on which we tell it Mr O and Ms S accept my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the payment at 8% a year simple.

* If Amtrust considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr O and Ms S how much it's taken off. If requested, Amtrust should also provide Mr O and Ms S with a certificate showing the amount deducted, so they can reclaim it from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and require Amtrust Europe Limited to take the steps outlined in the "Putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Ms S to accept or reject my decision before 20 February 2025.

Emma Hawkins
Ombudsman