

The complaint

Mr S and Mrs Z complain that Amtrust Europe Limited unfairly declined their home insurance claim after an escape of water from their underfloor heating system.

Mrs Z is a joint policyholder but I'll mainly refer to Mr S in my decision because he referred the complaint to us. Mr S has also sought legal advice from a solicitor. I'll refer to the arguments of the solicitor as though they were made by Mr S.

What happened

Mr S purchased a house in late 2022. He took out an insurance policy, underwritten by Amtrust, for the time the property would be unoccupied between exchange of contracts and when he moved in. This period lasted around 18 days.

When Mr S moved into the property, he noticed damp patches to the stairwell and downstairs ceiling. He called in plumbers to try to identify the cause. A few weeks later, he found water coming down from the ceiling of the downstairs bathroom.

In early January, he made a claim to Amtrust. At around the same time, he arranged for an underfloor heating engineer to attend. The engineer investigated and was confident the leak was coming from the underfloor heating system. Part of the floor was taken up to trace and access the leak. The engineer then found that the leak was coming from a cracked aluminium barrier to one of the underfloor pipes. The engineer couldn't say whether this occurred during installation or due to a manufacturing fault. But he said the entire system needed to be replaced, which required the entire concrete floor taking up, new pipework installed, and the floor reinstating. Mr S wanted Amtrust to cover the cost of this along with the water damage to his plasterwork.

Amtrust declined the claim because it didn't think the leak happened during the short time it was on cover. Mr S didn't think this was right, so he complained. Among other things he said he'd had a survey carried out shortly before exchange of contracts, so he thought the damage must have happened after this, during the time Amtrust was on cover.

Amtrust didn't change its stance. It said Mr S didn't have cover for tracing and accessing the leak or for the repairs to the heating system. It also said that due to the nature of the water damage and the time it would take for the leak to spread, the damage must have happened before his cover with Amtrust commenced.

Mr S didn't think this was fair, so he referred the matter to the Financial Ombudsman.

I considered the complaint and issued a provisional decision, upholding it in part. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

I've only summarised the background and the arguments made by the parties. I mean no discourtesy by this; it's only reflective of the informal nature of this service. I'd like to reassure the parties that I've read all the information and arguments they've provided.

Having done so, I'm intending to uphold the complaint, in part. I've focused my comments on what I think is most relevant. If I haven't commented on a specific point, it's because I don't believe it affects what I consider to be the right outcome.

The onus is on Mr S to show that an insured event has caused the damage for which he is claiming. I've grouped this damage into three main areas:

- 1. The damage associated with tracing and accessing the leak.*
- 2. The damage associated with removing the floor, replacing the heating pipework, and reinstating the floor.*
- 3. The damage associated with water leaking into the plasterwork and downstairs ceiling.*

Trace and access

I've checked Mr S's policy documents and he has no cover for trace and access – i.e. the costs associated with taking up the floor to the extent necessary for the engineer to locate and diagnose the leak. As there is no cover for this, I'm not intending to tell Amtrust to reimburse the associated costs.

Floor and heating system

I'm also not intending to tell Amtrust to reimburse the costs of taking up and relaying the rest of the floor or replacing the heating pipework. Mr S's policy covers loss or damage caused by escapes of water. For me to tell Amtrust to cover the costs associated with the floor and heating pipework, I'd need to be satisfied that these were damaged by an escape of water, i.e. by water flowing out of the broken heating pipe.

I've seen no evidence that the surface flooring or the concrete screed beneath was materially damaged by the escape of water. I've looked at the photo of the area of the leak and it shows some minor discolouration of the adhesive, which I understand allowed the engineer to locate the leak. But none of the photos show any real water damage to the floor or screed, and none of the reports detail this either. Instead, the floor needed to be taken up and re-laid in order to replace the faulty pipework, not because it had sustained meaningful water damage. So, I'm not persuaded that the damage has been caused by an insured event.

Regarding the faulty pipework, I've checked Mr S's policy carefully and, under the escape of water peril, it specifically excludes damage to pipes and appliances. It is common for home insurance policies to have exclusions like this, whereby insurers are usually only liable for damage caused by escaping water, and not for damage to the object from which the water escaped, e.g. the burst pipe. I'm satisfied that the pipework was not damaged by escaping water and, in any event, the pipework is excluded from cover.

I recognise that this makes up the bulk of Mr S's claim. I'm mindful of the costs he's incurred to repair his new home – so I know my provisional decision will be deeply disappointing. I'm sorry about that. I also recognise how upsetting it must have been to move into a new house and find issues like this, and then for me to say that Amtrust doesn't need to bear much of the cost. But, for the reasons above, I'm satisfied that the remedial costs associated with the flooring and heating system fall outside of Mr S's insurance contract. So it wouldn't be fair for me to tell Amtrust to pay this.

Plasterwork

I intend to tell Amtrust to reimburse Mr S for the cost of repairing the water-damaged areas to the stairwell and basement ceiling.

Mr S's policy covers damage caused by escaping water, and it isn't in dispute that those areas were damaged this way. The key question is when the damage occurred. The parties have made detailed arguments about when the leak first occurred and whether this was during or after installation. But the crux of the matter is when the insured damage manifested. I've considered the evidence relating to this, and I've based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

Mr S's home underwent a survey on 17 October. If the damage was present before this, I think it's likely the surveyor would have noticed. Amtrust's loss adjuster was of a similar mind, saying:

"We are mindful that no damage was observed at the time of the Building Survey in October. It would therefore appear that the damage has manifest since this time."

Amtrust was on cover from 14 November until 2 December. Mr S moved into the property on or around 4 December and noticed the damage. I've seen a report from a plumber who attended a couple of weeks later, and wrote that Mr S found the damage when he moved in.

I can't say for certain when the damage occurred between the survey and Mr S's arrival. But there are some things that persuade me that it more likely happened while Amtrust was on cover. Mr S has said he visited the property upon completion on 23 November. He didn't notice any damage, but he said he brought the heating system up from its anti-frost setting. So, there was a meaningful change to the state of the heating system. Second, I think it's fair to say that water damage to plasterwork becomes visible quite quickly after water reaches it. The damage noted by Mr S was damp patches and water staining. So I think it's more likely that this happened closer to the time that Mr S moved in, which was during the time Amtrust was on cover.

Again, I want to reassure the parties that I've considered the arguments they've made about when the pipework failed. But I've focused on when the insured damage occurred, in line with Mr S's policy terms. I think this more likely took place while Amtrust was on cover. So, I think it's fair that Amtrust reimburse Mr S for the cost of the remedial work associated with the plasterwork and ceiling damage, in line with the remaining policy terms – subject to Mr S providing proof of payment to Amtrust. I also think Amtrust should add interest to this from the date Mr S incurred these costs to the date of claim settlement.

During this matter, Mr S had to arrange for all the reinstatement works without the assistance of Amtrust. I think this would have been upsetting and difficult. While I think Amtrust was right to decline most of the claim, I think it should have covered the water-damaged areas. This would have meant that Mr S didn't have to arrange all of this himself. To recognise the hassle and upset caused, I think Amtrust should pay Mr S some compensation. I think £250 is a fair amount and is what I'm intending to award.

Mr S's home also suffered water damage to the downstairs bathroom ceiling. Mr S has consistently said that this manifested towards the end of December – almost four weeks after the Amtrust policy ended. So, Mr S would need to take this up with his other insurer. “

Responses

Amtrust said it accepted my provisional decision. Mr S said he would await my final decision and confirmed that he had nothing to add.

As both parties have responded, I now consider it appropriate to issue my final decision.

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 the parties have accepted my provisional decision or have confirmed that they have nothing further to add, I see no reason to depart from the findings I reached.

I've reviewed the complaint again and my opinion hasn't changed. So, the findings of my provisional decision are now the findings of this, my final decision.

Putting things right

To resolve the complaint, Amtrust must:

- Reimburse Mr S and Mrs Z the costs of repairing the water-damaged areas to their stairwell and downstairs ceiling, not including the downstairs bathroom, in line with the policy terms, and subject to Mr S and Mrs Z providing proof of payment.
- Add 8% simple yearly interest to the above, from the date the costs were incurred to the date of settlement*.
- Pay Mr S and Mrs Z £250 of compensation for distress and inconvenience.

* If Amtrust considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S and Mrs Z how much it's taken off. It should also give Mr S and Mrs Z a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've given, I uphold Mr S and Mrs Z's complaint about Amtrust Europe Limited and direct it to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs Z to accept or reject my decision before 6 January 2025.

Chris Woolaway
Ombudsman