

The complaint

Mrs H complains AmTrust Specialty Limited (“AmTrust”) has unfairly declined a claim she made on a Building warranty policy.

What happened

In summary Mrs H made a claim to AmTrust as she became aware the decking to the rear of her property was unstable and unsafe as it had not been designed correctly. The decking was built over a void between the main house and a cut slope in the land. The cut slope under the decking had no retaining structure and the land therefore was liable to slip. Where the decking met the lawn, some of the soil had started to fall into the void below leaving a gap.

Mrs H engaged the services of a Geotechnical and Environmental company, and its engineer concluded in their report the decking had been installed in an unsafe manner as there was no retaining structure to support it. It also concluded that in some areas where there were Gabion baskets, they were structurally unsafe and not fit for purpose, and they did not extend sufficiently far around the cut slope. The report also confirmed the chipboard sheet underneath the decking was heavily water stained and damp as it was absorbing the water from the surrounding land.

AmTrust arranged its own inspection of the area which also confirmed there was no retaining structure to hold back the cut slope, although it appears there was meant to be gabion baskets according to the initial design. It confirmed earth was slipping below the decking and into the void. It also confirmed there were bulging and distortions to the chip board and cladding indicating the slope behind it was moving and pushing against the timber. The report noted signs of moisture, decay and wet rot to a number of the timber posts and joists to the decking.

It concluded there was risk of landslip and that the timber cladding and chipboard are not sufficient to retain the earth around the perimeter of the property. It also said there was a potential for the slope to collapse, although timing of this would be difficult to predict, but if it happened would have a catastrophic effect on the decking and those on it or underneath it. Given the inadequate design of the decking, and its current damage, it was likely to result in instability and that instability will inevitably result in a risk of falling from or through the decking.

AmTrust considered both reports but concluded the claim wasn't covered by the policy. It said there was no evidence of Major Damage to the Housing Unit, including its Structure, as defined in the policy document. It said the cut slope itself wasn't covered by the policy and there was no damage that required immediate remedial action.

Mrs H disagreed with the decision AmTrust made, she also complained about how long the claim had taken. AmTrust issued two final responses. It maintained its decision on the decline of the claim but admitted there had been several avoidable delays in the progression of the claim. It offered Mrs H a total of £400 compensation. Mrs H brought her complaint to this Service to be reviewed,

An Investigator considered the complaint and recommended it be upheld. She noted the definition of 'Housing Unit' within the policy also included its 'Structure' and within the definition of Structure it confirmed "*floor decking and screeds, where these fails to support normal loads*" was covered. Given the comments in the reports about the decking being unsafe due to the lack of retaining structure to support its load, the damage to the decking and inevitability of its failure, including the current slippage of the land noticed to the lawn area and the potential for further land slips to happen, she thought that the claim should be met by the policy.

The Investigator said she thought Amtrust should reconsider the claim in line with the remaining terms and conditions of the policy and that it should reimburse Mrs H the cost of the survey she had completed with interest at 8% simple. She also said she thought the compensation offered of £400 was reasonable to reflect the trouble and upset caused to Mrs H.

AmTrust disagreed, it said the reference to floor decking was only meant to refer to internal surfaces, not external. The policy requires the damage to be as a result of a defect which, as defined in the policy, comes about due to the failure to comply with a Functional Requirement in the Technical Manual in respect of the construction of the Housing Unit. It said it couldn't identify such a defect had occurred here. And, without further investigation of the foundations of the property it couldn't categorically be said the effects of the decking collapsing would be catastrophic. AmTrust also pointed out the warranty wasn't intended to cover future events, so the possibility of a landslip or failure of the decking was a future issue that is not covered.

The Investigator responded by confirming that as the policy document didn't define the decking to only relate to internal floors, she was satisfied that it could be appropriately applied to this claim. In respect of the Technical Requirements, she said thought that the decking failing to support normal loads would be classed as a defect in workmanship and design.

AmTrust requested the case be reviewed by an Ombudsman, so it 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.

Having done so, I agree with the conclusion reached by the Investigator for the following reasons:

- For a claim to be accepted under the policy Major Damage has to be caused to the Housing Unit as defined in the policy. Having looked at the policy terms and definitions I am satisfied that the Housing Unit encompasses the definition of Structure and under that definition it includes "*floor decking and screeds, where these fail to support normal loads*". There is no reference to decking only applying to internal floorings, so I am not persuaded AmTrust's argument is valid here. If that is what it intended the policy to say, then that should be very clear.
- The findings of the reports between them conclude the decking is damaged and that it has not been designed correctly to support a load, due to the slope beneath it not having any retaining functionality and, the failure of the decking is inevitable. I'm satisfied the decking is therefore covered by the definitions as set out in the policy and it is suffering from damage.
- There is a further requirement for Major Damage that it must result from "*..a defect in the*

*design, workmanship, materials or components of: the **Structure**; ...*” As set out above, I’m satisfied the decking falls for cover under the definition of Structure therefore I only need to consider whether there is a defect.

- The word defect here is not in bold and as such is not intended to follow the definition as set out in the policy – elsewhere in the policy this word is in bold where that definition is intended. I therefore read the sentence as a whole, where the defect only relates to the design, workmanship, materials or components.
- Given the findings of the report conclude the decking was installed in an unsafe manner due to the lack of retaining structure to support its load, I’m satisfied this would constitute a defect in design and workmanship. So, I’m therefore satisfied the criteria for Major Damage has been reached under the policy.
- Even if I was to consider the Technical Requirements, on a fair and reasonable basis I would still conclude the condition had been met. All the sections have ‘Functional Requirements’ which provides guidance on the required standards of finishes. And most, if not all, refer to the structure having a lifespan of not less than 60 years and individual components and assemblies not less than 15 Years - the claim has been raised within six years of the property being completed.
- Where a design section is listed, they also state that the design and specification shall give a clear indication of design intent and demonstrate a satisfactory level of performance. It is noted in the report AmTrust commissioned that gabion baskets were included on the initial design, but they were clearly not installed. So based on the initial design, it appears they were considered necessary to demonstrate a satisfactory level of performance in retaining the slope. AmTrust has not offered any explanation as to why they may have been excluded, so I can’t say this aspect of the Functional Requirements has been met.
- There has been commentary about whether there an immediate need for repairs, as an alternative criterion for Major Damage, is to prevent actual destruction or physical damage to any portion of the Housing Unit – which I’ve established above includes the Structure (and therefore the decking). Given the reports basically conclude the failure of decking is inevitable, given the movement of the slope and the damage to the timber posts and joists. And, that its failure could be catastrophic, endangering anyone on or around it at the time. I do think there is an immediate need for repairs. Its understandable that no timeframe has been given specifically as to when the failure will occur, but I think the reports convey the seriousness of the situation and the threat of damage and potential injury.
- Having considered everything, I’m satisfied the claim Mrs H has made is valid under the policy and AmTrust has not acted fairly or reasonably by declining it. It will therefore need to deal with the claim in line with the remaining terms and conditions, limits and excesses of the policy.
- AmTrust has offered Mrs H a total of £400 compensation for the trouble and upset she has been caused by the way in which the claim has been handled and the delays she has experienced. This amount is within the range that recognises where an error has caused considerable distress, worry and upset so I think it fairly reflects the situation here. Amtrust has recognised it delayed the claim process and the impact it would have had on Mrs H. I think it is a reasonable amount, so I won’t be asking it to pay anymore.
- Mrs H paid for a report to assess the decking and damage caused to it. This has been relevant to the claim and has supported the reasons why it should be accepted under the policy. As such I will direct that AmTrust reimburses the cost of this report to Mrs H with interest from the date she paid for it.

For the reasons above, I uphold this complaint.

Putting things right

To put things right Amtrust should do the following:

- Deal with the claim in line with the remaining terms and conditions, limits and excesses of the policy.
- Reimburse the cost of the report Mrs H obtained upon receipt of evidence of this cost.
- Pay 8% simple interest per year on that amount from the date Mrs H paid it, to the date Amtrust makes the payment.
- Pay£400 compensation to Mrs H if it hasn't done so already.

My final decision

My final decision is that I uphold Mrs H's complaint against AmTrust Specialty Limited. I direct it to put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 27 June 2025.

Alison Gore
Ombudsman