

The complaint

Mr and Mrs M complain about the repudiation of their commercial property insurance claim by AmTrust Specialty Limited ('AmTrust').

Although Mr and Mrs M are professionally represented, in my decision I'll only refer to them, and not their representative.

What happened

The background to this complaint is well known to Mr and Mrs M and AmTrust. Rather than repeat in detail what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr and Mrs M took out a commercial property insurance policy on 18 February 2024. On 22 March 2024 they made a claim under the policy. AmTrust declined the claim. They said that the damage being claimed for appeared to have occurred gradually, and prior to the start of the insurance policy.

Mr and Mrs M made a complaint about the claim decline and as they remained unhappy with AmTrust's response, they referred it to our Service for an independent review. Our Investigator considered the complaint and recommended that it be upheld. As AmTrust didn't accept the recommendations, the complaint was referred to me for a decision. I recently sent both parties a copy of my provisional decision and as the deadline for responses has now passed, I've considered the complaint for a 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The scope of my decision

In this decision, I'll be considering whether AmTrust fairly investigated and considered this claim before repudiating it. There were two main reasons provided for the repudiation: 1- pre-existing damage and 2- gradual damage.

Mr and Mrs M have referred to AmTrust's obligations under the Consumer Duty when responding to this claim. Whilst I've kept the Consumer Duty in mind, it's not the primary reason I'm upholding this complaint.

Responses to the provisional decision

Only Mr and Mrs M responded. They queried the change from our Investigator's recommendations. As no materially new representations have been made by either party

that affect a fair and reasonable outcome, I find no reason to deviate from my previously set out findings. Therefore, the provisional decision findings form the basis of this, my final decision.

My key findings

Based on the evidence, the damage likely did occur over a period of time. The policy does exclude gradual damage.

AmTrust should be aware of our Service's published approach to this type of complaint: <https://www.financial-ombudsman.org.uk/businesses/complaints-deal/insurance/home-buildings-insurance/gradual-damage> In summary, we consider (where gradual damage may have occurred) when the policy holder ought to have been aware of the damage happening.

I find that when Mr and Mrs M were first made aware of the damage by the dentist business beneath their property, they promptly took action to notify AmTrust.

AmTrust have shown that Mr and Mrs M (their tenants) ought reasonably to have been aware of the ongoing damage prior to that point in time. I've also kept in mind that the leaking pipe from a toilet commode wasn't initially suspected of being the cause and instead a shower was. This supports that Mr and Mrs M weren't aware of the ongoing damage underneath their floorboards until the dentists below made them aware.

Given the nature of the business beneath and the strict health and safety/hygiene rules they would have to adhere to, it's reasonable to assume this was the point when the damage became known. Therefore, I find that AmTrust have unfairly relied on the gradual causes exclusion to repudiate the claim.

AmTrust have also said the event that started the damage occurred prior to the inception of this policy: *"Whatever the event was that caused the water leak occurred before cover started..."* and *"...The considerable amount of damage and mould present indicates the leak not only predates the policy but must have been occurring for a significant amount of time. At inception the damage must have already been severe."* It may well be the case that the damage began pre-policy inception.

However, the gap between inception and the first notification of loss was around five weeks. This was plenty of time for the non-visible damage such as mould to develop.

It doesn't seem to be in dispute that the cause of the damage was water leaking from a toilet commode. It therefore stands to reason that each time the toilet was used or filled with water - damage was being caused.

No evidence has been provided by AmTrust that the leak started pre-inception and didn't occur again after policy inception. I'd have expected there to have been evidence of drying out having occurred if this was the case.

Therefore, I find that AmTrust haven't been able to show with sufficiently persuasive evidence that all the damage being claimed for did occur pre policy inception.

Our Service's well-established approach (where damage has potentially occurred across two insurance policies), is one insurer should take the lead in responding to the claim. In the specifics of this claim, it's impossible to safely say how much of the damage occurred pre and post policy inception.

In the interests of treating customers fairly, I find the fairest outcome is for AmTrust take the

lead on the claim and communicate separately with the previous insurer of the property to recover any potential outlay they feel they are entitled to. To be clear, this would need to happen in the background and shouldn't delay any potential claim settlement.

Our Investigator recommended that AmTrust accept Mr and Mrs M's claim and reimburse the costs incurred because of the escape of water, plus 8% simple interest per annum. I direct AmTrust to reconsider the claim in line with the remaining policy terms. Based on the available evidence, it's unfair and unreasonable to rely on gradual causes or the pre-existing damage exclusions to decline the claim.

I also note that loss of rent was raised in the loss adjuster's report, but this wasn't commented on due to the overall repudiation. AmTrust would also need to reconsider any potential loss of rent claim.

I find that the claim was unfairly declined and the £300 compensation recommended by our Investigator for avoidable distress and inconvenience is broadly fair, reasonable and in line with our published guidelines on this type of award. I acknowledge that Mr and Mrs M are commercial customers, but AmTrust's response to the claim was not in line with ICOBS 8.1.1 or treating customers fairly.

Putting things right

I uphold this complaint. I find that an insured event covered by this policy has occurred and Mr and Mrs M promptly reported the damage when they became aware of it.

- AmTrust Specialty Limited will need to reconsider the claim (including a potential loss of rent claim) in line with the remaining policy terms and pay Mr and Mrs M £300 for avoidable distress and inconvenience caused by their handling of the claim.
- Should this be a claim that progresses to settlement, subject to the remaining policy limits, AmTrust will need to reimburse Mr and Mrs M and add 8% simple interest per annum for any repair works carried out that were covered by the policy. This is to be calculated from the date of Mr and Mrs M's outlay (subject to reasonable proof), until the date any claim settlement is paid to them. If AmTrust considers that it's required by HMRC to take off income tax from that interest, it should tell Mr and Mrs M how much it's taken off. It should also give Mr and Mrs M a certificate showing this if they ask for one, so they can reclaim the tax from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint. Subject to Mr and Mrs M accepting the decision before the deadline set, I direct AmTrust Specialty Limited to follow my direction, as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 25 June 2025.

Daniel O'Shea
Ombudsman