

The complaint

Mr M complains that AmTrust Specialty Limited (AmTrust) unfairly declined a claim he made on a legal expenses insurance policy.

What happened

Mr M held legal expenses insurance cover with AmTrust as part of a tenant's policy. His landlord took legal action due to unpaid rent, and Mr M filed a defence and counter-claim, saying the property was unfit for habitation due to being in a state of disrepair, and that a deposit he'd paid hadn't been properly protected. He sought AmTrust's assistance in paying his legal costs.

AmTrust reviewed the information available and declined cover for Mr M's claim. It said the events that were the basis for Mr M's counter-claims occurred before the policy cover started in 2024, and that a condition of the policy said there was no cover for events which happened before the start of cover.

Mr M was unhappy with this and complained to AmTrust, and then referred this complaint to our service. Our investigator thought AmTrust's decision to decline cover for Mr M's claim was fair. Mr M disagreed, and asked for an ombudsman's 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.

AmTrust has a duty to handle claims promptly and fairly, and can't decline claims unreasonably. When it declined cover for the claim, it referred to an exclusion for events that occurred before the insurance cover started. As it's referred to an exclusion, the onus is on AmTrust to show that it reasonably applies to Mr M's claim.

The exclusion in question says there's no cover for "Any loss, damage, liability, cost or expense of any kind which occurs as a result of an event before the insurance starts."

The policy doesn't give any definition of "event" but does define the "date of event" as "The date of any incident which may lead to a claim; where there is more than one such incident, the date of the first of these." I think this is helpful, and so I'm satisfied a fair interpretation of what is meant by "event" in the policy would be the incident which is the underlying reason for the claim being made.

Of relevance to this complaint, two significant dates aren't disputed. Those are that Mr M had been a tenant in the property since December 2020, and that the policy cover with AmTrust started in May 2024. That second date is important because, in line with the exclusion, any event which leads to a claim that occurred before May 2024 wouldn't be covered. It also isn't disputed that the landlord began legal proceedings, and Mr M filed his defence and counter-claim, after the policy cover started. However, as I've outlined above,

the date of the legal proceedings is of less relevance than the date of the events leading to those proceedings.

When it declined cover for Mr M's claim, AmTrust said that the events which resulted in the counter-claim occurred, in essence, when Mr M moved into the property, which was in December 2020. It takes the view that Mr M has said the property was in a state of disrepair and not fit for habitation when he moved in, and that the deposit wasn't protected as it should have been when he moved in. It seems it therefore considers that Mr M's moving into an unfit property was the event leading to the claim.

Mr M says he was unaware the deposit hadn't been protected until June 2024, after the cover started. He also says there were multiple, continuing issues at the property which hadn't been repaired or resolved by May 2024.

I've every sympathy with Mr M's difficult situation. He's listed a number of problems with the property, including water ingresses, boiler breakdowns and mould, and provided evidence of the impact of these on his health. However, it's also clear from the counter-claim he filed, and messages between Mr M and the landlord, that he'd been aware of, and reporting all of the issues to the landlord from early 2021 onwards. It's also clear from the messages that Mr M didn't consider the issues he was raising from 2021 to have ever been satisfactorily resolved. I think the narrative provided in the counter-claim documents filed with the county court, and the content of the messages, gives a very clear indication that Mr M considered the property to have been in a state of disrepair and unfit for habitation since he moved in, in 2020. Indeed, his claim for damages would seem to rely on that central allegation.

By any logic, therefore, the event which has led to this claim would be Mr M's discovery, on moving into the property, that it was in a state of disrepair and unfit for habitation. While he didn't describe the property as such at the time, he clearly feels that was the case based on his counter-claim and submissions. I'm aware that Mr M believes AmTrust should pay a proportion of the costs, based on issues which occurred at the property during the period of cover. However, as I've outlined, I'm satisfied the event which underpins all of the matters claimed for (other than the deposit protection) is the state of the property when Mr M moved in. Furthermore, I haven't seen any evidence of new issues which were unrelated to any previously highlighted matters which occurred during the period of cover.

While ingresses of water and mould continued (among other things), those were issues which had been highlighted and notified to the landlord before the policy cover started. I note the specific wording in the terms and conditions around claims involving more than one incident, which says "where there is more than one such incident, the date of the first of these" would be the event. So a new incident or issue suggesting the property was unfit for habitation and in a state of disrepair wouldn't be a new event, but linked to the earlier incidents. The first incident giving rise to the claim occurred before the policy cover started.

Another significant indicator that the event leading to the claim occurred prior to the policy cover started is that by Mr M's own account, he withheld rent from February 2024, three months before the policy was taken out. He says he did so because the condition of the property was unsuitable and the landlord hadn't made reasonable efforts to rectify these. It was that withholding of rent payments which resulted in Mr M making his counter-claim, the costs of which he wants Amtrust to cover. So by that logic, the events which caused Mr M to withhold the rent were the same as he now seeks cover. Those events had to have occurred before the policy cover started, as Mr M withheld his rent payments because of them.

With respect to the deposit protection element of the claim, I appreciate Mr M's view that the event would be when he established, after the policy cover started, that the deposit hadn't been properly protected. However, AmTrust notes that he should have received a certificate

in early 2021 confirming the details of the scheme and that the deposit was protected. It could be argued that should have acted as an indicator that the deposit hadn't been properly protected. It says that the event which led to the claim was the failure to pay the deposit into the protection scheme when Mr P moved into the property.

The relevant exclusion is suitably clear in my view, that the event is when the matter which is the subject of the claim occurred, not when it was discovered. That means the event in this case is the failure to pay the deposit into the protection scheme. That happened before the policy cover started.

For these reasons, I conclude that the events giving rise to the claim occurred before the cover provided in Mr M's policy started. The exclusion is clearly worded, and given suitable prominence in the policy documents. I'm satisfied it was reasonable for Amtrust to rely on the exclusion and so it was fair to decline cover for the claim. While I know this will be very disappointing for Mr M, I can't say AmTrust's response to the claim was unreasonable.

My final decision

I don't uphold Mr M's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 December 2025.

Ben Williams
Ombudsman