

The complaint

X and Mr V complain about how AmTrust Speciality Limited (AmTrust) has said it will settle a claim made under their Premier Guarantee warranty for damage to their home.

Any references to AmTrust include its agents.

What happened

X and Mr V made a claim for water ingress to their home under their Premier Guarantee warranty. The warranty covers their apartment, which is situated in a development where the first building is split into four separate homes, with a fifth home located separately.

Several investigations were carried out and there was found to be a defect in relation to how the balconies were constructed. The claim was accepted by AmTrust who subsequently offered a cash settlement to X and Mr V. They complained about how AmTrust had calculated the cash settlement. They said, amongst other things, it was unfair for AmTrust to apply a common parts excess when the damage claimed for was inside their apartment. And whilst there were defects to other balconies, these weren't found to have been the cause of damage to other apartments.

AmTrust didn't change the decision it made, so X and Mr V referred their concerns to the Financial Ombudsman Service.

Our investigator considered X and Mr V's complaint. She concluded:

- It wasn't fair for AmTrust to apply the common parts excess. This was because the policy was responding to damage caused by a defect. And the damage claimed for wasn't within the common parts of the property, it was within X and Mr V's apartment.
- It wasn't fair for AmTrust to require X and Mr V to pursue a claim through their own buildings insurance when they were entitled to make a claim under this warranty.
- AmTrust didn't need to cover any repairs not required to repair the water ingress issue which were notified after the warranty end date, nor did it need to pay the legal costs incurred by X and Mr V.
- To put things right, our investigator said AmTrust should pay the full claim costs for damage to X and Mr V's apartment and the defects causing the damage, less the excess, along with simple interest at 8% from the date of the offer.
- AmTrust also needed to reimburse the costs of the leak detection report and the expert investigation reports instructed by X and Mr V, along with simple interest.

X and Mr V initially accepted our investigators' conclusions though they later asked for their legal fees to be reimbursed again.

AmTrust only responded to the point about the common parts excess. It said it needed to remediate the defect to make a lasting and effective repair, and the defects fell under the common parts section of the policy. This was because the membrane was bonded directly to the screed that forms the structure of the roof above the flat below. Our investigator remained of the opinion that because the policy was responding to damage which was in X

and Mr V's home, not in the common parts of the property, it wasn't fair to apply the common parts excess. AmTrust didn't reply, so the case 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.

Because both sides appear to have accepted the majority of the investigator's findings, my decision will focus on the issues which seems to remain in dispute. These are whether it's fair to apply the common parts excess and the request for the reimbursement of legal fees. I've focused on the key points relevant to reaching a fair and reasonable decision in this respect. This reflects the informal nature of the Financial Ombudsman Service. But having done so, I've reached the same conclusion as our investigator and for largely the same reasons.

It's important to note this decision only relates to X and Mr V's apartment.

In responding to our investigators' view, AmTrust referenced the lease which contained a definition of X and Mr V's property but excluded the balconies as part of that definition. AmTrust also said, essentially, that to carry out an effective repair, it needed to repair the structure of the balcony, which is a common part according to the lease.

X and Mr V made their claim under section 3.3 of the warranty which says:

*"The **Underwriter** will indemnify the **Policyholder** against all claims discovered and notified to the **Underwriter** during the **Structural Insurance Period** in respect of:*

*1. The cost of complete or partial rebuilding or rectifying work to the **Housing Unit** which has been affected by **Major Damage** provided always that the liability of the **Underwriter** does not exceed the reasonable cost of rebuilding each **Housing Unit** to its original specification; ...*

And major damage is defined in the warranty as:

*"a) Destruction of or physical damage to any portion of the **Housing Unit** for which a **Certificate of Insurance** has been issued by the **Underwriter**.*

*b) A condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the **Housing Unit** for which a **Certificate of Insurance** has been issued by the **Underwriter***

in either case caused by a defect in the design, workmanship, materials or components of:

- the **Structure**; or*
- the waterproofing elements of the **Waterproof Envelope***

*which is first discovered during the **Structural Insurance Period**."*

I haven't set out the definitions of Housing Unit and Structure as defined by the warranty for ease, but I'm satisfied both sides have had access to the warranty terms and that X and Mr V's home meets the required definitions.

The definitions above mean the warranty covers damage to a housing unit caused by a defect, rather than covering the defect itself in isolation. Therefore, I consider it's the location of the damage which defines whether the claim relates to a single demised apartment or the common parts of the development – not the location of the defect.

And it's accepted the damage in this instance is inside X and Mr V's apartment. Based on this, I think Amtrust acted unfairly when it sought to apply a common parts excess on the basis that the defect was located in a common part (the balcony). The fact that the balcony defect needs to be remedied in order to deliver a lasting and effective repair doesn't change the fact that the policy is responding to the damage.

I therefore require AmTrust to cover the claim costs for damage to X and Mr V's apartment (less the standard, non-common parts policy excess), including the cost of any repairs required to deliver a lasting and effective repair.

However, I'm not going to require AmTrust to reimburse the legal fees X and Mr V say they incurred. I appreciate the point they've made in that they feel AmTrust handled the claim so badly they had no other option but to arrange legal advice. However, ultimately the decision to incur legal costs was a decision they X and Mr V chose to take, without any guarantee of a refund. And as our investigator said, the instruction of solicitors didn't alter the course of the claim so I'm not going to require AmTrust to reimburse those costs.

Putting things right

To put things right, I require AmTrust to:

- Cover the claim costs (less the standard, non-common parts policy excess) for damage to X and Mr V's apartment and the defects causing the damage.
- Pay simple interest at 8% per annum from the date the final cash settlement offer was made, until the date of settlement.
- Reimburse X and Mr V for any costs they incurred for the instruction of the leak detection and independent investigation reports.
- Pay simple interest at 8% per annum from the date each of the above payments were made, until the date of settlement.
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My final decision

I uphold this complaint and require AmTrust Speciality Limited to do what I've set out above in the "Putting things right" section.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr V to accept or reject my decision before 10 March 2026.

Emma Hawkins
Ombudsman