

The complaint

Mr S complains that AmTrust Specialty Limited unfairly declined a claim he made on his Premier Guarantee building warranty policy.

What happened

Mr S owns an apartment in a block. His property, and the building, is covered by a ten-year building warranty policy underwritten by AmTrust. The cover for Mr S's apartment started in April 2018.

In June 2023, Mr S's apartment began suffering damage from rainwater ingress originating from the apartment above. Mr S made a claim for the damage in February 2024.

AmTrust appointed a loss adjuster. The claim was considered under Section 3.3 of the policy, which is the policy cover that applies between April 2020 and April 2028 (the 'Structural Insurance' period).

In April 2025, AmTrust declined Mr S's claim. This was because the water ingress was being caused by defects in the apartment above which is owned by the original developer, and the original developer is excluded from cover. In other words, AmTrust argued the defects weren't arising in a part of the structure that was insured.

During the claim, AmTrust acknowledged various delays and service issues, and offered Mr S £800 compensation.

Mr S remained unhappy with AmTrust's claim decision, so he brought his complaint to our service. One of our investigators considered the matter and he set out in detail why he thought the complaint should be upheld.

Because AmTrust hasn't responded to our investigator's findings and recommendations, the complaint has been passed to me 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.

Having done so, I've reached the same overall outcome as our investigator. In my below findings, I've focused on what I consider to be the key issues and considerations.

But firstly, it's disappointing AmTrust hasn't responded to our investigator's outcome, despite being chased. It's also disappointing to see the position AmTrust has taken on Mr S's claim, which is contrary to the well-established approach taken by our service.

Claim decision

- Under Section 3.3, Mr S is covered for physical damage to his apartment caused by a 'defect' in the 'structure' or the waterproofing elements of the 'external envelope'.
- The water ingress is understood to be originating from the apartment above, due to defective capping seals on the balcony balustrade and defective terrace doors. It's not disputed that the issues fall under the policy definition of 'defect', or that those elements of the building fall under the policy definitions of 'structure' or 'external envelope'.
- AmTrust has declined Mr S's claim on the basis the defects causing the damage are in an uninsured part of the building. However, I don't consider that to be relevant. Section 3.3 covers the damage caused by a defect; it doesn't cover the defect itself. So, the important question is the location of the damage, not the location of the defect. This has long been our approach, which AmTrust should be aware of.
- When settling the claim, be that via a repair or a cash settlement, the repair solution will need to be effective and lasting. I acknowledge that *may* mean rectifying the defect, but that doesn't change what I've said above.
- It's not clear whether AmTrust consider the defects to be in the common parts or in part of above apartment's demised premises. I'm mindful that a common parts claim attracts an excess from each leaseholder who holds responsibility for the common parts. However, Section 3.3 covers the damage not the defect. Here, the insured damage is located in Mr S's apartment. So, it follows the claim being made is a demised claim, with a single excess to be paid by Mr S.
- I'm also mindful the managing agent submitted a common parts claim for the defects within the 'Defects Insurance' period (Section 3.2). Under Section 3.2, the defect and the resulting damage are both covered, but AmTrust only becomes responsible (in place of the developer) if certain conditions are met. However, as I understand it, there was no visible damage to Mr S's apartment until after the common parts Defects Insurance period had ended. So, I don't consider the damage in his apartment to form part of the Section 3.2 common parts claim.
- What's important for both Section 3.2 and Section 3.3 are the dates of discovery and claim notification. Mr S discovered damage and notified his claim within the Section 3.3 period for his apartment, which was outside of the Section 3.2 period for the common parts. Therefore, Mr S's claim shouldn't fail based on the Section 3.2 common parts claim. His claim should be considered within its own right.
- To be clear, I've not considered the Section 3.2 common parts claim, and I've made no findings on it, but as set out above, an effective and lasting repair to Mr S's apartment may require the defects to be rectified by AmTrust.
- I acknowledge there's the argument that the developer remains the freeholder and it has obligations under the lease in respect of repairs. Had the developer rectified the defects following the managing agent's Section 3.2 common parts claim, damage to Mr S's apartment is unlikely to have occurred. AmTrust doesn't seem to have relied on this argument, but the loss adjuster has made this point in its reports. For clarity, I wouldn't consider this argument to be fair or reasonable. Mr S's Section 3.3 cover doesn't cease to exist due to the inaction of the freeholder or developer. Rather, AmTrust retains subrogation rights should it want to recover its losses from the parties it considers responsible.

- In conclusion, I find the way AmTrust has applied the policy terms in this case to be unfair and unreasonable, and somewhat concerning. The very purpose of the policy is to protect a buyer of a new home against such defects, yet AmTrust has sought to avoid liability on the basis that insured damage to an insured apartment originates from an apartment still owned by the developer. AmTrust and its appointed agents must recognise that their approach here leaves Mr S in an impossible position and renders his cover worthless when needed most.
- To put matters right, AmTrust will now need to accept Mr S's claim for the damage to his apartment and engage with him about the settlement options, which must deliver an effective and lasting repair. In June 2025, when responding to Mr S's complaint, the loss adjuster said it understood a contractor (who was involved in the building's construction) intended to rectify the defects along with the damage to Mr S's apartment. However, if that's yet to happen, AmTrust now needs to fulfil its obligations under Mr S's policy by settling his claim.

Compensation

- Mr S doesn't reside at the property, but rather, it was previously let to tenants. Mr S's last tenants left the property in September 2023 when their tenancy agreement came to an end, a few months after the damage started appearing. The monthly rent received from those tenants was £1,300.
- Mr S would like his lost rental income covered on the basis he hasn't been able to put the property back on the rental market. As per the photos of the damage, it's evident the property can't be re-let in its current state. The internal repair costs are relatively significant, so I don't consider it would be reasonable to decide Mr S should have mitigated his losses by funding the repairs himself. In any event, those internal repairs would unlikely be lasting unless the defects are rectified.
- The policy doesn't cover consequential losses such as loss of rent. However, in my view, AmTrust is responsible for such losses outside of the policy terms, when they have been caused by an unfair claim decision or unreasonable claim delays. As AmTrust is aware, the regulator requires an insurer to handle claims fairly and promptly and not unreasonably reject them.
- The claim wasn't made until February 2024, so it follows AmTrust isn't responsible for the delay (and therefore, lost rent) before this date. However, it took 14 months for AmTrust to provide its claim decision. I don't consider that reasonable.
- It's apparent from the loss adjuster's report dated June 2024, that investigations into the damage at Mr S's apartment had been carried out. However, it took a further ten months for the loss adjuster to decline Mr S's claim despite already knowing the information it later relied on, *i.e.*, that the water ingress was originating from an apartment owned by the developer.
- I appreciate discussions may have been ongoing with the developer or the contractor (who I referred to above) to understand their intentions and to gain a commitment to undertake repairs. But ultimately, that isn't Mr S's concern. As I've explained above, I consider his claim ought to have been accepted by AmTrust, with it taking responsibility for delivering an effective and lasting repair.

- In conclusion, I'm persuaded AmTrust should compensate Mr S his lost rental income from July 2024 to January 2026 (a period of 19 months). I consider it reasonable to base this on the last tenancy agreement of £1,300 per month.
- AmTrust will also need to add 8% simple interest on each monthly rental payment of £1,300, from the first day of the applicable month (for ease) to the date of settlement. For instance, interest on the first monthly payment should accrue from 1 July 2024, and on the second monthly payment from 1 August 2024, and so on.
- I'm ending the period of lost rent in January 2026 because, providing Mr S accepts my final decision, he'll then be in the position he ought reasonably to have been in around July 2024. That is, following investigations into the damage, his claim has been accepted, and settlement options are being explored with him.
- Given the impact of the claim delays and the claim decision on Mr S, I agree with our investigator that £1,000 compensation for his distress and inconvenience should be awarded, in total. So, if £800 had already been paid, a further £200 would be due.
- If Mr S is unhappy with how his claim progresses after accepting my final decision, or with the settlement options offered to him, he's free to make a further complaint. That said, Mr S should bear in mind that the speed in which AmTrust can identify and/or deliver an effective and lasting repair will likely depend on the cooperation of the developer and access to the defective parts of the building.

My final decision

For the reasons I've set out above, I uphold this complaint.

My final decision is AmTrust Specialty Limited should:

- Accept Mr S's claim for the damage to his apartment and engage with him about the settlement options (which must deliver an effective and lasting repair).
- Compensate Mr S his lost rent from July 2024 to January 2026 (a period of 19 months), based on £1,300 per month.
- Pay 8% simple interest on each monthly rental payment of £1,300, from the first day of the applicable month to the date of settlement.
- Compensate Mr S a total of £1,000 for the distress and inconvenience caused by the handling of the claim (if £800 has already been paid, a further £200 would be due).

I make no further awards.

If AmTrust considers it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr S how much it's taken off. If requested, AmTrust should also provide Mr S with a certificate showing the amount deducted, so he can reclaim it from HM Revenue & Customs if appropriate.

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

Vince Martin
Ombudsman

