DRN-6110900

The complaint

Mr and Mrs R have complained about Amtrust Specialty Limited's handling of a claim they made under the structural defects warranty covering their property.

Reference to Mr and Mrs R and Amtrust also includes their respective agents/ representatives.

What happened

The subject of this complaint is a building comprised of multiple flats. Damage has been caused to multiple flats, including Mr and Mrs R's, as a result of defects with the construction of the balcony/roof terraces of the building. Other leaseholders within Mr and Mrs R's development have been affected by similar issues and have been represented by another leaseholder – Mr J – when bringing their complaints.

But this particular complaint relates to Mr and Mrs R only and concerns only what they are entitled to under their individual warranty. Separate decisions will be issued for the other leaseholder's who have brought separate, but largely similar complaints.

Mr and Mrs R's complaint concerns Amtrust's handling of a long-running water-ingress claim involving multiple apartments. Early in the claim, Amtrust wrongly required leaseholders to sign a JCT contract before repairs could begin, causing significant delay and distress. Amtrust later accepted this was inappropriate. Further delays then arose when Amtrust refused to start repairs until a common-parts excess was paid. Repairs still had not begun more than seven months after Amtrust had issued a final response letter to a complaint Mr and Mrs R made to them. Amtrust agreed to the Financial Ombudsman Service considering that additional seven-month period.

Across four views, the investigator felt there had been several failings on Amtrust's part:

- The JCT issue should never have arisen
- The balcony works fall within the demised property, meaning the common-parts excess is not applicable
- Amtrust's refusal to proceed while insisting on the wrong excess caused continued distress and inconvenience.
- Amtrust's total offer of £1,050 compensation for Mr and Mrs R wasn't sufficient to reflect the impact of its failings and so it should increase this to £2,000.

However, the investigator also concluded that the standard policy excess must still be paid before Amtrust would need to proceed with the works. He explained the Financial Ombudsman Service couldn't reasonably order Amtrust to begin repairs by a fixed date nor direct that Amtrust remove the appointed loss adjuster.

Neither side accepted the investigator's assessment. So, because no agreement has been reached, the complaint 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 investigator's findings. I'll explain why.

But first, I want to explain that while there has been extensive background and multiple issues of contention throughout the life of this claim and complaint, I don't intend to comment on everything which has happened in detail. Instead, I'll focus on the key issues which remain in dispute, and which I need to decide in order to deliver a fair outcome to this complaint. This isn't meant as a discourtesy to either party, rather it reflects the informal nature of our service and my role within it. But I'd like to assure the parties that I have read and considered all the evidence provided when reaching my decision.

It is not in dispute that Amtrust shouldn't have insisted on the leaseholders signing the JCT contract. Nor that this issue has caused significant distress and delays in the progress of the claim. Amtrust has accepted this and has offered Mr and Mrs R a total of £1,050 compensation.

The issues which remain in dispute and which I'll focus on are whether it is fair for Amtrust to maintain that a common parts excess needs to be paid, whether Amtrust should remove its loss adjuster and appoint a new one, and whether the compensation it has offered is fair and reasonable in all the circumstances of Mr and Mrs R's claim and complaint.

What the warranty covers

The section of cover relevant to Mr and Mrs R's claim is section 3.3. The warranty document explains the cover it provides under this section:

> *"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…*

The warranty defines 'Housing Unit as:

> *"Housing Unit*
>
> *The property described in the Certificate of Insurance comprising:*
>
> - *the structure;*
> - *all non-load bearing elements and fixtures and fittings for which the Policyholder is responsible;*
> - *any Common Parts retaining or boundary walls forming part of or providing support to the Structure;*
> - *any path or roadway within the perimeter of such property;*
> - *the drainage system within the perimeter of such property for which the Policyholder is responsible;*
> - *any garage or other permanent out-building."*

The warranty defines ‘Major Damage’ as:

> *“Major Damage*
>
> *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”*

‘Defect’ is defined as:

> *“Defect*
>
> *A failure to comply with a functional requirement in the Technical Manual in respect of the construction of the Housing Unit.*
>
> *Failure to follow the performance standards or guidance supporting the functional requirements does not in itself amount to a Defect, as it may be possible to achieve the recommended performance in other ways.*
>
> *For any contract insured under this Policy relating to the conversion, refurbishment or renovation of a New Development the definition of Defect shall only be deemed to include any of the works constructed or installed by the Developer as part of the Conversion, refurbishment or renovation.”*

And ‘Structure’ is defined as:

> *“Structure*
>
> *The following elements shall comprise the Structure of a Housing Unit:*
>
> - *foundations;*
> - *load-bearing parts of ceilings, floors, staircases and associated guard rails, walls and roofs, together with load-bearing retaining walls necessary for stability;*
> - *non-load bearing partition walls;*
> - *chimneys and flues;*
> - *roof covering;*
> - *any external finishing surface (including rendering) necessary for the water-tightness of the external envelope;*
> - *floor decking and screeds, where these fail to support*
> - *normal loads;*
> - *wet applied plaster;*

- *double or triple glazed panes to external windows and doors;*
- *Underground drainage that the policyholder is responsible for maintaining."*

What all the above means in practice is that section 3.3 of Mr and Mrs R's warranty is designed to cover them for major damage to their flat caused by a defect in the structure (as defined). This section of the warranty provides cover for the damage which results from the defect, rather than covering the defect itself in isolation.

Common parts excess

Mr and Mrs R's insurance certificate sets out the excess fee payable in the event of certain claims. For claims under section 3.2 the excess is £100, under section 3.3 £1,000 and for common parts the excess is £10,000.

Amtrust has sought to argue that because the remedial works for this claim will require work to common parts of the building, that it's reasonable to charge the leaseholders a common parts excess, in addition to a standard excess for each apartment. But I don't agree that this is correct or fair.

I say this because the policy makes it clear that under section 3.3, it responds to major damage. This section of the policy does not (and so Amtrust would not) provide cover for a defect, in isolation, if it were not causing major damage. I therefore consider it is unfair for Amtrust to seek to charge the common parts excess based on the location of the defect.

In this case, it is clear that the major damage is water ingress to Mr and Mrs R's flat, caused by the defective construction of the balcony/roof terraces, and I therefore think the applicable excess fee is determined by the damage (not the defect) and is the standard excess.

Based on my reasoning above, Mr and Mrs R are covered for repairs to the damage to their flat (or the equivalent cost to Mr and Mrs R of having those repairs carried out), not for the repairs to the defect itself. However, it's widely accepted good industry practice (and a well-defined approach of this service) that any repairs carried out, or funded, under a contract of insurance should be lasting and effective. This may well mean that Amtrust has to repair or cover the cost of repairing the defect. But I don't consider this means it can fairly charge the common parts excess. This is because it is only repairing the defect in order to deliver the cover provided under Mr and Mrs R's warranty – repairing the major damage to their flat. The policy is not responding to the defect itself.

I'm aware that Mr and Mrs R are unhappy that Amtrust has refused to commence with the works until the excess is paid. As set out above, I think it was unfair for Amtrust to insist on payment of the common parts excess. But the policy is clear that the policyholders are required to fund the first part of any claim by paying the applicable excess fee. This is neither unusual nor inherently unfair. And I'm not aware of any specific financial circumstances which would prevent Mr and Mrs R from being able to pay the excess upfront. So, taking everything into account, in the particular circumstances of this claim and complaint, I think Amtrust can reasonably require Mr and Mrs R to pay the standard excess before it commences with arranging the repairs.

I also understand that Mr and Mrs R feel that I should direct Amtrust to commence with repairs by a set date. But I agree with the investigator here that such a direction would be outside the realms of what is reasonable. I say this because there are too many variables for me to safely decide on and/or direct a feasible start date – including the excess fee being paid, the schedule of works being finalised, contractors being available and more. What I will say is that Amtrust is required under industry rules to settle claims promptly and fairly. So, now that this complaint has been concluded, upon payment of the correct excess fee, I would expect it arrange and commence with the repairs promptly, in line with this requirement.

Should it fail to do so, Mr and Mrs R are of course free to raise any concerns about this as a new complaint – with Amtrust in the first instance. But it is in all parties' interests for the works to progress and conclude swiftly on receipt of this decision, and I'd expect Amtrust to take all reasonable steps to ensure that it does.

New loss adjuster/claims manager

Mr and Mrs R have made it clear they are unhappy with the professionals Amtrust have appointed to manage the claim on their behalf. They've highlighted the numerous accepted service failings as reasonable grounds for having lost faith. They want me to direct Amtrust to appoint somebody new to manage the claim.

I've thought carefully about this, but like the investigator I'm not minded to make such a direction. I say this because it's clear this claim and complaint have been ongoing for a significant length of time. I think it's likely that the appointment of a new loss adjuster, claims manager, or both, is only likely to extend the length of time it will take for the claim to be fairly settled. And given all the difficulties Mr and Mrs R, and the other leaseholders impacted by essentially the same issues, have experienced I don't think that would be appropriate in this case.

Should Mr and Mrs R remain unhappy with this, Amtrust has said it is willing to consider a cash settlement instead. I think this is a reasonable alternative in the circumstances – although again, it's likely to further delay the repairs being completed compared with Amtrust promptly proceeding to carry out the repairs using the same agents it has up to now.

Service issues and compensation

It isn't in dispute that Amtrust is responsible for significant avoidable delays and service issues. I don't intend to repeat them all here. I've thought carefully about everything that went wrong, and about the specific impact these issues have had on Mr and Mrs R. This includes, but is not limited to, living in a property with severe water ingress issues for several years and having to wait a significant length of time, and make a complaint to the Financial Ombudsman Service, just to receive a fair settlement under their policy.

Amtrust has accepted responsibility for many of the service issues and has offered Mr and Mrs R £1,050 compensation. But the investigator felt this should be increased to £2,000 on the basis of further delays being included in the complaint late on, and the cumulative impact of all the issues.

The photos of the damage I've seen show the damage was significant, and that it has been worsening over time. This would be understandably distressing and would clearly impact on Mr and Mrs R's daily lives. I'm also aware of specific vulnerabilities impacting Mr and Mrs R which would have exacerbated the impact of Amtrust's failings.

That all being said, £2,000 is within the range of awards the Financial Ombudsman Service would make where a business's failings have caused sustained distress, potentially affecting someone's health, or severe disruption to daily life typically lasting more than a year. So, having considered everything Mr and Mrs R have said about the claim and complaint and how they've been impacted, I consider this amount is sufficient to fairly put things right – even considering the additional delays which have resulted from its unfair insistence on receiving a common parts excess.

To be clear, I am not attempting to suggest that Amtrust hasn't made serious failings, nor that Mr and Mrs R haven't been severely impacted. Just that I think £2,000 compensation is sufficient to fairly put things right in the circumstances.

It therefore follows that I'll be directing Amtrust to pay Mr and Mrs R £2,000 compensation, instead of the £1,050 previously offered.

Mr and Mrs R have previously suggested that Amtrust should deduct the excess fee from the compensation it has offered, if it wants it to be paid upfront. Ordinarily that isn't something the Financial Ombudsman Service would suggest, because compensation for the impact of avoidable distress and inconvenience is rightly payable to the impacted parties and is separate from any claim settlement they are due under the terms of the policy. However, if this remains Mr and Mrs R's preference, and the compensation remains unpaid, I see no reason why Amtrust couldn't do that. But I'll leave it to the parties to decide on this aspect, upon receipt of this final decision.

My final decision

For the reasons set out, I uphold Mr and Mrs R's complaint.

Amtrust Specialty Limited must:

- Promptly progress with the required repairs upon collection of Mr and Mrs R's standard excess fee.

- Pay Mr and Mrs R a total of £2,000 compensation for the avoidable distress and inconvenience it has caused them – if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 13 April 2026.

Adam Golding
Ombudsman