DRN-6138288

The complaint

Miss B has complained about AmTrust International Underwriters DAC's (Amtrust's) handling of a claim made under her Build-Zone Structural Warranty Policy.

Reference to Miss B and Amtrust throughout includes their respective agents and representatives.

What happened

The subject of this complaint is a building comprised of 50 separate apartments. Miss B is the leaseholder of one of the apartments, and the holder of a Build-Zone Warranty underwritten by Amtrust, covering her apartment and her share of any common parts.

The details of this complaint are well known to all parties, so I will not repeat them again in full detail here. But to briefly summarise, Miss B's complaint concerns a claim made under the policy for fire safety issues with the common parts of the development. There have been several points of dispute at various stages of the claim and complaint, as things have moved on over time.

An investigator at the Financial Ombudsman Service considered Miss B's complaint and issued several assessments, as new evidence came to light. Below is a summary of his various findings, and whether or not they remain in dispute:

Accepted by both sides

- There have been significant avoidable delays on Amtrust's part and as a result it is not fair for it to apply indexation to the claim from the point of claim notification in 2021.
- Instead, indexation should be applied from the relevant 2023 anniversary of Miss B's policy commencing.
- Amtrust should consider any additional evidence Miss B can provide to quantify the increased cost of buildings insurance caused directly by its handling of this claim.
- Amtrust should pay Miss B £400 compensation for the avoidable distress and inconvenience it has caused her.

Still in dispute

- Due to an underwriting error, section 5.2 of the policy was included in the policies covering the development when it shouldn't have been. As a result, there is no final certificate specifying the cost of works the applicable policy limit should have been based on.
- Amtrust says it should be £3.4m based on a master contract form document it has provided.

- Miss B says it should be based on the actual cost of the works, as evidenced by various invoices and bank statements, which was around £7.9m.

The investigator agreed with Miss B and so recommended Amtrust calculate Miss B's proportion of the claim settlement based on that higher limit.

Miss B accepted the investigator's recommendation. But, despite being chased, Amtrust didn't respond to confirm whether it accepted or not, or to provide any further comments or evidence. So, as 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.

I'll start by explaining that I don't intend to revisit the parts of the complaint which are no longer in dispute. Instead, I'll focus my attention on the matter which remains outstanding. This isn't meant as a discourtesy, rather it reflects the informal nature of the Financial Ombudsman Service, and my role within it.

I should also explain that this complaint has been brought solely by Miss B under her own individual warranty and so any award or directions I've made only apply to her proportion of the claim. However, in response to this decision, Amtrust may wish to consider its position on the remaining leaseholder's claims to avoid potential future complaints about the same issue being referred to the Financial Ombudsman Service.

Having carefully considered the outstanding aspect of Miss B's complaint, I agree with the conclusions reached by the investigator. I'll explain why.

The claim which is the subject of this complaint is being considered under section 5.2 of the policy. This is the section which covers the cost of repairs for issues which result in a present or imminent danger to the health and safety of the occupants, which has been caused by a breach of relevant building regulations. It isn't in dispute there is a valid claim.

Section 5.2 is only supposed to be included in the policy where an Amtrust approved building inspector carried out the building control function for the development. In this case, that didn't happen and building control was carried out by the local authority. But due to an underwriting error, cover under section 5.2 was included in the policies covering Miss B's development. Amtrust has accepted that, as a result of this error, it is on risk for issues covered under section 5.2 – including those which are the subject of the claim that this complaint relates to.

The policy booklet sets out the limits that apply to claims made under the various sections of cover. For a section 5.2 claim, it says:

> *"Section 5.2 Physical Health and Safety of Occupants*
>
> *The maximum the Underwriter will pay for claims relating to the Housing Unit under section 5.2 of the Policy is the original cost of work covered by the Build-Zone appointed Approved Inspector's Building Control Final Certificate"*

As the local authority carried out building control, rather than a Build-Zone approved inspector, no "*Build-Zone appointed Approved Inspector's Building Control Final Certificate"* exists. And the local authority building control certificates do not include a build cost. So, the outstanding dispute is what the applicable limit for the overall cost of the claims (Miss B's and each of the other leaseholder's linked but essentially identical claims) should be based on.

Amtrust has said the key element of the above definition is the part which says *"original cost of work".* It has provided a copy of a master contract document which seems to be from prior to completion of the works. This sets out the developer's declared build cost was to be £3.4m. Amtrust says this was the amount the risk was underwritten based on and so its limit of indemnity should be based on this figure.

Miss B argues that the master contract form can't be relied on as it was never part of the sales discussions, quotations, acceptance, policy wording or final certificates. She says this estimated build cost was never confirmed or declared as an operative build cost for the development and nor was it verified at any point by Amtrust.

Miss B argues that a fairer figure for the policy limit to be based on would be the actual, final build cost. She has provided multiple invoices and bank statements to demonstrate this was £7,972,811.37.

I've thought carefully about all the evidence and arguments put forward by the parties around this point. In my view, it comes down to a matter of interpretation of the policy wording. And, in situations where policy wording can be considered as ambiguous, I consider it is fair and reasonable to apply the interpretation most favourable to the party who didn't write the contract – i.e., Miss B – in line with the principle of contra proferentem. This principle reflects the fact that insurers draft the policy and should therefore bear the risk of any unclear wording.

In my view, the wording of the limit can be considered ambiguous, in this case, for several reasons. Firstly, and most crucially, the wording ties the limit to a document that doesn't exist, and therefore it cannot be interpreted literally or in full. Secondly, when trying to interpret part of the wording in isolation, without the key relevant document, there is more than one reasonable way in which it can be interpreted. For example*, "original cost of work"* could be interpreted as the original estimated cost of the work at the point of underwriting – as suggested by Amtrust – or the cost of the work at the point of building control sign-off – suggesting the actual cost of the work noted at the final stages.

Ultimately, the reason for the ambiguity in this case is Amtrust's underwriting error, and I don't consider it would be fair for Amtrust to be the party which benefits from the uncertainty its error created. I therefore consider it is fair and reasonable that the wording be interpreted in the way which is most favourable to Miss B, i.e., that the original cost of the works should be considered as the actual, evidenced cost of the works.

Miss B has provided detailed evidence to demonstrate this was £7,972,811.37. Amtrust has had sight of this information and raised no disputes as to its veracity or reliability. And having carefully considered it myself, I am persuaded, on balance, that it most likely reflects the actual cost of the works.

Taking the above into account, it therefore follows that I consider it fair and reasonable for Amtrust to calculate the proportion of the claim settlement Miss B is entitled to under her policy, based on the overall claim limit being £7,972,811.37, rather than the £3.4m it previously sought to apply.

My final decision

For the reasons I've explained above, I uphold Miss B's complaint.

In line with my findings above, and with the aspects of the complaint it has already accepted, AmTrust International Underwriters DAC must:

- Apply the higher overall limit of £7,972,811.37 (prior to indexation) to its calculation of Miss B's proportion of the claim settlement
- Calculate Miss B's settlement indexation from the relevant 2023 anniversary
- Pay Miss R a total of £400 compensation for the avoidable distress and inconvenience it has caused her
- Consider any additional evidence Miss B can provide to quantify the increased cost of buildings insurance caused directly by its handling of this claim

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 11 March 2026.

Adam Golding
Ombudsman