

## **The complaint**

Miss A and Mr M complain about the service they received from Amtrust Europe Limited relating to a claim on their buildings insurance policy, in particular that it was recorded as a subsidence claim; that Amtrust refused to implement recommendations from an expert they instructed; and that the excess on their policy increased.

## **What happened**

Miss A and Mr M made a claim on their policy in October 2020 after they noticed some cracks had appeared.

Amtrust appointed loss adjusters, who arranged for monitoring to be carried out during 2021. They reported on the outcome of that monitoring in September 2021. This noted that the property had stabilised and there were no further signs of movement. Repairs to some cracks were recommended.

Miss A and Mr M were not happy with the recommendations. They instructed an engineering firm, which recommended carrying out site investigations and a drain survey, and then designing a ground improvement scheme. Miss A and Mr M asked Amtrust to pay for these but Amtrust didn't agree.

When their policy came up for renewal in January 2022, Amtrust said it would not include subsidence cover. Miss A and Mr M complained about this and in response, Amtrust agreed to reinstate subsidence cover, but with an excess of £2,500.

Miss A and Mr M made a further complaint in June 2022. They said Amtrust had not investigated the claim properly and should carry out the investigations recommended by their engineer. They also said the excess should not have been increased.

Amtrust issued a final response to this complaint in October 2022 saying

- The loss adjuster had monitored the property.
- A tree that was thought to have caused some problems had been reduced in size and was not causing any movement.
- As there was no ongoing movement, it couldn't say for sure whether the cracks were due to subsidence but they could have been; so it had offered to pay for repairs to these cracks.
- The loss adjuster said the engineers Miss A and Mr M had instructed were not experts on investigations but were contractors who carried out work dealing with subsidence. And while the loss adjuster had used them for other types of issues he wouldn't recommend using them for clay shrinkage.

A certificate of structural adequacy was issued in February 2023. This said the nearby tree had caused some very minor subsidence type damage over the summer of 2020 and only simple superstructure repairs were needed.

Miss A and Mr M referred the complaint to this Service.

In the meantime, they had made a further complaint to Amtrust about poor service; recording the claim as subsidence; and a loss in the market value of their property.

Amtrust issued a final response in May 2023 saying:

- The loss adjusters were appointed to manage the claim and a reasonable level of support had been provided.
- It was necessary to refer to the relevant insured peril, which in this case was subsidence.
- For future purposes, it would be noted that a subsidence claim was made and then withdrawn. This may or may not affect future insurance or the value of the property.

Our investigator explained to Miss A and Mr M that Amtrust had agreed to us investigating the second and third complaints together, but it wasn't possible to investigate the first complaint (which Amtrust had replied to in January 2022) due to the amount of time that had passed. Miss A and Mr M confirmed that as Amtrust had found in their favour in the first complaint they didn't intend to pursue that complaint.

The investigator didn't think this complaint should be upheld. She said:

- Any incident of damage needs to be recorded. It was reasonable for Amtrust to record that a claim had been made and that it was a claim for subsidence damage.
- The way Amtrust had dealt with the claim, arranging a period of monitoring and then making an offer, was reasonable. It was fair for Amtrust not to proceed with the recommendations from the engineer Miss A and Mr M had instructed.
- Amtrust was entitled to review the risk it wished to take on when renewing the policy and amend the policy excess.

Miss A and Mr M disagree and have requested an ombudsman's decision. They say

- the investigator didn't consider all of the points they raised;
- they would like the claim to be reviewed holistically; and
- there are many examples of contradictory advice from Amtrust and the loss adjusters.

Miss A and Mr M have also said they are unhappy that Amtrust decided to exclude subsidence cover when offering to renew the policy in January 2024. Our investigator has explained that's not part of this complaint and if they wish to complain about that decision they would first need to complain to Amtrust, which I understand they have now done.

### **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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy includes cover for subsidence. So Miss A and Mr M had cover for this, subject to the excess which at the time of the claim was £1,000.

I'd expect an insurer to carry out appropriate investigations. In the case of subsidence, this typically involves a period of monitoring to see if there is continuing movement in the property. Any remedial action should provide an effective and lasting repair.

We were set up to provide an informal alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case. So I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome I've reached. There are three broad points that Miss A and Mr M have raised and I'll address each of these.

#### *Recording this as a claim for subsidence*

The policy terms set out what's covered. For an insurer to consider a claim, the damage claimed for needs to be one of the insured events listed in the policy. If it's not, then there's no cover and no need for the insurer to deal with the claim.

Based on the evidence it had, Amtrust accepted the claim as one for possible subsidence and arranged for monitoring to be carried out, to establish whether there was movement at the property. That's in line with standard industry practice and what I'd expect an insurer to do.

The monitoring showed the property had stabilised, there wasn't ongoing movement and the cracks were not getting any worse. Various professionals undertook site visits and no likely cause of the damage was put forward other than subsidence. A chartered surveyor confirmed that the crack damage was possibly linked to the presence of a nearby tree during the summer, which had been very dry. In these circumstances, I think the decision to record the claim as one for subsidence was fair.

Miss A and Mr M made a claim, which was accepted. They wanted Amtrust to investigate the matter and take any necessary action to remedy the damage caused. In the end they arranged for the repairs to be done themselves as the cost was less than the excess. But that doesn't mean the claim should not have been recorded.

#### *Failure to investigate thoroughly or implement their engineer's recommendations*

The claim was logged in October 2020 and a chartered surveyor inspected the property. It was then monitored from February 2021 to September 2021, and found not to have had any significant ongoing movement.

As I've mentioned above, it was reasonable to carry out monitoring before recommending repairs to make good the cracks. If repairs had been carried out first and the property wasn't stable, it's likely the cracks would have reopened and further repairs would have been needed.

Miss A and Mr M instructed a firm of subsidence specialists who said they would need to carry out investigations, including a drain survey, and design a ground improvement scheme. Amtrust didn't agree to cover the costs for this.

Miss A and Mr M were naturally concerned about the property and I can understand why they sought advice. But the surveyor who had inspected the property had identified a nearby tree as the likely cause of the cracks and recommended site monitoring. The tree had been heavily pollarded. And the local council confirmed it would be reviewed periodically, with further pruning if required. Although the property had shown signs of subsidence, by September 2021 it was stable – the cracks hadn't got worse. Based on this it was reasonable for Amtrust to rely on the evidence it had and decide not to carry out further investigations. I note also that the specialists Miss A and Mr M instructed were contractors who put right certain types of subsidence damage rather than independent experts on investigations.

### *The increase in policy excess*

Insurers are generally free to choose which risks they want to underwrite and set the terms they're willing to offer. Different insurers assess risks differently, charge different premiums and set different excesses. It's not for me to tell an insurer which risks they should cover or on what terms.

Amtrust says it reassessed the risk and then confirmed the basis on which it was prepared to renew the policy. It's entitled to do that and it's then for Miss A and Mr M to decide whether they wish to renew the policy, with the increased excess.

### *Summary*

I appreciate Miss A and Mr M's concerns about their property. But Amtrust isn't obliged to prevent the property from subsiding in future; it's responsibility was to consider the claim for the damage that had occurred, investigate that claim and assess what action was needed to repair any damage that was caused by subsidence. The fact there was a claim may or may not affect future insurance or the value of the property but that's not the result of something Amtrust has got wrong.

On the basis the movement had stabilised, I'm satisfied the repairs would provide an effective remedy. The actions Amtrust took to investigate and deal with the claim were in line with the policy terms and were fair.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Mr M to accept or reject my decision before 4 April 2024.

Peter Whiteley  
**Ombudsman**