

## **complaint**

Mr N is unhappy that Amtrust Europe Limited has declined his claim for serious fire damage to his property under his Unoccupied Residential Property Insurance, and voided (cancelled back to the start) the policy.

## **background**

Mr N bought the property in 2014. It had previously belonged to his family. He intended to improve it alongside the renovation of a similar property next door when funds allowed. He bought an unoccupied property insurance through a broker. The policy renewed at the end of both 2015 and 2016. In September 2017 there was a serious fire at the property leaving it gutted with just the external walls standing. Mr N made a claim to Amtrust. In the course of the claim being investigated, he disclosed to Amtrust a housebuyer's report obtained by the previous owner in 2014. This revealed that the property was in various places in substantial need of repair. After buying the property Mr N had various repairs done to the property which addressed some of the issues in the housebuyer's report. But his intention was to carry out a major renovation – he couldn't start this work until the property had been vacant for two years to get the benefit of a reduced VAT rate for building work on unoccupied properties.

Amtrust found that Mr N had declared the property to be in a good state of repair when he took out the policy. On each renewal he was sent a statement of facts reflecting this. It said it wouldn't have issued a policy had it known about the repairs needed in the survey report. Whilst it noted that some repairs had been carried out by the 2016 renewal date, there were still a number of issues with the property. So although it asserts that a policy would never have been in place, it still wouldn't have issued a policy in 2016.

On referral to this service our investigator didn't uphold the complaint. He thought that Mr N had answered the question wrongly about the state of repair of the property in 2014. At the 2016 renewal, the question set out in more detail what it meant by a good state of repair. He thought that Mr N had still wrongly said that the property was in a good state of repair.

Mr N disagreed – he pointed out that the survey hadn't been commissioned by him. He used his own expertise and that of his father, who had many years' experience of managing and renting similar properties. He also relied on the experience of his builders. He said the non-disclosure was innocent and that he had answered the question to the best of his abilities at the time.

The matter has been referred to me for consideration.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We consider questions of non-disclosure at the start of a policy, taking into account the Consumer Insurance (Representations and Disclosure) Act 2012. Under the terms of that Act, it is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. Matters to be taken into account in deciding whether the consumer has taken reasonable care include *“how clear, and how specific, the insurer's questions were”* and *“in the case of a failure to respond to the insurer's questions in connection with the renewal or*

*variation of a consumer insurance contract, how clearly the insurer communicated the importance of answering those questions (or the possible consequences of failing to do so)".*

When he took out the policy Mr N was asked *"Is the property in a good state of repair?"* He replied "Yes", and advises that he believed it was. I have looked at the homebuyer's survey report. This was commissioned by the previous owner, but in connection with the proposed sale, in the knowledge that prospective purchasers may rely on it. That survey listed a number of "Category 3" issues. These were described as *"Urgent repairs or replacement are needed now. Failure to deal with them may cause problems to other parts of the property or cause a safety hazard. Estimates for repairs or replacement are needed now."*

The report went on to list a number of areas that needed category 3 repairs. These included severe rising and penetrating damp, the chimneys being off level with cement flashings cracked, areas of the roof sagging with woodworm rot and dampness to roof timbers with no under slate felt fitted. I won't go on to list all the other areas that came into this category but there were a total of 18 such repairs needed. And Mr N has listed the repairs he undertook at the property in the time up until the 2016 renewal, which included dealing with some of the issues in the survey report. Whilst I understand that he used his own, his father's and builders' judgements, I don't think he was seriously able to say that the property was in a good state of repair in 2014. This is even accounting for the fact that *"good state of repair"* wasn't at the time defined in the policy. I think the question was clear, especially as Mr N had to hand a survey report dealing with the state of repair of the property.

Amtrust has shown us a statement from a senior underwriter which says that if the question had been answered accurately, they would have asked for a survey report, and from considering the report, they wouldn't have issued a policy.

At the 2016 renewal the question was *"Is the building in a good state of repair? This means that it is secure, structurally sound, weatherproof, there is no evidence of dry rot, rising damp or infestation and there is no damage to the roof or chimney Yes/No."* Mr N's answer was recorded as "Yes". And I think the renewal notice from the broker contains a clear warning: *"If any of the information contained with the enclosed documents is incorrect, please advise your broker / agent immediately. Any delay in advising of an error could seriously affect the policy cover provided to you."*

I understand that Mr N had works carried out to the property to address some of the areas in the survey report. Particularly relating to dampness, woodworm infestation, rainwater downpipes and gutters. He has had some tiles replaced on the roof but Mr N admits that the property was due for a major renovation. So some of the issues which required more extensive building work hadn't been addressed. This particularly concerned the roof and the chimney. Clearly there was damage to both. I understand Mr N disagreed as to whether the chimney needed repair, but I think that, bearing in mind the more detailed definition in the 2016 question, that he still couldn't have said to Amtrust that the property was in a good state of repair at the 2016 renewal. Amtrust's underwriter has again said they wouldn't have issued a policy. So I think Amtrust acted fairly in declining the claim. And, as it wouldn't have offered a policy, it's entitled to void it.

I appreciate that Mr N says it was an innocent misrepresentation. We don't really use that term any more – the test is whether he took reasonable care not to make a misrepresentation. And I think, taking into account the factors I've mentioned, that he did fail to take reasonable care.

I should add finally that the policy was an advised sale to Mr N by a broker. Whilst Amtrust is entitled to base its decisions to provide cover on the policy proposal forms, I don't know to what extent Mr N discussed with the broker the state of the property. If he feels he did discuss this, he should take the matter up with the broker.

**my final decision**

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 26 October 2018.

Ray Lawley  
**ombudsman**