

The complaint

Mr M has complained about his let property insurer Amtrust Europe Limited because it declined his fire claim.

What happened

Mr M owns a property which he lets out. He arranged cover via a broker with Amtrust. He was asked, when arranging the cover, to confirm that cooking would not be allowed anywhere other than a kitchen. He agreed.

In June 2022 Mr M's tenant set up an electric tabletop hob in a room that was not the kitchen. Mr M has said the room is used for storage – when Amtrust became involved it referred to it as a bedroom. Either way it was not a kitchen. Whilst the hob was being used, a fire broke out. The tenant covered the chip pan with a damp towel and the fire didn't spread but there was some scorching in the vicinity of the pan and smoke damage throughout the small property. Mr M made a claim to Amtrust.

Amtrust appointed a loss adjuster who attended the property in July. Mr M was asked to get some repair quotes. He found this difficult. It was November when he was able to submit them. In January Amtrust declined Mr M's claim. It referenced a general policy exclusion for damage caused whilst cooking in a room other than a kitchen. Mr M felt that was unfair – he noted he had cover for fire and accidental damage, and this had been an accident. He said he could not control what the tenant did, and it had certainly not been his intention for cooking to be done other than in the kitchen. He also felt Amtrust had only declined the claim once it saw the cost for repair, circa £15,000. When Amtrust wouldn't change its view, Mr M complained to the Financial Ombudsman Service.

Our Investigator, noting the exclusion was referenced in the policy schedule, felt Amtrust had acted fairly and reasonably in declining the claim. So she wasn't minded to make it consider or accept the claim further. But she felt it could and should have done that sooner. So she felt it should pay Mr M £250 compensation.

Amtrust did not respond to the findings. Mr M was dissatisfied by them.

Mr M said he had reasonably expected his tenant to apply common sense in his use of the property – he had certainly never given permission or actively allowed the tenant to cook outside the kitchen. He'd checked the house regularly. He didn't think something so obvious needed highlighting to the tenant, such as putting it in the lease. He felt Amtrust's decision could not be fair when he was not to blame. Mr M said Amtrust knew the nature of his tenant – that he had accepted the policy specifically because it chose to cover that type of tenancy when other insurers would not. He thinks Amtrust must have known that type of tenancy comes with greater risks including the potential for poor decision making. He argued a tenant doing something irresponsible is largely predictable, which is why he'd taken insurance.

Our Investigator confirmed that she had not based her decision on what Mr M had permitted. She said she the general nature of the tenancy didn't mean that Amtrust should reasonably be asked to overlook specific risks it had chosen to not be liable for.

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 appreciate that this situation is very concerning for Mr M. I can see he acted to try and make sure he was covered for an unexpected incident like this and that, without the assistance of Amtrust, he will have to find substantial funds to reinstate his property. I also know he will likely lose, or may already have lost, his tenant. But just as I have to bear his situation in mind, I have to think about Amtrust's position too.

Amtrust did seek to offer cover for this let property, for this type of tenancy. Most insurers view let properties as being a greater risk for cover, regardless of the tenancy type, than properties which are lived in by the policyholder. As Mr M has pointed out – he cannot control what the tenant does in the property – even with regular checks. And, in general terms, it's often the case that someone who owns and lives in their own home is likely to take better care of it, than a tenant. With an owner/occupier also being more easily able to carry out regular maintenance or urgent work quickly, than a landlord is. So not all insurers will offer cover for let properties, and those that do often choose to tailor and limit their policies to account for the property being let.

I think Amtrust likely accepts, and expects, that the nature of the tenancy here added a further degree of risk. But that doesn't mean it is fair to say that because it has offered cover for a let property for this type of tenancy, it has to then just accept liability for anything which happens at the property. On the contrary, Amtrust, having noted there are likely risks, has sought to guard against certain specific risks it does not want to be liable for. It's done that by including within its policy, exceptions, or exclusions, to cover. And if it can show that a loss occurred due to something which is excluded, then it's often likely it will be able to reasonably decline liability for that loss.

The exclusion in question here is for:

"Any Damage caused by cooking in any area other than a clearly designated kitchen".

This is a general exclusion which applies to most of the policy, including the sections of cover for fire and accidental damage. It is quite significant and it's not one I've come across before, so it might be considered to be unusual. But, as noted by our Investigator, it was highlighted in the policy schedule. With Mr M arranging this cover via a broker, I couldn't reasonably have expected Amtrust to do anything more to highlight this important term. Mr M has expressed that he understood the importance to him of having insurance, and it was equally as important for him to make sure he checked the policy. Both to understand it and ensure the policy suited his needs. If he was unhappy with the exclusion, with it being clearly set out in the policy schedule, he had the opportunity, had he wanted to, to look for an alternative policy.

However, Mr M continued with the cover with Amtrust. Unfortunately, for Mr M, the tenant acted to cook in an area which was not a designated kitchen. And a fire resulted. Damage was caused – according to the loss adjuster's report, and reflected in Mr M's estimate; greater damage in the room at the seat of the fire, than seems likely would have occurred had cooking been taking place in the kitchen. In the circumstances, I think it's reasonable for Amtrust to rely on the general exclusion to cover to decline liability for this loss.

Amtrust's loss adjuster though, attending the property in July 2022, noted the circumstances of the loss and the general exclusion to cover. It's not clear to me why it then took Amtrust six months to decline liability for the loss. A decision which could reasonably have been

made within a few weeks, a month at most. I don't doubt Mr M was caused some frustration and upset when the decline came so late, and only after, from Mr M's point of view, him showing it how much the claim would cost. I think Amtrust could have handled this better; such as putting him on notice early on that the claim might not be covered, then making its decision in a reasonably timely manner. Because it didn't do so Mr M was caused distress and inconvenience. I'm satisfied that £250 compensation is fairly and reasonably due.

I know Mr M was unhappy about being asked to get estimates for repair. But in general terms a policyholder does usually need to assist to some extent with determining the value of the loss. It's not unusual for an insurer to ask for estimates to be obtained and I note the policy Mr M had with Amtrust offered to settle claims on the basis of Amtrust paying for repair, rather than it taking on the repair itself (as some insurers do offer and prefer to do). And a loss adjuster, seeking to manage a claim effectively will often ask for estimates to be gathered at the outset, whilst any other necessary investigations are carried out or issues of liability are considered. Acting like that helps to avoid or limit delays. Amtrust did then delay its liability decision, as I've noted, but it having asked Mr M to gather estimates was not, in itself, unreasonable.

Putting things right

I require Amtrust to pay Mr M £250 compensation.

My final decision

I uphold this complaint. I require Amtrust Europe Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 November 2023.

Fiona Robinson
Ombudsman