DRN-4004804

The complaint

Mrs W, Mr W and Mr W complain that AmTrust International Underwriters DAC charged them an excess after work was carried out on the common parts of their flat's building.

What happened

The background to this complaint is well known to both parties, so I'll give only a brief summary here.

Mrs W, Mr W and Mr W are leaseholders of a flat in a development of six flats within a Victorian building. When they bought the flat, they took over a ten-year building warranty policy underwritten by AmTrust. In short, the warranty covers defects in the building for ten years after the development of the flats.

In late 2021, issues were identified with the basement flat in the development. Mrs W, Mr W and Mr W's flat was also inspected and assessed at the time, but there were no issues.

Repair work was then carried out on the basement flat, but also on the large stone stairs leading to the front door of the development.

AmTrust's agents then notified Mrs W, Mr W and Mr W that they were due to pay an excess charge of £1,000 relating to the work on the common parts of the building – essentially, the stairs leading to the main doorway.

Mrs W, Mr W and Mr W paid the excess (via a Right to Manage Company set up for the building) but made a complaint to AmTrust about it. They were aware that all the leaseholders of the flats – who all had the same warranty policy with AmTrust - had been asked to pay a £1,000 excess relating to the repairs to the common parts. They thought one excess should have been paid between the six flat leaseholders.

AmTrust didn't uphold the complaint. At risk of over-simplification, they said the common parts were the joint responsibility of the flats' leaseholders (according to the terms of the lease). So, each leaseholder had an insurable interest in the common parts.

And each leaseholder had a policy which covered them – individually – not only for their own flat but also for any contribution they had to make towards repair of the common parts. In effect, in this case, each leaseholder was making a claim under their own individual policy - and each therefore had an excess to pay, in line with the policy terms and conditions.

Mrs W, Mr W and Mr W weren't happy with this outcome and brought their complaint to us. Our investigator looked into it and didn't think AmTrust had done anything wrong.

Mrs W, Mr W and Mr W disagreed and asked for a final decision from an ombudsman.

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.

There's no dispute here that it was absolutely necessary for the repairs to the common parts to be carried out. And rightly, under the terms of the warranties, AmTrust have covered the cost of those repairs.

There's also no dispute that the leaseholders are responsible for the upkeep of the building. Mrs W, Mr W and Mr W say they'd be perfectly happy to pay their share of the one excess they think should have been charged.

The dispute is about what the policy says – or does not say – about when and how the excess will be applied. The policy booklet isn't a great deal of help here – it simply says that amount of the excess will be set out in the initial insurance certificate.

That certificate, however, is more helpful. It says the excess is £1,000 for:

> "…*each and every separately identifiable cause of loss*."

I think the intention is that it should be clear that the policyholder will have to pay an excess for each defect in the development which causes damage which has to be rectified. And if there are several unconnected defects – even if they are identified at the same time – the excess will be payable for each one.

Mrs W, Mr W and Mr W's argument, in essence, amounts to the fact that there is one defect at the root of the 2021 claim in question. And so, one excess is payable – with contributions to that one excess from each of the leaseholders.

I know Mrs W, Mr W and Mr W will be disappointed, but I don't agree with that analysis. I'll explain why.

They've drawn a comparison with the buildings insurance policy for the block of flats, which they say would require only one excess to be paid when a claim is made relating to damage to communal areas.

That may be the case, but that is a different type of insurance. And clearly, from what Mrs W, Mr W and Mr W tell us, there is one policy to cover the building as a whole. I suspect that policy will be in the name of the freeholder, or a body acting on behalf of the freeholder, such as a Right to Manage company (RTM).

In that case, there is one policyholder – even though the policy potentially benefits each of the leaseholders. That one policyholder pays one excess per claim. And a claim relating to the communal parts will be made by the single policyholder (the freeholder, RTM or other body) – who pays a single excess.

The warranties provided to Mrs W, Mr W and Mr W – and to the other leaseholders in the development – when they purchased the leasehold to the flat, are policies specific to them as leaseholders of each flat. The policyholder for the warranty for the flat, in this case, is Mrs W, Mr W and Mr W. And not an RTM, or other body - or the freeholder.

The insurance contract which forms part of the warranty then is an agreement between AmTrust and Mrs W, Mr W and Mr W. And its terms should always be read in that light.

Taking that into account, the agreement is in effect saying that AmTrust will cover Mrs W, Mr W and Mr W for the cost of repairs to damage *to their flat* caused by defects in the build. And, for their share of the cost of repairs *to the common parts of the building* caused by

defects in the build.

It follows that an excess is payable *by the policyholder* – Mrs W, Mr W and Mr W – for each claim that they make under the policy relating to a separate cause of damage (as per the terms), whether or not that claim relates to damage to their own flat alone or to their share of the costs relating to repairs to the common parts.

Mrs W, Mr W and Mr W say all of this isn't specified explicitly in the policy terms. I agree, but I'd say it doesn't need to be. In essence, it's the necessary – and only - logical conclusion to be drawn from the fact that the warranty policy is an agreement between AmTrust and them. The policy, in other words, can't reasonably and justifiably be read in any other way.

So, I don't think it's unfair or unreasonable for AmTrust to ask Mrs W, Mr W and Mr W for an excess payment of £1,000 in relation to the repairs to the common parts of their building.

My final decision

For the reasons set out above, I don't uphold Mrs W, Mr W and Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W, Mr W and Mr W to accept or reject my decision before 20 September 2023.

Neil Marshall
Ombudsman