

The complaint

Mrs A complains that Amtrust Europe Limited won't consider her claim under her building warranty as it says she isn't an eligible policyholder under the terms of the warranty.

What happened

Mrs A completed the purchase of her property in October 2015, and the warranty started at the same time. In March 2020 Mrs A made a claim under the warranty. Following leaking around her patio door and windows when it rained, she had had a builder inspect who advised her it was a structural issue.

Amtrust instructed a company, M, to manage the claim. After an initial inspection M reported back to Amtrust that Mrs A wasn't an eligible policyholder under the terms of the warranty. It also said that if the damage was due to storm it wouldn't be covered.

M's reasons for saying Mrs A wasn't eligible were because her husband, Mr A was an employee, then became a director of the builder (a limited company) which constructed the property. It said that as a relative of the builder and of someone with an interest in the construction or sale of the property, she was excluded by the definition of policyholder in the warranty.

On referral to this service our investigator said that Amtrust had acted reasonably. Mrs A disagreed, pointing out that she had bought the property off plan long before any builder had been appointed, and that her husband hadn't been made director until April 2015 after she had moved into the property. Although, as I've said, the purchase wasn't finalised until October 2015 and the warranty started then. She also said the policy term wasn't clear – a limited company can't have "relatives".

I issued a provisional decision. In it I said that I thought that Mrs A was a policyholder under the terms of the warranty and entitled to have her claim considered by Amtrust.

Both parties accepted my provisional decision.

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 following were my provisional findings:

"The definition of "Policyholder" in the warranty is:

*"For Section 3.1: A third party having paid a Registration Fee/and/or Deposit for the **Housing Unit** to the **Developer**. For Sections 3.2, 3.3, 3.4 and 3.5: The owner acquiring a freehold or leasehold interest, or their successors in title, or any mortgagee in possession or lessor excluding the **Developer**, **Builder**, any relatives or associated companies or anyone having an interest in the construction or sale of the **Housing Unit**." (my underlining).*

Sections 3.2-3.5 generally refer to claims in the defects insurance period of the warranty (years 3 to 10). Firstly I think factually the company that Mr A worked for, then became a director of, was the builder of the property. It doesn't matter in my view when it was decided who the building contract would be awarded to.

However the claim concerns Mrs A and whether her relationship to Mr A excludes her from benefitting under the terms of the warranty. I think Mrs A makes a good point – the “builder” here is a limited company and as such can't have relatives. The term doesn't say “relatives of directors or employees.” Secondly it is said that Mr A as a director of the company/builder at the time of commencement of the warranty had an interest in the construction or sale of the Housing Unit. Mr A is one of a number of directors of the company, but I don't think it's been shown that he has an interest in the way described in the warranty. He may have been paid a salary but I've not seen any information that suggests he has a direct interest in the profits and/or assets of the company.

In any event Mr A's interest is irrelevant. The second part of the exclusion underlined above doesn't refer to relatives or associated companies. I think the natural way to read it is that only the first part applies to relatives/associated companies of the builder/ developer. And in this case there are no such relatives/associated companies.

So I think that Mrs A is a policyholder under the terms of the warranty and she's entitled to have her claim considered by Amtrust. As it appears to be damage to the waterproofing around the window this seems unlikely to be storm damage. However Amtrust will have to consider the claim to determine how it is to be resolved.”

As both parties accepted my provisional findings, I have no further comment to make. My provisional findings are now final and form part of this final decision.

My final decision

I uphold the complaint and require Amtrust Europe Limited to acknowledge that Mrs A is an eligible policyholder under the warranty and to consider the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 8 November 2021.

Ray Lawley
Ombudsman