

## **The complaint**

Miss C and Mr S complain that AmTrust Europe Limited (“AmTrust”) has treated them unfairly in relation to their buildings warranty.

Any reference to Miss C, Mr S or AmTrust includes any agents or representatives.

## **What happened**

The background of this complaint is well known to all parties, so I’ve summarised events.

- In June 2019 Miss C and Mr S purchased a new build property which included an AmTrust warranty.
- Miss C and Mr S raised concerns about damage to the property and AmTrust considered this under its conciliation scheme. Within an August 2020 technical report it listed accepted defects and other areas that required further investigation. And it gave the developer three months for the remedial works to be completed.
- A second technical report was produced in August 2021, listing some of the same defects previously identified as outstanding.
- Miss C and Mr S raised concerns about the warranty with AmTrust. And since brought the complaint to this Service. AmTrust objected to this. Following some back and forth, one of our Ombudsmen issued a decision in February 2022 saying the Service had the power to consider the defects identified within the August 2020 report, which were not yet resolved by August 2021.
- Our Investigator looked into the merits of the complaint. This included concerns about Miss C and Mr S having access to third party data, problems with the property’s brickwork that they said AmTrust had unfairly declined to consider as a defect and accept under the guarantee, AmTrust’s use of exclusions, a dispute over AmTrust’s works to damp proof course (DPC), and claims handling.
- The Investigator directed AmTrust to pay £600 compensation, accept external brickwork as a valid defect, instruct a new contractor or provide a cash settlement for the DPC issue, and take steps to discuss any data protection concerns.
- Amtrust disagreed, saying some of the delays were as a result of Miss C and Mr S’ actions and difficulties they presented in allowing appointments. It said it had referred to the ICO on the data issue. It agreed the DPC issue was a defect, but said it required confirmation of works carried out and the developer failed to provide investigation photographs due to Mr S’ actions.
- The Investigator looked again but didn’t change her mind. She said Miss C and Mr S had been forthcoming with information and patient. And had AmTrust intervened earlier, matters would’ve been resolved sooner.
- So, the complaint was passed to me for an Ombudsman’s decision. I first issued a jurisdiction decision, explaining that this Service was only able to comment on matters that were identified as defects within the August 2020 technical report. And this meant I could not address Miss C and Mr S’ brickwork concerns. I then issued a

provisional decision on the merits of the complaint. I've included an extract of this below.

- *"As I have outlined in my previous decision, this Service can consider complaints where:*
  - *a Technical Manual report has been completed; and*
  - *the report directs a developer to do something by a deadline; and*
  - *the developer has failed to complete the works by this deadline.*
- *In this case AmTrust has produced Technical Manual reports in August 2020 which identified certain defects. The one in question here is the DPC, which it discussed across three areas of the external ground level, including the front of property, right of property, and left of property. This report concludes:*

*"DPCs should finish 150mm above the finished ground level.*

*In the case of the front of the property, either side of the front door, works have been carried out to meet this requirement retroactively, and this area is not a defect.*

*To the left side of the front door, and below the living room window, the DPC height above the finished ground level meets the technical requirements, and is not a defect.*

*To the area to the right side of the property, where the corner of the garage meets the driveway/footpath, the DPC is not 150mm above the finished surface, and is a defect. I recommend the developer carries out the same remedial works as have been done to the front door, with a retrofit DPC finishing 150mm above the finished surface level."*

- *So, it appears just the DPC on the right side of the property was considered a defect. And the developer was given three months to action these.*
- *Within the August 2021 report, under "defects", it refers to the same issue having previously been raised within the previous report. And it concludes:*

*"DPC's should finish 150mm above the finished ground level. One area of retrospectively installed DPC does not extend full width of the outer leaf of the brickwork.*

*The Developer should arrange for all the areas previously completed to be exposed and photographs provided to demonstrate that a full width retrospective DPC has been correctly installed.*

*Any other areas identified as requiring a secondary DPC as per the original TMR report should be undertaken.*

*In order to successfully install a full width DPC, the brickwork is likely to require temporary structural support whilst the bed joint is removed fully to facilitate the insertion of the full width DPC. The joint will then require packing/repointing, allowing this to cure before the support is removed."*

- *I understand the developer did carry out some repairs in this regard. But from this technical report it seems clear to me that the initial recommendations and direction from AmTrust weren't met by the developer within the three-month period it set. And it appears to me that the work was no further on a year later than the initial report.*
- *So, I'm satisfied AmTrust should've stepped in earlier, and its inaction on this point has led to a delay to these works being completed.*

- *AmTrust has said that it required further confirmation of the works carried out from the developer but said they hadn't provided investigation photographs. And it attributed this to Miss C and Mr S' actions albeit I'm unclear how it holds them responsible for this or how this would've been possible for Miss C or Mr S to prevent this. So, this doesn't persuade me that AmTrust isn't responsible for this delay.*
- *AmTrust has also said that Miss C and Mr S frustrated the claim by only allowing the property access on certain dates and times and raising issues in a piecemeal fashion with both AmTrust and the developer which caused confusion. I've taken into account its comments here, but I'm not in agreement that this is reflective of the approach Miss C or Mr S have taken with AmTrust.*
- *Miss C and Mr S aren't the experts here – so it doesn't surprise me that some issues may arise across the life of a claim and not all be apparent at the start. And having reviewed the correspondence, while I agree Miss C and Mr S were not free for appointments at all times, I don't believe this was obstructive in the way AmTrust has described.*
- *For the reasons I've given above, I'm in agreement with our Investigator that AmTrust has failed to demonstrate that an effective and lasting repair has been completed on the DPC defect identified. So, I'm intending to direct AmTrust to step in and handle the matter related to the DPC defect issue in line with its policy terms.*
- *And in light of the avoidable frustration, distress and inconvenience caused to Miss C and Mr S caused by delays and AmTrust not stepping in earlier I am intending to direct it to pay £300 in compensation. Miss C and Mr S will notice this is lower than the sum awarded by our Investigator – which I believe is reflective of the more limited circumstances that I've been able to consider within this decision.*
- *Miss C and Mr S raised a concern about having access to other people's data. Since this matter has come to this Service, AmTrust has confirmed it had referred the matter to the ICO. This is in line with what I would expect, and I'm satisfied this is a sufficient resolution to address the specific data concerns raised."*

And I explained I was minded to uphold the complaint, and direct AmTrust to pay £300 in compensation to Miss C and Mr S; and for it to take over the handling of the claim in relation to the DPC defect in line with its policy terms and conditions.

Miss C and Mr S disagreed. They provided a detailed response outlining the number of defects present and how AmTrust's actions had led to 13 months of unproductive meetings with the developer which left the matters unresolved.

I carefully considered the commentary put forward by Miss C and Mr S, sharing this with AmTrust. I told it I was minded to reconsider the compensation award to £500 in the circumstances and invited any further comments from AmTrust in light of the impact Miss C and Mr S described.

AmTrust responded to say it disagreed with my findings both on compensation, and that the DPC matter should not be transferred to a claim. It provided a range of documents in response, including a certificate of insurance, a policy book, and comments from its handlers that it has shared previously.

### **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.

AmTrust has reiterated its position in its most recent response but provided me with nothing new to consider. So, for these reasons, I see no reason to depart from my previous decision. And I'm still upholding this complaint for the reasons I've given previously.

I've thought carefully about the impact Miss C and Mr S have described, but I can only consider AmTrust's handling of identified defects and not the actions of the developer.

I do recognise that AmTrust should've stepped in earlier in the claim, but I'm not persuaded it would be reasonable to hold AmTrust responsible for the actions of the developer in these circumstances – as ultimately, they are separate entities. So, it's the impact of AmTrust's delay I have considered when awarding compensation here. And I'm satisfied £500 compensation is fair and reasonable in the circumstances.

### **My final decision**

I uphold this complaint, and direct Amtrust Europe Limited to do the following.

- Pay £500 in compensation to Miss C and Mr S; *and*
- Take over the handling of the claim in relation to the DPC defect in line with its policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr S to accept or reject my decision before 28 September 2022.

Jack Baldry  
**Ombudsman**