

The complaint

Mr and Mrs A complain that AmTrust Europe Limited (“AmTrust”) have poorly handled a claim made under their buildings warranty.

Any reference to Mr and Mrs A, AmTrust, or any of the companies mentioned within this decision includes respective agents and representatives.

What happened

Across the life of this complaint all parties have provided extensive reports, commentaries, and evidence. The background and history of these events is well known to all parties. So, I’ve summarised events.

- Mr and Mrs A purchased their property in October 2016. It included an AmTrust New Homes Warranty.
- In June 2019 Mr and Mrs A noticed cracking to render at the rear of their property, and reported this to the developer (Company A). They’ve said it took no steps to investigate the problem so they brought this to AmTrust in November 2019.
- AmTrust initially indicated the render would form part of the waterproof envelope of the building and accepted the claim and requested Mr and Mrs A obtain a surveyor’s report and two quotes for repairs.
- Company B – the maker of the render – inspected the property and stated the render was not faulty.
- Mr and Mrs A say it was difficult to obtain quotes, and despite contacting six firms were only able to obtain one by July 2020. They provided this to AmTrust, and it appointed its own surveyor - providing its response in November 2020 concluding the fault lay with a design issue in the rear elevation (an absence of a movement joint) and said the render didn’t form part of the waterproof envelope.
- Mr and Mrs A appointed Company C (structural engineers) who inspected the property and produced a report in December 2020. Mr and Mrs A say the report shows the cracking was progressive and extensive, and there was evidence suggesting the blocks themselves may be faulty and required testing.
- AmTrust reviewed Company C’s report but disagreed with its findings. AmTrust offered to install a movement joint and carry out localised repairs to render.
- Mr and Mrs A were unhappy with this, and appointed Company C to test outer leaf blocks. In April 2021 it provided its report, which was shared with AmTrust. Mr and Mrs A say this showed the blocks were faulty and didn’t meet building standards which had led to swell. And they told AmTrust the cracking had significantly worsened since its last visit which showed it was progressive.
- AmTrust appointed additional engineers (Company D) to test the blocks. They attended at the end of July 2021. Mr and Mrs A say they chased AmTrust for a copy of the report or its findings across the following months. And in the absence of this, they appointed Company C in January 2022 to advise on the appropriate remedy.

- Mr and Mrs A complained to AmTrust around this time, stating Company C had recommended demolition and re-build of the property as the faulty blocks could not be repaired.
- So Mr and Mrs A brought the complaint to this Service, asking for AmTrust to either carry out an adequate repair with a clear timetable, or to compensate them the difference between the market price of the property without damage against the price it achieved at sale. And they requested AmTrust to cover the costs of Company C for their necessary intervention alongside compensation for distress and inconvenience.
- Our Investigator looked into what happened and upheld the complaint. He said AmTrust had carried out insufficient investigations and he wasn't persuaded its proposed plans were sufficient to achieve an effective and lasting repair. He said further testing of the render didn't appear necessary given the expert opinion of both Companies C and D agreed the blockwork was defective and the cause of the damage. So, he said AmTrust should proceed with repairs that fully address the blockwork defect.
- The Investigator said Company C's involvement had been key in pursuing the claim so AmTrust should cover its costs between January 2021 and April 2022 – when the complaint came to this Service. And he said AmTrust should award £300 in compensation to Mr and Mrs A.
- AmTrust disagreed and provided a further report from Company D. It clarified it had not reached the same conclusions as Company C, nor did it agree the blocks were defective. And it concluded, that re-rendering the property with a render system that included an embedded mesh would constitute an improvement over the original construction and would be expected to reduce any future cracking to a negligible level by restraining any future shrinkage movements in the blocks.
- The Investigator looked again and was satisfied Company D's proposed method of repair was fair. But he said this should be arranged and carried out by AmTrust's agents. He stood by his findings on covering the costs of Company C's costs between January 2021 and April 2022 and also increased the compensation award to £800.
- AmTrust disagreed as it thought it should be entitled to cash settle the claim. And both parties provided further reports from their respective experts. These were detailed and explained Company C and D's reasons for their difference in opinion on the proposed repairs.
- Following a back and forth, Mr and Mrs A reviewed all of the comments provided by AmTrust and Company D and said they would accept the Investigator's revised view.
- The Investigator shared this acceptance with AmTrust and reiterated why he felt it should carry out the works and not cash settle – making reference to AmTrust previously recognising Mr and Mrs A's difficulties in obtaining estimates from November 2020 in which its agent agreed to draft the scope of works and complete the works. AmTrust still disagreed, making reference to several final decisions which it said supported the choice of how to settle a claim was at AmTrust's discretion.

So, the matter has been passed to me for an Ombudsman's final 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.

Both parties' submissions to this Service are vast. Within this decision I won't be responding

in similar detail. This is not intended as a discourtesy, but a reflection of the informal nature of this Service.

My role is to focus on what I consider the crux of the complaint to be which means I will only comment on those things I consider relevant to the decision I need to make – which also means I've not focused on the matters that are now not in dispute between parties. However, I can confirm I have carefully read and considered everything said and provided by both parties in reaching this decision.

Having done so, I'm upholding this complaint. I'll explain why.

AmTrust's proposed repair

- Mr and Mrs A have now accepted for AmTrust's proposed repair to go ahead. I'm satisfied the available evidence supports this will lead to an effective and lasting repair. So, I won't comment on this part further.

Cash settlement

- AmTrust's policy states it has the option of:
"...either of paying the cost of repairing, replacing or rectifying any damage resulting from items 1 to 2 above or itself arranging to have such damage corrected."
- On its face, I'm in agreement this means the choice of how to settle the claim sits with AmTrust. It has quoted several decisions from this Service that support this approach – including a decision of my own.
- AmTrust argues it is prepared to give Mr and Mrs A the funds to have these repairs completed, or alternatively it will indemnify the cost incurred when evidence of the cost is provided. It said either way Mr and Mrs A would not be disadvantaged as it will have indemnified costs as required by the policy.
- I'm satisfied its position here is in line with its own policy terms. However, my role requires me to consider if an Insurer's actions are fair and reasonable within all of the circumstances, alongside policy terms and other relevant considerations.
- In this case it's evident to me that Mr and Mrs A have lost a lot of faith with AmTrust's handling of the matter. And they've raised concerns about the following:
 - The potential costs they may have to incur would be large and may require them to borrow substantial sums (which may incur interest) – likely to be above £20,000. And they believe there is no guarantee AmTrust would reimburse them promptly.
 - The proposal from Company D (from December 2022) requires a detailed specification to be developed in consultation with the render manufacturer. Mr and Mrs A have said they do not know what this entails, and they believe there is clear scope for disagreement after the event about the scope of the works undertaken.
 - Mr and Mrs A say they believe AmTrust would seek to challenge whatever sum they incur on the basis that it would not be reasonable and recovering their expenditure may be fraught with practical problems.
 - And they highlighted AmTrust's agent of November 2020 in which they offered the services of its in-house contractor to Mr and Mrs A.
- I will detail my thoughts on AmTrust's handling of this matter below, but put simply,

I'm satisfied it has not handled this claim well – neither promptly nor fairly in line with its obligations. This I think has led to a reasonable degree of concern on the part of Mr and Mrs A about being left with works unfinished or without support should things not progress smoothly. Particularly against a backdrop of previously finding it difficult to obtain contractors which AmTrust's agent has acknowledged in the past.

- It is also clear that there have been conflicting views on the method of putting things right. While I'm satisfied Company D's proposal of repair is fair in the circumstances, I also acknowledge that this is not in keeping with Company C's view and Mr and Mrs A have felt strongly that further works would likely be needed. I can understand the degree of skepticism on their part, and why this leaves them concerned that such a proposal – should it fail – would leave them in a challenging position with more limited recourse if something goes wrong.
- I also understand Mr and Mrs A's concerns about a potential further dispute related to the proposal and discussions with the render manufacturer. For all of these reasons I'm satisfied in these particular circumstances it would be fair and reasonable for AmTrust arrange these repairs to ensure their success. So, I am directing it to do so, and to carry these out promptly and fairly and set out clear timeframes for Mr and Mrs A on next steps.

Company C's costs

- AmTrust has provided a limited response to our Investigator's position on this matter so I will be brief.
- I'm satisfied AmTrust's initial investigations were insufficient in line with what we'd expect of an insurer. And it was only following Company C's instruction, handling, and production of reports that AmTrust was prompted to carry out its own necessary investigations and proposals to fairly resolve this matter.
- As a result, again in this particular case, I am directing AmTrust to settle reasonable costs incurred by Company C (upon receipt of appropriate invoices/receipts) across the period of between January 2021 and April 2022 when this matter came to this Service. This is inclusive of any works or reports Company C had commissioned across this time on the part of Mr and Mrs A.

Distress and inconvenience

- I'm satisfied AmTrust's initial investigations were insufficient as it had reached inaccurate conclusions on the cause of damage, and in turn had made offers of £4,500 in December 2019, then £6,000 in November 2020, that would not have resolved the issue at hand or provided an effective or lasting repair. There have also been various delays caused by AmTrust as a result of its handling.
- I'm satisfied Company C's involvement here prompted AmTrust to carry out further investigations to establish an effective and lasting repair – which shouldn't have been necessary.
- It's clear to me that all of these events have had a significant disruptive impact on Mr and Mrs A and caused them unnecessary distress and inconvenience beyond that which would be expected in a claim of this nature. As a result, I'm satisfied the sum of £800 compensation that our Investigator has put forward is fair and reasonable.

Putting things right

For the above reasons, I'm directing AmTrust Europe Limited to do the following:

- AmTrust must take the claim forward and arrange for necessary repairs itself, providing clear timeframes for the work going forward.
- AmTrust should settle Company C's costs (as described above) between January 2021 and April 2022.
- AmTrust should pay £800 for the distress and inconvenience caused.

AmTrust must pay the compensation within 28 days of the date on which we tell it Mr and Mrs A accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

My final decision

For the above reasons I'm upholding this complaint. AmTrust Europe Limited must follow my direction set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 11 April 2023.

Jack Baldry
Ombudsman