

The complaint

Mr and Mrs M complain about the way AmTrust International Underwriters DAC handled a claim they made under their new home warranty.

What happened

The circumstances aren't in dispute, so I'll summarise the background:

- Mr and Mrs M bought a new home covered by a ten-year structural warranty underwritten by AmTrust.
- After Mr and Mrs M moved in, they experienced a variety of problems and reported them to the builder. The problems weren't resolved, so they got in touch with AmTrust in late 2018. AmTrust appointed a loss adjuster, C.
- Mr and Mrs M appointed a number of parties, including a professional representative, B, and a firm of engineers and surveyors, W.
- W prepared a schedule of work, invited three contractors to tender for it, and analysed their responses. In summary, it recommended appointing a contractor who'd quoted around £370,000 plus VAT for the work – and holding a contingency of £85,000 plus VAT. It also noted that some of the work remained uncertain until the property could be opened up. The tender analysis was shared with C in May 2021.
- In September 2021, C made an offer to settle the claim by paying a total of £409,400, including £14,400 AmTrust had already paid.
- B asked for further information about the offer as it didn't think it was clear what was included or excluded. AmTrust didn't answer the queries. Nonetheless, Mr and Mrs M accepted the offer and were paid the remaining £395,000.
- Work began soon after. In January 2022, B told C that more serious defects than anticipated had been found. C inspected them but it didn't change the settlement.
- In February 2022, B complained on behalf of Mr and Mrs M. It said Mr and Mrs M felt coerced and intimidated into accepting the offer. Whilst they thought the offer was 'grossly inequitable' and would leave them to contribute to the cost of repair, they said their only alternatives were to begin the complaint process or take legal action – neither of which they felt able to do given the increasing deterioration of their property and the length of time the matter had been outstanding.
- C responded to the complaint on behalf of AmTrust in April 2022. It said a settlement had been offered and accepted. But that settlement was the subject of "an ongoing review" and, once that had been completed, C would let B know its position.
- By October 2022, B hadn't heard further from AmTrust or C, so it referred the

complaint to this Service. It said Mr and Mrs M had spent £357,000 more than they'd received from AmTrust to complete the work and asked to be paid that amount.

- Our investigator thought the offer was clear about the acceptance conditions, and that didn't include scope for further payments. So she didn't think AmTrust should pay £357,000. But she thought it had caused some delays and communication problems during the claim, so she asked it to pay £200 compensation as a result.
- AmTrust agreed to pay £200 compensation. B didn't agree on either point.

My provisional decision

I issued a provisional decision in which I said:

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 the warranty covers the problems Mr and Mrs M encountered. AmTrust has paid over £400,000 for investigations, building work, professional fees, alternative accommodation, removals and storage.
- The dispute I have to consider is whether AmTrust should pay anything further.
- B says it should do so because Mr and Mrs M have faced an additional £357,000 of costs to put the problems right. This figure takes into account the policy excesses, interim payments, private work unrelated to the warranty and a contribution from another insurer. The costs arose as further problems and damage were discovered after work began and previously concealed parts of the property were opened up.
- On the other hand, AmTrust says an agreement was reached to settle the claim before those costs arose. So it doesn't agree to pay anything further.
- In September 2021, C set out the offer to B. Amongst other things, it said:
 - It offered to settle the claim, including "all defects, damage and losses notified" and "any issues that are subject to further investigations".
 - The offer was made "in full and final settlement of the whole of the claim".
 - It was open to acceptance for a week.
 - If it wasn't accepted, C reserved the right to seek costs under certain circumstances, should legal action be taken.
- In response, B raised a number of queries and asked for longer than seven days to discuss the matter further. C agreed to further time, but not to answer B's queries. It said it had made a cash offer and it was under no obligation to qualify it further than it had done – it was simply open to Mr and Mrs M to accept or reject it.
- Mr and Mrs M accepted the offer and signed a 'form of acceptance' which referred to C's offer from September 2021 and reiterated it was in full and final settlement of the claim.
- The money was paid in October 2021 and work began soon after. More problems and damage were discovered once the property was opened up and B asked AmTrust to consider the claim further. Although C revisited, and it later said the claim was the subject of "an ongoing review", no further offers have been made.

- I'm satisfied the offer letter and the form of acceptance were sufficiently clear about the impact of accepting the offer. It was made clear that the offer would settle the claim, including any issues subject to further investigation, in full and final settlement.
- Mr and Mrs M had been represented by B for most of the claim and were able to take its advice if they wished. Through B they ought to have been aware of W's comments about the possibility of discovering further damage beyond that in the schedule of work and its recommendation to include a sizeable contingency sum. So I'm satisfied they had reasonable information available to them about the consequences of accepting the offer. And AmTrust didn't keep any relevant information from them.
- Whilst B says Mr and Mrs M felt coerced and intimidated into accepting the offer, I haven't seen any evidence to support that. B's communication with C at the time didn't indicate they felt that way. It said they would "give very serious consideration to the offer presented" which doesn't suggest they felt concerned or pressured about it. And C made clear Mr and Mrs M were entitled to reject the offer if they wished.
- B said the offer was made with a very short deadline. Given the delays caused by AmTrust prior to that time, which I'll discuss below, and the significant impact of the offer, I would have expected to see a longer deadline. But when B asked for an extension, it was granted. So I don't agree that C's actions were indicative of coercive, intimidating or pressurising behaviour.
- B noted C's reference to reserving the right to seek costs in certain circumstances. And pointed out that C didn't answer the questions B raised about the offer. However, Mr and Mrs M nonetheless chose to accept it. I think C was entitled to set out the offer as it saw fit and allow Mr and Mrs M to decide how to proceed.
- It was clear from what B said that Mr and Mrs M were understandably eager to have their home repaired and their lives return to normal. But I don't think the offer was made in a way that would have put them under pressure to accept it or which was coercive or intimidating.
- Overall, I'm satisfied AmTrust, through C, acted fairly when it made the offer. As it was in full and final settlement, and Mr and Mrs M accepted it, I'm not persuaded AmTrust was obliged to consider the claim further. So I'm not going to require it to take any further action on this point.
- Mr and Mrs M's complaint was also about the time taken to deal with the claim and the way they were communicated with. I won't go over each and every detail of the claim, instead I'll highlight some key points I've taken into account.
- AmTrust, in its role as underwriter of the warranty, first became responsible for handling this matter in late 2018, when Mr and Mrs M reported the problems to it. At that time, Mr and Mrs M had already appointed a surveyor and they went on to appoint other companies to investigate the cause of the problems and provide recommendations for how to put them right.
- AmTrust accepted the claim in mid 2019. But after that, there were significant delays waiting for it to agree the next steps in late 2019 and early 2020. The delay was compounded by one of the companies appointed by Mr and Mrs M failing to progress the tender effectively – for which I can't hold AmTrust responsible.

- After further investigation and discussion, W created the schedule of work and carried out the tender exercise. After B shared this with C, there were delays in mid to late 2021 waiting for AmTrust to agree how to proceed.
- After the offer was accepted, paid, work began and the further problems reported to AmTrust, through C it took steps to look into it and even said it would review things further. But it didn't do so. Whilst I've found above that it wasn't obliged to offer to do anything further, saying it would do so and then not keeping to that was unreasonable – and added unnecessarily to Mr and Mrs M's distress.
- On several occasions C gave B unclear information, such as how many excesses should apply and which investigation costs it would meet. It was also repeatedly slow to respond to B and often had to be chased numerous times before it did so.
- I take into account this was a very high value claim and one with various causes of damage – some of which AmTrust thought were covered and some they didn't. There were also complex recovery possibilities to consider. So I think it was reasonable for some of the claim steps to take longer than might usually be expected. Nonetheless, I'm satisfied there were significant avoidable delays and communication problems.
- Mr and Mrs M were represented by B, so they didn't directly suffer some of the inconvenience of poor communication. But it contributed to the overall delay and I think it would have been frustrating and disappointing for them to hear from B that communication had often been lacking.
- Mr and Mrs M suffered the impact of the delays directly. Up until work began in late 2021, they were living in a property that had suffered significant damage. Had it not been for the avoidable delays during the claim, work could have begun much sooner and minimised the distress and inconvenience Mr and Mrs M experienced.
- Bearing all of this in mind, I consider AmTrust should compensate Mr and Mrs M for the way it handled the claim. I'm satisfied a total of £1,000 is reasonable in the circumstances. If AmTrust has already paid the £200 it previously agreed to pay, it can deduct this and pay only the remaining £800.

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 responded to my provisional decision to say it had no further comment to make.

B responded to make a number of points. I'll summarise and consider each in turn.

- B said the warranty is designed to provide cover for its full ten year duration. At the time of the offer, it still had five years of cover remaining. For AmTrust to make an offer which precluded Mr and Mrs M from making claims for any and all further defects during the remainder of the warranty was unfair.
- I can see why it might be unfair if this is what had happened, but I don't think AmTrust's settlement was as broad as B says it was. C made the cash offer in relation to the 'Claim', and defined that to mean all defects, damage and loss notified to AmTrust under a certain reference number, including further investigation into those things. That was reflected in the form of acceptance document Mr and Mrs M

signed. So the full and final cash settlement is, in my view, limited to that definition. Were some new matter to arise that Mr and Mrs M may wish to claim for under the warranty, they wouldn't necessarily be precluded from doing so by the settlement. Although that would depend on the nature of the matter and to what extent it related to the Claim that's been settled.

- B said AmTrust's role as underwriter was wider than handling claims made under the warranty – it also included the sale of the warranty and inspections during the build in order to confirm the warranty would be issued. B says the now known defects mean there was a problem with the inspections and responsibility for that must ultimately fall with AmTrust as it accepted the inspections were sufficient to issue the warranty.
- I can only consider a complaint about the sale, including the inspections, if it were made by the party who bought the warranty. In this case, that's the builder, not Mr and Mrs M. They acquired the warranty with the house, after the warranty had been sold to the builder. So I can't consider a complaint from them about the sale. All I can consider a complaint from them about is the claim – and AmTrust first became responsible for that in 2018, after the house had been built, the warranty had been sold, and the inspections had been carried out.
- B said AmTrust hadn't complied with the term in the warranty that says, in summary, that the limit of liability or indemnity won't be reduced following a claim, subject to payment of an additional premium by Mr and Mrs M. AmTrust hasn't offered them this opportunity, so they have less than £100,000 worth of cover left and can't claim on that in any case.
- I've explained above why I don't think Mr and Mrs M are precluded from making further claims if they wish, dependent on the nature of those claims. So I won't repeat that point here. On the other point, the total sum insured is over £2,000,000 and the policy says it will pay up to £500,000 'for any claim'. So it's not clear to me why the policy term highlighted by B would mean Mr and Mrs M have less than £100,000 worth of cover left. And I haven't seen AmTrust say that's the case.
- B said feelings don't come with documented evidence and none of us can pass judgement on others' emotions. Mr M had expressed 'anguish' about the offer, including its lack of clarity. He and his family had various reasons for wanting to get the repairs carried out as soon as possible in order to allow them to return to a normal life. And the way AmTrust and C had acted amounted to intimidating and coercive behaviour.
- I agree that none of us can know what someone else is feeling. But this is an evidence based Service, so I must consider whether the evidence provided by B supports its position that it would be unfair for AmTrust to rely on Mr and Mrs M's agreement to the full and final settlement because they were coerced or intimidated into accepting it.
- As I set out in my provisional decision, in my view the evidence doesn't support that. Whilst Mr and Mrs M were clearly and understandably motivated to progress the repairs promptly, I don't think it follows that it was unfair for AmTrust to put forward a cash settlement offer to them. Ultimately it was open to Mr and Mrs M to accept or reject it, they had access to professional advice, and were aware of W's comments about the risk of further damage, and therefore costs, being discovered once work began. And I don't think the way AmTrust or C set out the offer was unreasonable – I haven't seen any suggestion they put Mr and Mrs M under pressure

to accept it. So whilst I don't claim to know how Mr and Mrs M were feeling at the time, the evidence available to me doesn't, in my view, show they were coerced, intimidated or pressurised into accepting the offer.

- B questioned why C referred to an 'ongoing review' when further damage arose after the settlement had been paid. That would suggest the settlement wasn't full and final. And normally a settlement such as this would be open to negotiation – rather than an insurer making a full and final offer with limited explanation.
- In my provisional decision, I noted that C took steps to look into the further damage and even said it would review things further. But it didn't do so. It was unhelpful and misleading to look into it when a full and final offer had already been accepted – and to say it would consider things further but not fulfil that agreement. So I'm satisfied this treated Mr and Mrs M unfairly. I took into account the impact of that when considering appropriate compensation for distress and inconvenience.
- AmTrust, like any insurer, was entitled to negotiate the claim settlement if it wished – but it was also entitled to set out a full and final settlement offer if it wished. It wasn't required to negotiate. Similarly, it was open to Mr and Mrs M to reject the offer if they didn't think it was fair and seek to negotiate the claim settlement if they wished.
- Finally, B said I was able to make a decision that I considered fair and reasonable, even if that meant not following the relevant law. I agree with that. I've taken into account the law but also what would, in my view, be fair and reasonable in all the circumstances. Having done so, including addressing all the points B made in response to my provisional decision, I'm satisfied AmTrust acted fairly in relation to the claim settlement offer for the reasons set out above. I'm not satisfied it handled the claim fairly and I consider £1,000 compensation is a reasonable remedy to that.

My final decision

I uphold this complaint.

I require AmTrust International Underwriters DAC to pay a total of £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 21 December 2023.

James Neville
Ombudsman