

The complaint

Mr and Mrs T complain Amtrust Europe Limited have unfairly cancelled their building warranty.

In my findings I refer to the builder of Mr and Mrs T's property as 'K'.

I also reference the administrator of the warranty. Who I shall refer to as 'P'.

What happened

Below is intended to be a summary of what happened and does not therefore include a full timeline or list every point that has been made.

The details of the complaint are well known to both parties, so I won't repeat them in full detail here.

However, in summary Mr and Mrs T are unhappy Amtrust cancelled their self-build warranty.

Amtrust said the build period exceeded three years – and Mr and Mrs T have not provided evidence that a list of defects established in a site report in 2016 were rectified in line with its technical requirements, as it had requested.

It said it has been unable to issue a certificate of insurance as a result and the warranty has been cancelled.

Mr and Mrs T disagreed with this, they said the information requested has been provided to P on several occasions and has sought clarification on anything that might be outstanding.

They would like Amtrust to reinstate the warranty or refund all the premiums paid.

Our investigator's view

Our investigator said she'd seen evidence Mr and Mrs T, and K, had provided information to P on more than one occasion with little response or acknowledgment.

She said following the last site visit from Amtrust in 2017, the same list of defects was issued as was contained in the site report in 2016 – and responses were again sent to P with information previously provided.

Our investigator said she hadn't seen anything to persuade her P, or Amtrust, had made it clear there was an issue with the information provided by Mr and Mrs T, or K.

She concluded Amtrust acted unfairly in cancelling the warranty for this reason.

To put things right she recommended Amtrust reinstate the warranty. She also recommended it pay Mr and Mrs T £500 compensation for the distress and inconvenience its actions have caused.

In response to our investigator's view, Amtrust said it agreed Mr and Mrs T had sent some of the data in 2016, but neither they, nor K, had provided a copy of the Builder Indemnity Agreement. It said it had been chasing Mr and Mrs T, and K, for it to be signed and returned.

As this was also a condition under the terms of the warranty, it maintained it had fairly cancelled it.

Considering this, our investigator didn't recommend the complaint be upheld. She said she had seen nothing to persuade her Amtrust had received the document from Mr and Mrs T.

Mr and Mrs T disagreed with our investigator and asked for the matter to be referred to an ombudsman. Mr and Mrs T said the document had been posted in 2018 and have provided a photo of the document, which was signed in 2018, that had been emailed to them by K.

Further developments

I wrote to both parties in January 2024 with some initial thoughts. In summary I said:

- The indemnity form was not the original reason referenced by Amtrust for cancelling the warranty.
- Mr and Mrs T had provided a copy of the form signed and dated from 2018, when it was said to have been returned to Amtrust. So, though Amtrust never received it, I was satisfied it existed at the time.
- An email in September 2020 from its underwriting team confirmed Amtrust were happy to offer cover subject to the property being signed off technically. The indemnity form wasn't mentioned.
- Based on Amtrust's response to our investigator's view, in that the indemnity form had not been returned and therefore the warranty had been cancelled for this reason, I asked it to refer to its underwriting team to confirm if they will backdate and reinstate the warranty as it had previously suggested. I said based on what I'd seen, I was minded to uphold the complaint and find the warranty had been incorrectly withdrawn.

P responded on behalf of Amtrust. It didn't provide any comments from the underwriters but said:

- The terms and conditions stipulate a requirement to complete the Builder Indemnity Contract.
- The property must achieve technical sign off and all conditions need to be met. Mr and Mrs T didn't meet those conditions and breached the three-year build period. It said because of this it wouldn't provide cover.

I responded further to Amtrust. I said on balance, based on what I'd seen and as per our investigator's initial view, it appeared the information had been provided multiple times. Because of this I thought it more likely than not the technical requirements had been met.

I asked Amtrust that if it believed this wasn't the case to respond to me specifically with what hadn't been met.

I asked Amtrust to bear in mind I'd seen the previous documentation it had provided but explained this appeared to be the same list that was present on the last site investigation report issued in November 2017, which was also the content of the previous one provided in 2016. So, it didn't appear to take into account any of the information Mr and Mrs T, or their builder, have provided in the meantime.

I also set out that while Amtrust were in contact with Mr and Mrs T, and K, during 2018, 2019 and 2020 about outstanding information, having reviewed the content of these emails, what Amtrust was asking for was inconsistent.

Some emails referenced the missing indemnity, some emails referenced the site investigation report and defects and some of the emails asked questions about why the works were taking the time they had. None of these emails acknowledged or responded to the information provided by Mr and Mrs T, or K. And no further context was given when Mr and Mrs T, or K. asked for more clarification of what was missing (as their understanding was that they had provided everything needed).

I again requested the matter be referred to the underwriter so it could confirm its position regarding the reinstatement of cover. I asked to be provided with a copy of the actual response received.

I set out I was minded to decide that Amtrust have incorrectly cancelled the warranty, and as such any intended direction I made would be around rectifying the consequences of this.

In response, Amtrust reiterated its previous points. Namely it had fairly withdrawn cover due to a breach of conditions and not receiving the indemnity form.

My provisional decision

I issued a provisional decision on 23 February 2024. In my provisional findings, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm intending to uphold the complaint. I'll explain why.

- *Mr and Mrs T have provided evidence showing K sent information responding to items outstanding on the 2016 investigation report. I can see a series of emails with attachments were sent to Amtrust in July 2016 and these cover items referenced in the site investigation report. This included architectural drawings and information regarding guaranteed products.*
- *I can see this was brought to the attention of P by Mr and Mrs T, and K, at the time as I can also see emails in January 2017 which say P was looking to locate the emails, as the information was not loaded onto their system.*
- *However ultimately, I'm satisfied the emails with relevant information were sent to a correct address at Amtrust in 2016.*
- *I can see further copies of what appears to be the email chains were again sent on to Amtrust later. I've not seen any information to show P, nor Amtrust, have ever provided further clarification on whether this information was sufficient or what further steps were required.*
- *The site investigation report issued at end of 2017 is the same site report from 2016. P's note from the time says one of the representatives who Mr and Mrs T, and K, had been attempting to liaise with regarding a final inspection didn't turn up to this site investigation meeting as was intended. The note from the representative that did attend said no further site visits were required.*
- *However, I can't see anything that persuades me any discussion took place about the outstanding defects or any further clarification was given at this time about what Mr and Mrs T needed to do.*
- *Mr and Mrs T were cooperating with Amtrust and I can see K was regularly sending requested items to Amtrust throughout 2015 to 2017. So I think it's more likely than not that if Amtrust provided clearer clarification at that time about the defects, if*

- indeed any remained, Mr and Mrs T would have acted accordingly.*
- I can see further correspondence from Mr and Mrs T, and from K, attempting to clarify what was outstanding. But as I've previously set out Amtrust haven't given clear information or been consistent with what they were requesting. Its also failed to comment and provide detail on any technical information sent by Mr and Mrs T, and K.*
 - While P said the inconsistency is due to the requests coming from different departments, I don't think this is relevant. If there is outstanding information, P needed to be clear and consistent about what it required. It was the expert on this matter, and I believe it had the greater duty to ensure the matter was administered correctly. And for the reasons I've set out. I'm not persuaded it was. So I don't think it has treated Mr and Mrs T fairly.*
 - Mr and Mrs T said the builder indemnity form was sent in the post by K. While they have been unable to provide proof of postage, Mr and Mrs T have provided a photo of the completed form – which is signed and dated in 2018 and the picture is dated from 2020. So, I'm satisfied it existed at the time and it's more likely than not was sent on to P as the consequences of not doing so would be significant.*
 - I appreciate Amtrust says it never received the form, and the terms and conditions technically allow it withdraw warranty cover for these reasons, but I don't think doing so for this reason alone would produce a fair outcome.*
 - Based on the administration errors I've outlined above, I don't think it is possible to be certain Amtrust didn't in fact receive the form originally. Overall, I don't think it is fair for Amtrust to rely on this in cancelling the warranty. I therefore intend to direct it to reinstate the warranty.*
 - Mr and Mrs T have spoken of the impact of not having a warranty in place and it has prevented them being able to sell their home. I also acknowledge the prolonged uncertainty and the attempts to rectify and clarify matters would have caused distress and inconvenience, with the added worry of not being able to plan for future. In the circumstances I think Amtrust should pay Mr and Mrs T £500 compensation as this fairly reflects the distress and inconvenience its actions have caused.*

Putting things right

Based on what I've seen so far, I intend to direct Amtrust to:

- Reinstate the warranty and backdate it to the build completion date.*
- Pay Mr and Mrs T £500 compensation for the inconvenience its actions have caused."*

Responses to my provisional decision

Mr and Mrs T responded to say they accepted my provisional decision.

P responded on behalf of Amtrust. It confirmed it would issue compensation to Mr and Mrs T and reinstate the warranty at the point in the process it was prior to the cancellation.

However, it has also commented a surveyor would need to attend the property as part of its risk management process and it would withhold issuing a certificate of insurance if the property didn't meet its technical requirements.

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.

I've considered what both parties have said, but it doesn't change my decision – or my reasoning.

However, I will comment further on what P has said in response to my provisional findings.

Amtrust is naturally entitled to validate any policy application. However, I need to point out here that the outstanding matter is verifying technical requirements as opposed to whether the property has met the build period. I'm satisfied based on the information on file Amtrust indicated it would be prepared to move forward with the application regardless, so it should do so now.

I also will point out that Amtrust will need to bear in mind the time elapsed since the property was completed and that I've already set out in my reasoning that it failed to respond adequately to the technical information already submitted by Mr and Mrs T, and by K. Which potentially may now cause difficulties should Mr and Mrs T not easily be able to obtain any information Amtrust believe to be outstanding. I would expect Amtrust to assess the matter in a pragmatic way should any such difficulties arise. If Amtrust further decline to issue a certificate of insurance based on the technical requirements not being met, Mr and Mrs T might consider raising a further complaint which they may bring to our service if not satisfied with Amtrust's response.

I remain of the opinion Amtrust should make a payment of £500 compensation to Mr and Mrs T to recognise the inconvenience its actions have caused.

Putting things right

- Reinstate the warranty application and backdate it to the build completion date.
- Pay Mr and Mrs T £500 compensation for the inconvenience its actions have caused

My final decision

My final decision is that I uphold Mr and Mrs T's complaint.

To put things right, I direct Amtrust Europe Limited to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 2 April 2024.

Michael Baronti
Ombudsman