

The complaint

Mr B and Miss T complain that Amtrust Europe Limited (“Amtrust”) failed to undertake the work to rectify a defect under their building guarantee.

What happened

Mr B and Miss T held a building warranty, underwritten by Amtrust, for their new build home. Within the first few years, they identified a number of defects within the home, and a dispute resolution service assisted in facilitating the rectification of these. But Mr B and Miss T weren’t happy with the work and said some defects relating to the finish of the walls and other areas remained outstanding.

So Mr B and Miss T made a complaint. In its response, Amtrust said its claims department had no liability as the dispute resolution service had been conciliating with the policyholders and the Developer. It said section 7 of the policy outlined the options available and that the relevant requirements hadn’t been met in order to engage the policy. It said Mr B and Miss T would need to inform the dispute resolution service in writing if there were outstanding issues, so it could continue further conciliation between the parties.

Mr B and Miss T didn’t agree with Amtrust, so they referred their complaint to this service. They said they had a valid claim under the policy because the Developer hadn’t carried out all the rectification works and had exceeded the two-month deadline, so the policy cover had come into effect.

Our Investigator considered the complaint and thought it should be upheld. He said section 7 of the policy terms, which merely gave alternatives to pursue in the event that the dispute resolution service didn’t resolve the issue, didn’t give Amtrust a reasonable basis to avoid Mr B and Miss T’s valid claim.

Because Amtrust didn’t accept our Investigator’s opinion, the complaint has now come to me to decide.

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.

Having done so, I’ve decided to uphold this complaint. I’ll explain why.

The building warranty says Amtrust will:

“indemnify the Policyholder during the Defects Insurance Period against the cost of repairing, replacing or rectifying any Defect and resultant damage to the Home for which the Developer is responsible and which:

- a) is discovered and notified in writing to the Developer during the Defects Insurance Period; and*
- b) is notified in writing to the Underwriter no later than 6 months after the expiry of the*

Defects Insurance Period.”

A “Defect” is defined in the policy terms and conditions as:

“A Failure to comply with a functional requirement in the Technical Manual in respect of the Construction of the Home”.

The Technical Manual contains guidance in relation to acceptable finishes and what is considered within tolerance and includes the requirement that:

“There should be no sharp differences of more than 4mm in any 300mm flatness of wall; the maximum deviation is +/-5mm from a 2m straight edge with equal offsets”.

Mr B and Miss T say that there are still several outstanding issues relating to areas that are outside the acceptable tolerances. However, under the terms of the policy it's only the underwriter's liability to remedy the defect if the Developer fails to respond within a reasonable time, hasn't consented to the use of the dispute resolution service, has failed to carry out the works on time following dispute resolution, or hasn't effected the works.

Mr B and Miss T say that the Developer has failed to carry out some of the work following the dispute resolution process, so it's now Amtrust that's liable to rectify the defects identified. Amtrust says the Developer wouldn't be liable to put right issues that a surveyor has deemed to be within tolerance. So I've considered whether there are still areas of concern or whether the work has been completed to the required standard by the Developer.

In doing so, I've looked at videos and photos provided by Mr B and Miss T, the Technical Manual Report and the thermal imaging survey. Overall, whilst there are too many photos and videos to refer to individually, I'm not satisfied that the Developer has rectified the issues with the property within the required time. For example, I've looked carefully at the photos provided by Mr B and Miss T. And I can see the noticeable joint lines on the walls and ceilings, due to the joints on the plasterboard. This was covered in the Technical Manual Report and required remedial work, but I can see from the photos provided, that this – among other things – has not been corrected. So I don't consider the work to have been completed to the required standard by the Developer.

And because the policy provides cover in the event that the Developer unjustifiably refuses to remedy a defect and resultant damage (including after the use of the dispute resolution service) and says that in those circumstances the underwriter will meet valid claims under the policy, I'm satisfied the policy has engaged and that it is now Amtrust that is liable to remedy the defect.

The Technical Manual Report identified various areas that were outside the acceptable tolerances and recommended the Developer carry out remedial work to put those issues right. Because a number of these, according to Mr B and Miss T, remain outstanding, I'll require Amtrust to investigate the claim as an accepted claim, and if its investigations reveal that there are indeed still defects and issues that are out of the acceptable tolerances, then it will need to remedy those defects.

I've considered the level of distress and inconvenience Mr B and Miss T have experienced as a result of pursuing Amtrust about this claim. And I do think they've had some problems which have impacted them, such as the aesthetic issues they've tried to resolve relating to the walls, and issues with the shower, for which they should be compensated. And because I consider the impact of the problems to have been minimal, but required some effort for Mr B and Miss T to sort out, I think £100 compensation is fair and reasonable in the circumstances.

Putting things right

Amtrust Europe Limited must now:

- Reconsider Mr B and Miss T's claim and settle it in line with the remaining policy terms and conditions.
- Pay Mr B and Miss T £100 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and I direct Amtrust Europe Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss T to accept or reject my decision before 4 November 2024.

Ifrah Malik
Ombudsman