

The complaint

Mr B complains AmTrust Europe Limited unfairly declined a claim he made on his building warranty.

Any reference to Amtrust also includes its agents.

What happened

Mr B bought a new-build property in 2018 which came with a ten-year Amtrust 'defects and damage' warranty. Mr B says there were issues with water ingress from the roof near a dormer window. He contacted the developer to report the issues he was facing in February 2020, which was within the first two years of the warranty. The developer carried out some repairs but Mr B remained concerned and contacted Amtrust in January 2024, having received a report from an engineering firm in that same month. That report had recommended some repairs needed to fix the issue.

Amtrust said there was no cover under the warranty. It said Mr B had raised the initial concern during the first two years of the policy, known as the defects insurance period. For Mr B's policy, this ran from June 2018 until June 2020. It said whilst Mr B had raised the concern to the developer in time and in line with that section of the policy, he hadn't then contacted Amtrust within six months of the end of the two-year defects period (so before the end of December 2020, which was six months after the end of the defects period). As a result, it said Mr B hadn't complied with the terms of the warranty, and as such no cover would be provided.

Mr B complained about Amtrust's decision. He also said the issues he's claiming for are new issues, which were first identified in a structural report he had carried out in January 2024. As such he felt his claim should be considered under section 3.2 of the policy – the structural insurance period – which covers years three to ten of the warranty.

Amtrust responded to Mr B with a complaint final response letter (FRL) dated 16 February 2024. It didn't think it had acted unfairly in declining the claim under the defects insurance section, based on the fact it considered Mr B hadn't met the relevant time limits of the policy. But it said it should have requested a copy of Mr B's structural report dated January 2024, in order to review the findings. It offered £100 for that oversight and said to resolve the complaint, the claim would be re-reviewed.

In early March 2024, in line with the FRL a loss adjuster attended Mr B's property. His findings were that the defect within the property was the same defect as previously fixed by the developer. Mr B made a further complaint.

On 25 March 2024, Amtrust issued a further complaint FRL. It didn't accept it had unfairly declined the claim or that it was responsible for delays in arranging repairs. It said as no liability had been accepted under the policy, it wasn't responsible for any delays of the developer. But it said it had tried to assist Mr B and had engaged the developer to remedy what it considered to be its failed works.

Unsatisfied with Amtrust's response, Mr B brought his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator thought Amtrust had made a reasonable offer to resolve the February 2024 complaint, so he didn't think Amtrust needed to do anything more in relation to complaint

points answered in the February 2024 FRL. He further said Amtrust's position in the second FRL was also reasonable. He didn't think it had been shown the issue being reported now was 'new'. And so, as it linked to works notified to the developer in 2022, Amtrust didn't reasonably need to consider it under the structural insurance section of the policy.

Mr B asked for an Ombudsman to consider matters, he provided extensive responses to the Service around why he feels Amtrust has fabricated reasons to decline his claim; not considered it in line with the terms of the policy or in line with treating customers fairly. The crux of his argument is that he believes he has a valid claim under section 3.3 of the policy on the basis that he only discovered the structural nature of his claim on engaging the services of his engineer (at the end of 2023, with their report finalised in January 2024).

Whilst the complaint has been awaiting a final decision, Mr B has provided a further complaint FRL dated 9 October 2024. This covered Mr B's complaint points that Amtrust had failed to confirm the property was constructed in accordance with the architects' plans, amongst other things.

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.

As this is an informal service, I'm not going to respond to every point made or piece of evidence provided by the parties. There has been extensive correspondence between Mr B and Amtrust, I will only comment on that which is relevant to the outcome I've reached. Mr B has also asked some hypothetical questions of this service, such as in which scenarios certain aspects of the policy would respond. I won't comment on anything that isn't directly related to the outcome of his specific complaint about Amtrust; including its apparent decision to consider his neighbour's claim under section 3.3 of the policy. This is because we're set up to resolve individual disputes, between certain relevant parties, not to pass general comment on warranties or other financial products or about scenarios involving others not party to the complaint in hand.

I will also only consider Amtrust's FRLs of February and March 2024. They were issued before the first stage of our complaint process was completed with our Investigator reaching and issuing his view on the complaint points in play at that time. If Mr B also wants us to review his complaint as answered by Amtrust's FRL of October 2024, we can set up a separate complaint in that respect. That complaint will then be considered separately, subject to our usual rules, including that we won't re-investigate matters already decided upon in a previous final decision.

I can understand that this is a difficult situation for Mr B to be in. He's bought a new-build property which now seemingly has water ingress issues. I consider it not unreasonable for him to expect a new-build property to be free from such defects. However, the building warranty is limited in its scope and when it will respond.

Has Amtrust reasonably said section 3.2 (defects insurance) doesn't apply?

Mr B doesn't dispute that he raised *an* issue with Amtrust during the first two years of the warranty. However, he says his claim is about section 3.3, given he only realised the issue was a "structural one" in January 2024. As Amtrust has considered it primarily under section 3.2 "Defects Insurance," I have first reviewed whether it reasonably did so.

Section 3.2 says Amtrust will indemnify the policyholder (so in this case Mr B) during the defects insurance period – which in Mr B's case ran from June 2020 until June 2022 – against the cost of repairing, replacing or rectifying a defect, if it is (amongst other things):

"discovered and notified to the Developer during the Defects Insurance Period and which is notified to the Underwriter within 6 months of the expiry of the Defects Insurance Period."

The claim form Mr B submitted stated the issue was “*water ingress*”. And that the issue was first noticed 19 February 2020. Mr B provided the following detail:

“this is a long-standing issue with a great deal of correspondence the problem is intermittent and [M – the developer] have attempted earlier repairs the problem has returned but [M] is now ignoring my correspondence”

I find Mr B did notify the developer of an issue within those first two years of the warranty, satisfying the first part of the term. But he didn’t make a claim to Amtrust until 2024. Even though from his comments above, he seems to acknowledge it was as a result of the same issue. I note that, upon reviewing the claim. Amtrust was also satisfied it was the same issue. As January 2024 is more than six months after the defect insurance period ended (in June 2020), I’m satisfied Amtrust was reasonable in saying the condition of notification which applies to claims under section 3.2 of the policy hasn’t been met. I’m satisfied its decline of the claim on this basis was fair and reasonable.

Has Amtrust reasonably said Section 3.3 (structural insurance) doesn’t apply?

Mr B says he has a valid claim under section 3.3 of the policy because he only first realised there was a structural issue with the property, having received his expert report in January 2024. He said the policy terms cover him for any “*claim*” discovered in the structural insurance period, which runs from years three to ten of the policy. He says as his “*claim*” relates to issues found in his report of January 2024, it should be met.

Amtrust say that isn’t the case because its loss adjuster found the current issue with the roof to be due to a failed repair previously carried out by a developer. It also says 3.3 can’t apply as Mr B knew about the issue prior to the structural insurance period starting.

I’m sorry to disappoint Mr B but I don’t consider Amtrust has been unreasonable in saying section 3.3 doesn’t apply to his claim. Section 3.3 of the policy does provide cover for “claims”, as Mr B says. However, section 3.3 will only be met if the property has suffered “Major damage”. This term is given a special definition in the policy terms. For the definition of “Major damage” to be met for the purpose of the policy, there needs to be “*Destruction of or physical damage to any portion of the Housing Unit... caused by a defect in the design, workmanship, materials or components of:*

the Structure; or

the waterproofing elements of the Waterproof Envelope

*which is first discovered during the **Structural Insurance Period**”.*

From the correspondence from Mr B, the developer, and Amtrust, I find that the damage, caused by an issue in the design or workmanship, was first discovered *before* the structural insurance period. It wasn’t discovered “*during*” the structural insurance period, and so I find that section 3.3 doesn’t apply. I say this because Mr B said he’d had water ingress issues since 2020, and Amtrust’s loss adjuster found the damage to the roof to be due to a previous failed repair. Whilst it found that following Mr B submitting new evidence in 2024, that doesn’t mean his claim should be considered as a new claim first discovered in 2024.

I don’t think it matters, for the purpose of this section, that Mr B didn’t know it was a ‘structural issue’ as he refers to it, until January 2024. Because section 3.3 applies only if the definition of “*Major damage*” has been met, which I don’t think it has, for the reasons set out above.

Amtrust’s handling of matters

I understand Amtrust has tried to assist with the developer, I consider this reasonable in order to support Mr B. But there isn’t anything I can see in the policy terms which require it to do so. So I can’t then impose time limits or make recommendations as to how Amtrust should assist Mr B, as it is doing so outside of the terms of the policy. Whilst I appreciate it leaves

Mr B in a difficult position, I consider Amtrust has acted reasonably in saying there is no cover under the policy for the issues he's facing.

Amtrust did say, in response to the first complaint that it should have considered Mr B's report. It offered £100 not the inconvenience caused in not doing so. I think that's reasonable to recognise the frustration that oversight caused. I also consider it was reasonable to consider matters further, which it did. But I still find its decision to decline the claim was reasonable, so I'm not going to ask it to do anything differently.

My final decision

My final decision is AmTrust Europe Limited has already made an offer to pay £100 to settle the complaint and I think this is fair in the circumstances. As such, my final decision is that AmTrust Europe Limited should pay £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 December 2024.

Michelle Henderson
Ombudsman