

The complaint

Mr and Mrs A complain that AmTrust International Underwriters DAC (“AmTrust”) unfairly declined a defective roof claim made under their new build warranty.

What happened

Mr and Mrs A’s new build property was completed in 2020. When tiles started to fall off their roof in 2023, they contacted a roofing contractor to fix the problem and to carry out an assessment of their roof.

The contractor told Mr and Mrs A that the roof hadn’t been constructed to specification and that there wasn’t enough ventilation because of an error in the way the tiles had been installed. This was causing the cement slates on the roof to crack as heat and moisture built up. The contractor recommended that the roof be replaced.

So Mr and Mrs A got in touch with AmTrust to make a claim under their warranty. A surveyor attended on behalf of AmTrust and, after an investigation was carried out, the claim was declined. AmTrust said this was due to an exclusion in the policy. It said the cracking was due to a lack of ventilation causing condensation behind the tiles. AmTrust felt that as condensation was excluded, the issue wasn’t covered under the warranty.

Mr and Mrs A didn’t agree with AmTrust’s decision, so they made a complaint. In its response, AmTrust maintained its position, so Mr and Mrs A referred their complaint to this service. Our Investigator considered it, and thought it should be upheld. He said the build-up of condensation was a result of the defect itself, and not the overall cause of the damage.

AmTrust didn’t accept our Investigator’s recommendations. It said it had relied on both the condensation and humidity exclusions in the policy, in order to decline the claim. Because an agreement couldn’t be reached, the complaint was passed 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.

Mr and Mrs A’s warranty provides cover for ten years following completion of the property build. This claim relates to the section of the warranty covering years 3-10, known as the Structural Insurance Period. The warranty says:

“The Underwriter will indemnify the Policyholder against all claims discovered and notified to the Underwriter during the Structural Insurance Period in respect of:

1. The cost of complete or partial rebuilding or rectifying work to the Housing Unit which has been affected by Major Damage provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Housing Unit to its original specification.”

So, in order for there to be a valid claim under the warranty in years 3-10, there must be Major Damage to the Housing Unit – ie. the property described in the Certificate of Insurance.

“Major Damage” is defined as “Any Defect in the design, workmanship, materials or components of the Structure: Or Waterproofing component of the Waterproof Envelope”.

“Defect” is defined as “A failure to comply with:- The current Building Regulations in England and Wales” and “Structure” includes “any external finishing surface (including rendering) necessary for the water-tightness of the Waterproof Envelope”.

And the *“Waterproof Envelope”* is defined as *“the ground floors, external walls, roofs, skylights, windows, doors, of a Housing Unit but excluding those parts below ground floor slab level”.*

I've looked at whether the claim Mr and Mrs A made should be covered by their policy based on the definitions above. The damaged tiles are part of an external finishing surface necessary for the water-tightness of the Waterproof Envelope, i.e. the roof. This means the roof tiles form the Structure of the property as defined by the warranty. And I haven't seen any arguments to persuade me otherwise.

So I've considered whether there is Major Damage, as defined in the warranty. The report provided by the tile supplier says:

“It is important to ensure that the roof has been designed and constructed in accordance with the relevant British Standards such as BS5534: 'Code of practice for slating and tiling (including shingles) and BS 5250: 'Code of practice for control of condensation in buildings', ensuring that adequate ventilation provisions are provided to prevent the potentially harmful build-up of moisture within the construction layers and in conjunction with a condensation risk assessment where appropriate.”

AmTrust's surveyor also provided a report, which says:

“The lack of ventilation in the batten cavity has led to the slates being in an unbalanced condition that has led to curling of the roofing slates. In this instance the slates have started to split along their centre line through the tail preformed rivet hole. The lack of ventilation has, therefore, caused condensation to build up behind the tiles and in conjunction with the heat from the facing side of the tile has caused the tiles to crack.”

So I'm satisfied that there was a Defect, as defined by the warranty, because the reports confirm that building standards pertaining to adequate ventilation weren't complied with in the construction of the roof. And because the Defect is in the design, workmanship or materials, which didn't allow for enough ventilation in the cavity behind the tiles, I consider there to have been Major Damage here, that's covered by the warranty.

AmTrust has relied on two policy exclusions which say the warranty won't cover loss or damage caused by humidity or condensation. So I've looked carefully at the wording of those exclusions. The exclusion relating to humidity says:

“The Insurer shall not be liable to the Insured for any: Loss or damage caused by or in consequent upon humidity in a Housing Unit that is not a direct result of the ingress of water caused by a Defect in the design, workmanship, materials and components of the waterproofing elements of the Waterproof Envelope of the Housing Unit.”

And the exclusion relating to condensation says the policy doesn't cover:

*"Wear and tear
Loss or damage of the Housing Unit due to
a) wear and tear;
b) normal dampness, condensation or shrinkage"*

But having carefully considered the expert reports, it's clear that the original cause of the damage to the tiles wasn't condensation or humidity. It was the lack of adherence to building standards. The build-up of condensation and humidity was a direct result of the Defect which didn't allow for adequate ventilation in the cavity behind the tiles. So I don't think it's fair for AmTrust to rely on these exclusions to decline the claim.

It follows therefore that I'm going to require AmTrust to cover this claim in line with the policy terms.

Putting things right

AmTrust International Underwriters DAC must now cover this claim in line with the terms and conditions of Mr and Mrs A's warranty.

My final decision

My final decision is that I uphold this complaint and I direct AmTrust International Underwriters DAC to put things right as I've 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 2 December 2024.

Ifrah Malik
Ombudsman