

The complaint

Mr and Mrs M complain that Amtrust Europe Limited (“Amtrust”) unfairly withdrew cover when they tried to make a claim under their self-build warranty.

What happened

Mr and Mrs M had a self-build home constructed. A ten-year warranty was included in the plot package which was provided by the developer.

In March 2020, the plot was handed over to Mr and Mrs M, including foundations, ground floor slab and below ground drainage and utilities ductwork, ready for them to commence construction of their home.

Mr and Mrs M say they are now aware that the policy could be withdrawn if the build period exceeded three years, but that this wasn’t made clear to them at the time. The policy they were given said the three years began *“from the start date notified to the Scheme Administrator when the original application was made”*. But Mr and Mrs M say this didn’t specify that if exceeded, the policy would definitely be cancelled. They think the three years should’ve started when they began construction of their home.

In March 2022, Amtrust wrote to Mr and Mrs M to explain that it didn’t have a completed application from them, and asked for one to be provided. Mr M sent a completed application to Amtrust, specifying that construction had commenced in April 2020, once the plot had been passed to them in March.

Mr M says the property was signed off in March 2023 – and they assumed it was covered by the warranty. But in October 2023, Amtrust wrote to Mr and Mrs M to say it had withdrawn cover, as it was entitled to do under the terms of the policy, because the build period had exceeded three years.

Mr and Mrs M made a complaint. They said Amtrust wasn’t clear about when the three-year period would commence. They’ve said that not having cover has caused them a great deal of stress. They’re worried about the impact of this for them in the future, and they’re both now suffering from severe depression.

In its response to their complaint, Amtrust said the Statement of Fact provided by the developer gave a construction start date of April 2018. And that based on the three-year build requirement, the build period expired in April 2021. But Amtrust says it actually noted the start date as January 2020 because it inspected the site during that month and works had commenced. So the build period would’ve therefore expired in January 2023.

It went on to say that as the construction of Mr and Mrs M’s home was completed in March 2023, the three-year period had therefore been exceeded and so Amtrust was entitled to withdraw the policy.

Amtrust clarified that it had considered the build start date given on the Statement of Fact, and had based its cancellation of the policy on this. But that even if it had used the revised

start date of January 2020 when works began, Mr and Mrs M had still exceeded the three-year build period by two months.

Mr and Mrs M didn't accept Amtrust's response. They said no date had ever been confirmed as the start of the construction period for the purposes of the warranty. And that they actually believed the building regulations sign off had been achieved as early as March 2022.

Because they remained unhappy, Mr and Mrs M referred their complaint to this service. Our Investigator considered it and thought it should be upheld. She said Amtrust should've been clear about what date they'd consider as the start date of the policy.

Amtrust didn't agree with our Investigator's recommendations, so 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.

The warranty terms and conditions say:

"Unless otherwise agreed in writing by the Scheme Administrator the Underwriter reserves the right to cancel the Policy and return any premium, less any retentions in line with our cancellation procedures in the event of:

i) *the building works period exceeding three years from the start date notified to the Scheme Administrator when the original application was made;*

or

ii) *if building work ceases for 90 days or more before the Home is complete".*

Mr and Mrs M have said that they were first given access to their plot in March 2020. And due to the lockdown restrictions around the time of the pandemic, they were unable to start on site until the end of May 2020. They've also pointed out that the policy terms don't say the warranty will be automatically cancelled if the build period exceeds three years, but that the provider reserves the right to cancel.

Whilst the terms do give Amtrust the right to cancel the policy, the specific clause is set out on page sixteen of a twenty page document. So I think Amtrust could've done more to make it clearer to Mr and Mrs M. I say this because Amtrust asked Mr and Mrs M to complete an application form in March 2022 because it didn't have one from them as homeowners. But I've not seen any evidence that, on receipt of the application form on which Mr M gave a start date of April 2020, Amtrust either queried this with Mr and Mrs M, told them this was incorrect, or engaged in any discussion around the three-year build period. I think it would've been reasonable at this point to have set out the three-year time period clearly to Mr and Mrs M and advise them of the start date and when they'd need to complete all building works by.

But Amtrust didn't do this. It also hasn't shown why exceeding this period by only two months (if it took the start date to be January 2020 and the property was complete in March 2023) represents a greater risk to it, which it's unwilling to cover. For me to agree that Amtrust cancelled the policy fairly on the basis that the build term exceeded three years, I'd

like to have received an explanation of why the relatively short additional time taken to complete the build went against Amtrust's risk appetite.

Amtrust has said the aim of the cancellation condition is to avoid a situation where the developer/builder starts work whenever they want, and the insurer then gets stuck for years without a way out. But that didn't happen in this case, and I've also had consideration for the fact that pandemic restrictions came into force in March 2020, which caused some of the delay. I don't think that was Mr and Mrs M's fault, and I don't consider the spirit of the cancellation condition was to prevent situations like this.

I've considered the other points Amtrust has made, such as highlighting that Mr M was the architect on the project, and how the form could've been filled out in 2022 when it wasn't available following 2018. But I don't consider those points relevant to the outcome here, as the reasons I've given are still valid and I believe the key factor relevant to my consideration of the complaint to be that Amtrust didn't make the start date clear enough when it had opportunities to do so.

It follows therefore that I consider Amtrust to have cancelled the policy unfairly and it should be reinstated. I think the unfair cancellation caused Mr and Mrs M distress and inconvenience for which they should be compensated. And I think £250 is a fair and reasonable amount of compensation in the circumstances, because the impact of Amtrust's decision caused Mr and Mrs M a considerable amount of worry that's affected their health and wellbeing.

Putting things right

Amtrust Europe Limited must now:

- Reinstatement Mr and Mrs M's self-build warranty.
- Pay Mr and Mrs M £250 for the distress and inconvenience caused.

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 M and Mrs M to accept or reject my decision before 10 December 2024.

Ifrah Malik
Ombudsman