

The complaint

Mrs H complains about the way Amtrust Europe Limited handled a claim she made on her building warranty.

Any reference to Amtrust also includes its agents, unless set out otherwise.

Mrs H is being represented in bringing this complaint by a representative, Mr B. She has also been represented by other parties at various points. However, for ease I've referred to all comments and actions as being those of Mrs H, unless set out otherwise.

What happened

Mrs H bought a property in 2012 which came with a warranty underwritten by Amtrust. Mrs H says minor cracks in the property were noted within the first two years of the warranty, these were advised to be shrinkage cracks and no claim was made.

Mrs H says further cracks appeared in 2016; she employed a chartered architect who said the cracks were due to structural shortcomings, so Mrs H made a claim under her warranty in 2018.

Amtrust ultimately declined the claim in August 2021. It said the issues Mrs H was now claiming for had arisen during the Defects Insurance Period which ran from December 2011, until December 2013. It said Mrs H needed to have contacted it no later than six months after the defect period ended, which was June 2014. The claim wasn't registered until 2018, so Amtrust considered it hadn't been made in time. It also said some other issues raised didn't amount to 'major' defects as defined by the policy, and so there was no policy cover for them.

Mrs H disputed that the claim should be declined, she also complained that the claim had been transferred from the administrators (M) without her knowledge and that Amtrust was refusing to share copies of reports carried out on the property during the build.

Amtrust responded with a complaint final response letter (FRL) on 26 October 2021, maintaining the decline was reasonable. The FRL also said that Amtrust wouldn't release copies of reports and surveys from when the property was constructed, as those were for the sole use of the underwriter. It recognised the claim had been moved to being assessed by the underwriter, from administrator M and accepted this hadn't been communicated as well as it should have been. In recognition of that failure, Amtrust offered £250 compensation.

In December 2021, Mrs H said the loft space had been opened up and it had shown serious failures in the construction of the building.

Amtrust issued two further complaint FRLs to Mrs H; one on 27 January 2023, and another on 9 June 2023. The January 2023 FRL covered Mrs H's complaint about the lack of oversight of the build, and the inspections that were carried out by the site auditor. Amtrust didn't accept it had done anything wrong in that respect. The June 2023 FRL noted Mrs H had raised the following complaint points:

- The handling of the claim was changed from the administrator M in August 2021, and she wasn't advised why.
- Faults in construction were not picked up by the Site Audits prior to the Certificate of Insurance being issued.

- Her own investigations have been hampered by AmTrust's refusal to provide design information.
- Administrator M had offered £65,000, with the claim since being declined.
- The Loss Adjuster ignored her comments following the decline of the claim.

Amtrust's FRL said much of Mrs H's complaint had already been considered in its earlier FRLs. In response to Mrs H's complaint about Amtrust reneging on an offer of £65,000 to settle the claim, Amtrust said it couldn't find a record of an offer being made. It also said whilst it understood there was a desire to enter further dialogue relating to the claim, it had already been declined, so there was nothing further for it to add.

Unhappy with Amtrust's response, Mrs H brought her complaint to the Financial Ombudsman Service in June 2023 for an independent review. An Investigator here said the complaint response of October 2021 had been referred to our Service too late. A separate decision has been issued deciding we cannot consider those complaint points answered in that FRL.

A separate decision was also issued by this Service setting out that Mrs H's complaint points about the site auditor, and the inspections and work it carried out before issuing the warranty, isn't a regulated activity. So it isn't something this Service can consider.

Our Investigator considered we could look into Mrs H's complaint points about Amtrust "holding her at arm's length" since the October 2021 FRL and about her complaint relating to the offer of £65,000. She didn't think Amtrust had reneged on an early agreed offer, as there seemed to be no record of it. But she said even if she was satisfied one had been made, it wouldn't be reasonable to hold Amtrust to it, as it appears to have been made before a decision on the claim was decided in 2021. She ultimately thought Amtrust had considered matters fairly.

Mrs H asked for an Ombudsman to consider matters, her representative was particularly unhappy with the Investigator's use of the word 'fair' in her assessment, saying what had happened was anything but fair. The representative said it was important that other people didn't have to go through what Mrs H has, after discovering issues with her newbuild home.

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 haven't responded to every point made or piece of evidence referred to. Instead, I've focussed on those that are key to the outcome I've reached. But I want to reassure both Amtrust and Mrs H that I have read, and considered, everything provided.

At the outset I'd like to say that I recognise this has been a difficult time for Mrs H. She's bought a property which seemingly now has structural issues. I consider it not unreasonable of her to have expected a newbuild property to be free from such issues. However, the Amtrust warranty that comes with the property is limited in its scope in terms of what it will respond to. And as Mrs H knows, the claim decision it gave cannot be reviewed by this Service as the complaint about that decision wasn't brought to us in time to do so. So, I'm limited on what I can review as part of her complaint.

Did Amtrust unfairly withdraw an offer of £65,000?

Mrs H says when the administrator M was dealing with the claim, it made a verbal offer of £65,000 to settle it, which at the time she couldn't accept because the full extent of the damage, and cost of repair, was unknown. She says when Amtrust took over the handling of the claim, this offer was then revoked.

Amtrust says it doesn't have any evidence of that offer being made. It said it did approach builders to explore costs involved of any repairs as part of investigating there being a potential for a valid claim. And I have seen a tender document with estimated costs of around £64,000. Amtrust says it thinks this is what Mrs H might be referring to, but it was in no way an admission of liability, or an offer made.

So it seems to me that all parties accept there may have been a discussion over costs at an early point in the claim. And the approximate figure of around £65,000 which Mrs H says was offered does match with a tender estimate provided.

But I don't think this is evidence of a verbal offer being made by M to settle matters. Even if the offer was verbal, I'd expect some written confirmation or correspondence relating to an offer being made or refused, especially considering the sum in question. I haven't been provided that from Mrs H or Amtrust.

I accept it's possible a verbal offer was made between the administrator M and Mrs H, before Amtrust took over handling of the claim. However, even if I was satisfied an offer was made (and refused) I don't think this means Amtrust has acted unfairly in not paying Mrs H £65,000 following its decision to ultimately decline the claim.

That offer (if made) pre-dated Amtrust's claim decision. So with Amtrust deciding not to meet the claim under the warranty, I consider it wouldn't then still make an offer to Mrs H. Nor could it reasonably be expected to meet an offer made by the administrator months earlier before investigations were complete and a decision was made as to what liability *Amtrust* had under the warranty. So it follows that I'm not persuaded Amtrust did treat Mrs H unfairly in this respect. And as set out previously, the complaint about Amtrust's claim decision wasn't referred to this Service in time, so I can't consider whether it's acted fairly and reasonably when making its decision about the claim and answering her complaint in respect of the same.

Amtrust's handling of matters since its FRL of 21 October 2021

Mrs H says Amtrust has held her at arm's length and her own investigations have been hampered by Amtrust's refusal to share information with her about the build of the property. She said Amtrust was invited to some works done to open up the property to check its construction, but no one attended.

Amtrust's position was that given the claim had been declined due to a breach of policy conditions, further evidence provided relating to any possible structural damage wouldn't alter its position, and so it didn't need to attend any further investigations or enter any further dialogue on it.

I don't consider this to be unfair of Amtrust to not attend works relating to the property given it had made its position on its claim liability clear in August 2021. I understand it would have been very frustrating for Mrs H, who was left with a damaged property. As I understand it, the developer also went into administration around 2015, so her prospects for recovery are likely very limited. However, given Amtrust's position reached on the claim, I don't think it acted unfairly in not engaging any further substantively after October 2021.

I can see it did respond to two further complaints from Mrs H, one in relation to the site auditor, which hadn't been raised or addressed by the October 2021 FRL. This is in line with what I'd expect it to do. However, I can see from Mrs H's correspondence in 2022 and early 2023 that much of it was repeating issues that Amtrust had already responded to in its FRL of 26 October 2021.

For example, Amtrust had set out in that October 2021 FRL that it accepted it hadn't been clear about the claim being transferred from the administrator M, to Amtrust. It also set out that it wouldn't release the reports it had carried out for the sole purpose of issuing the warranty. But those complaint points were reiterated at various points in the correspondence after that time, including in a complaint letter submitted by Mrs H's solicitor at the time in

June 2022. I understand Mrs H remained unhappy with Amtrust's position, but I don't consider it unfair of Amtrust to refuse to review matters it had provided its FRL on. That's in no small part because the DISP rules don't require a financial business to engage further once an FRL is issued, because the FRL signifies, and includes detail on, the complainant's right to refer that complaint to this Service.

I can also see that there's been further correspondence relating to the declined claim of 2021, and the actions of the loss adjusters since Amtrust issued its most recent FRL in June 2023. I want to make clear that I haven't reviewed any matters that have happened since 9 June 2023. If Mrs H wants this Service to review a further complaint, we might be able to do so, subject to our usual rules including those involving time limits. But where can look at a further complaint, we won't review any matters that I've made findings on as part of this decision.

In response to our Investigator's view, Mrs H's representative said they were particularly unhappy that this Service had said Amtrust had treated Mrs H fairly. He said what Mrs H has experienced is anything but fair. I don't think our Investigator was making a comment on the unfortunate situation Mrs H is in. Nor am I going to decide that what has happened to Mrs H is fair. However, the role of this Service is to consider whether Amtrust has responded to Mrs H's complaints fairly and reasonably. And for the complaint points that I have the jurisdiction to consider, and so have considered as set out above, I'm satisfied that it has. So it follows that I'm not going to direct Amtrust to do anything differently.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 2 December 2024.

Michelle Henderson
Ombudsman