

## The complaint

Mrs B and Mr P are unhappy with a decision taken by AmTrust International Underwriters DAC (AmTrust) to decline a claim made under their Build-Zone warranty.

Any references to AmTrust include its agents.

## What happened

Mrs B and Mr P purchased a new build property in 2019. In March 2023 several roof tiles broke and fell from the roof. They arranged for their own inspection to take place and then raised a claim under their Build-Zone warranty with AmTrust.

AmTrust arranged for an inspection to take place. This identified a number of issues with the roof. One issue, the inadequate headlap in the pitched roof, was found to have compromised the roof's ability to prevent water ingress. AmTrust reviewed Mrs B and Mr P's report and the pre-purchase survey instructed in 2019. The survey identified some issues with both the pitched and flat roof and recommended they appoint contractors to provide quotes for any necessary repairs. AmTrust said Mrs B and Mr P therefore ought to have been aware there was an issue with the roof before completing their purchase and declined the claim.

Mrs B and Mr P complained about AmTrust's decision, but this didn't cause it to reach a different conclusion. AmTrust accepted there were issues with the roof but said Mrs B and Mr P had prior knowledge of these before purchasing the property. Unhappy with AmTrust's response, Mrs B and Mr P referred their concerns to the Financial Ombudsman Service.

These concerns were considered by one of our investigators who said AmTrust had fairly relied on the prior knowledge exclusion to decline the claim. Mrs B and Mr P didn't agree.

They said they know knew there were issues with their pre-purchase survey but had been reassured by the checks carried out on the property whilst it was being built, including those carried out by Building Control. This didn't cause the investigator to reach a different conclusion, so this case has been passed to me to decide.

I issued my provisional decision on 3 March 2025. I've copied my findings below:

*"First, I'd like to reassure both sides that while I've summarised the background to this complaint and submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to do so. Instead, I've focused on what I consider are the key issues.*

*And in taking this approach, I think it's helpful to clarify that there doesn't seem to be a dispute that there's a defect with the roof. The focus of my decision will be whether AmTrust have fairly relied on the prior knowledge exclusion to decline the claim. In considering this, I've set out the policy wording AmTrust is seeking to rely on to decline the claim:*

### **"5 Exclusions**

*The Underwriters shall not be liable to the policyholder for any:*

***Prior Knowledge***

*Anything which would constitute a valid claim under the Policy and about which the Policyholder was aware before purchasing the Housing Unit."*

*AmTrust say the pre-purchase survey carried out in March 2019 highlighted issues with the pitched roof. In summary, the surveyor noted the following issues:*

- "A small number lifting slates and slight undulation was noted to the front elevation...*
- this could be vulnerable during high winds and should be monitored.*
- Minor settlement was noted over the flank wall and Building regulation consent for the roof frame should be checked.*
- A small number of damaged slates were noted and these should be replaced. Slight localised settlement was noted over the flank wall.*
- General unevenness was noted to the slate finish.*
- Lifting slates were noted."*

*In relation to the flat roof, the survey said:*

- "This is showing some signs of ageing to parts., Detailing appears poor around the gutter outlet and this area could be vulnerable to damp penetration. The falls to the roof are in part poor with some ponding noted."*

*In the pre-purchase survey, the roof was given a condition rating of 2. This meant it had "Defects that need repairing or replacing but are not considered to be either serious or urgent". Mrs B and Mr P say this is why they didn't take any further action, beyond contacting the developer (a point I'll come to later). However, at the end of the pre-purchase survey, it said:*

*"It is recommended that you should treat the following matters as discussed earlier in the report – as urgent repairs to be remedied as soon as possible after purchase.*

*You are therefore advised to commission suitable contractors to provide quotations for each of the items on the following list as soon as possible and prior to commitment to purchase... Should you decide to exchange contracts without this information you will have to accept the risk that adverse factors may come to light in the future.*

- 1. Check and overhaul the roof coverings. If possible, flat roof coverings should be checked."*

*I appreciate Mrs B and Mr P have told us they now have several concerns about the qualifications and competence of the surveyor who undertook the pre-purchase survey. They said this because some of wording from their survey appears to be from a standard template used by their surveyor, who also incorrectly said the property had artificial slate roof tiles and made another inaccurate comment. And I note their comments that the property was later signed off by building control after the pre-purchase survey was undertaken, so they felt reassured there was no reason to be concerned by the findings of the survey. Mrs B and Mr P also say it's unfair of AmTrust to place so much weight on the pre-purchase survey.*

*AmTrust said the Build-Zone sign off is based on inspections undertaken by surveyors during construction. They ensure core elements of the building are in place but don't go into the degree of detail such a measuring gaps between roof tiles. Whereas AmTrust says a pre-purchase survey is, in its nature, much more detailed. And the pre-purchase survey provided by Mrs B and Mr P identified issues with both the pitched and flat roof, including*

*that roof tiles were lifting slightly and could be vulnerable to high winds (the inadequate headlap). Mrs B and Mr P said they later experienced roof tiles lifting and falling from the roof, which caused them to arrange their own inspection in 2023.*

*Mrs B and Mr P say following the pre-purchase survey they weren't provided with a guarantee for the flat roof. But based on the recommendation of the pre-purchase survey they contacted the developer of their property. They've shared a document with us which they say includes the developers' replies, which suggested they'd be prepared to carry out repairs and further inspections of both the pitched and flat roof. I consider it was reasonable for them to reach out to the developer in the first instance, as the property was still under construction.*

*Mrs B and Mr P say these repairs were never carried out after they moved in. However, if those repairs to the pitched roof had been carried out (the lifted and cracked slates replaced) I'm not persuaded this would necessarily have led to the inadequate headlap being identified and highlighted to Mrs B and Mr P.*

*I don't consider the findings in the pre-purchase survey outlining damage to the slate tiles were sufficient to give Mrs B and Mr P reasonable cause to conclude there might be a more serious defect to the pitched roof which would later cause damage to their property. It follows I'm not persuaded the prior knowledge exclusion is a reasonable one for AmTrust to rely on in relation to the pitched roof. This is because, at the time the survey was carried out, no damage had been caused by the defect, and the property was still under construction and had yet to be signed off by building control. In other words, it wouldn't amount to knowledge of something that would constitute a valid claim, as required for the exclusion to apply.*

*However, I do consider AmTrust is able to rely on the exclusion in relation to the flat roof. It's clear from the pre-purchase survey that there were concerns and recommendations issued by Mrs B and Mr P's surveyor in terms of having the flat roof checked which they don't appear to have followed up on either before or after purchasing the property. So, I'm minded to conclude it's fair for AmTrust to rely on the prior knowledge exclusion in relation to this part of Mrs B and Mr P's claim.*

*As I'm not persuaded it's fair for AmTrust to rely on the prior knowledge exclusion to decline Mrs B and Mr P's claim for the pitched roof, I'm intending them to require AmTrust to consider their claim for damage caused to their property because of this defect, subject to the remaining warranty terms.*

*In terms of the cover provided by the policy, the terms say:*

#### ***"4 Cover***

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

*...*

*3. The necessary and reasonable costs incurred in repairing, replacing or rectifying any part of the **Waterproof Envelope** within the **Housing Unit** as a result of ingress of water caused by a defect in the design, workmanship, material or components or the waterproofing elements of the Housing Unit."*

*Mrs B and Mr P have expressed concern in their correspondence about the cost of having a new roof put on their property. Whilst we can't know the outcome of AmTrust's consideration of their claim, I think it's important to set out here that the warranty only provides cover for damage caused by a defect, not for remedying the defect itself (other than as is necessary to provide a lasting and effective repair of the damage)."*

AmTrust accepted my provisional decision. Mrs B and Mr P accepted my conclusions in relation to the flat roof. They also provided some further comments for me to consider which I've summarised below:

- AmTrust has delayed their case inappropriately and no further delays should be allowed.
- AmTrust should make the repairs set out in their experts' report, which should include replacing the roof given it's well documented it doesn't adhere to building standards.
- The cost of the roof survey should be reimbursed.
- Another Ombudsman made a separate decision against AmTrust and required it to carry out repairs and this direction should be considered here.

### **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 reached the same conclusion as that outlined in my provisional decision. I understand that Mrs B and Mr P want some certainty around the repairs to their roof but I'm unable to provide this. For the reasons set out above, my finding is that AmTrust can't rely on the prior knowledge exclusion to decline their entire claim and should consider the claim for the pitched roof, subject to the remaining warranty terms.

Mr P says AmTrust ought to carry out the repairs set out by his expert in their report because it unfairly declined their claim. However, I'm not going to require AmTrust to take this step at this point. This is because AmTrust needs to consider the defect to the pitched roof subject to the remaining warranty terms. As I noted in my provisional decision, the policy provides cover for *"the necessary and reasonable costs incurred in repairing, replacing or rectifying any part of the **Waterproof Envelope** within the **Housing Unit** as a result of ingress of water caused by a defect in the design, workmanship, material or components or the waterproofing elements of the Housing Unit"*.

And whilst the roofers' report highlights repairs that need to be carried out because of the inadequate headlap, this needs to be considered alongside the cover provided by the warranty, which only provides cover for damage caused by defects, not remedying the defect as I've noted above.

I appreciate to Mrs B and Mr P the other Ombudsman's decision looks like their complaint. But each case turns on its own facts and I'm required to reach a conclusion I consider to be fair and reasonable in the circumstances of this case. Here, I consider a fair outcome to be the direction AmTrust consider the claim for the pitched roof subject to the remaining warranty conditions. And when considering this, AmTrust ought to consider reimbursing Mrs B and Mr P for the cost of their report, if that report leads to repairs being carried out under the warranty. In response to my provisional decision AmTrust said it would arrange to contact Mrs B and Mr P, so it does appear it is taking the steps I'd expect in order to move their claim forward.

If Mrs B and Mr P remain unhappy with AmTrust's continued handling of their claim, they can make a further complaint which can be referred to this Service, subject to the usual considerations.

### **Putting things right**

I require AmTrust International Underwriters DAC to consider Mrs B and Mr P's claim for damage to the pitched roof, subject to the remaining warranty terms.

**My final decision**

My final decision is that I uphold this complaint and require AmTrust International Underwriters DAC to do what I've set out above in the "Putting things right" section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr P to accept or reject my decision before 16 April 2025.

Emma Hawkins

**Ombudsman**