

## **The complaint**

Ms C and Mr R complain that AmTrust Specialty Limited (“AmTrust”) unfairly declined a claim they made under their new homes warranty.

Any reference to AmTrust in this decision includes its appointed agents and representatives.

## **What happened**

In April 2022, Ms C and Mr R made a claim under their new homes warranty, underwritten by AmTrust, for issues with damp and mould growth that they’d first noticed in 2021. The claim form said there was a lack of air circulation and ventilation in the basement, which was causing the damp and mould growth problem.

AmTrust declined the claim on the basis that the policy didn’t cover the issue claimed for. It said in May 2022 that a claim had been made by the previous owner of the property for an issue concerning the lightwell, which was cash settled with the previous owner in March 2021 on the basis that the previous owner would take responsibility for the repairs.

In its claim decline letter dated October 2023, AmTrust also said that the definitions in the policy meant no Major Damage had occurred, as there were no structural concerns to any of the load-bearing elements of the property and no water ingress due to a breach of the Waterproof Envelope.

Ms C and Mr R didn’t accept AmTrust’s decision and made a complaint about the claim decision but also the way in which the claim had been handled and the delays AmTrust had caused. In its response to the complaint, AmTrust said the moisture wasn’t caused by a breach of the waterproof envelope and said this was instead due to a lack of ventilation and a build-up of condensation within the lightwell.

AmTrust also considered its handling of the claim and agreed with Ms C and Mr R that this could’ve been better and that it had caused delays, so it offered Ms C and Mr R £500 compensation for the distress and inconvenience caused.

Ms C and Mr R didn’t accept AmTrust’s response, so they referred their complaint to this service. They said the remediation work for the lightwell would cost significantly more than the compensation offered. Our Investigator considered the complaint and recommended AmTrust reconsider the claim on the basis that the previous claim had been for a different issue in the lightwell, relating to cracked render. Based on the evidence, our Investigator was satisfied that there was a defect within the Waterproof Envelope and Major Damage had occurred as a result of the defect.

AmTrust didn’t agree with our Investigator’s opinion. It reiterated that this wasn’t an ingress of water issue, and the damage had been caused by a lack of ventilation and a build-up of condensation. It said there was no cover for the lightwell as this was not part of the habitable space in the basement. And it said there was no technical requirement for a non-habitable space to be well ventilated, so this fell outside the cover provided by the policy.

Because AmTrust didn't accept our Investigator's recommendations, the complaint has now come to me for an Ombudsman's decision.

### **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 here to every point raised or comment on every piece of evidence Ms C and Mr R and AmTrust have provided. Instead, I've focused on those I consider to be key or central to the issue in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I'm upholding this complaint. I'll explain why.

As Ms C and Mr R made their claim between years 3-10 of the warranty, this was considered under the Structural Insurance Period.

Mr R and Ms C's warranty says, in relation to the structural insurance provided, that it covers:

*"The cost of complete or partial rebuilding or rectifying work to the Housing Unit which has been affected by Major Damage."*

The definition of Major Damage in the policy terms is:

*"i. Destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter;*

*ii. A condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter;*

*In either case caused by a defect in the design, workmanship, materials, or components of:*

- The Structure; or*
- The waterproofing elements of the Waterproof Envelope*

Waterproof Envelope is defined in the policy terms as:

*"the basement, ground floors, external walls, roofs, skylights, windows, and doors of a Housing Unit."*

I've considered firstly whether there was a defect within the Waterproof Envelope and in order to do so, I've looked carefully at the expert evidence. This includes a report dated 8 December 2022 which confirms that *"the overriding issue appears to be one of elevated humidity and severe condensation, creating a micro environment due to the space not being fully external and open to the elements"*.

AmTrust says there was no water penetration during named storm events which indicated that there wasn't an issue with water ingress. I agree with that. The reports point to a lack of ventilation being the predominant cause of the excess moisture and mould growth.

Whilst I agree with what AmTrust has said in relation to there not being any obvious water ingress causing the problem, the report goes on to say that the best course of action would

include reviewing the existing ventilation which at present consists of small holes drilled in the frame of the glazing structure. It also mentions lifting sections of decking to reveal the outer frame and ventilation arrangement, checking seals around manhole structures and frames within the floor, and potentially replacing glass units should they not be properly insulated. All of the areas mentioned could reasonably be described as waterproofing elements of the lightwell.

The glazing element rests above the basement lightwell, and this is described in the report as a structural box accessible from the basement bedroom, which is capped over with a walk on glazing unit.

As the surveyor suggests the drilled holes are an inadequate method of ventilating the lightwell, I'm satisfied this shows there is a defect in the waterproofing elements of the waterproof envelope, as defined by the policy. I say this because the definition of waterproof envelope includes roofs, skylights and windows. And the frame of the glazing structure is clearly a part of the waterproofing element of the waterproof envelope, as it supports the glass and is sealed to prevent water ingress. So because I'm persuaded that there is a defect in the ventilation method used in the frame, this means there is consequently a defect in one of the waterproofing elements of the waterproof envelope.

AmTrust has rightly said this is not a water ingress issue. But I don't think it would need to be, to be covered by the warranty. The definition of waterproof envelope doesn't specify – nor is it specified anywhere else in the policy – that there would need to be evidence of water ingress in order for a claim in relation to the waterproof envelope to be accepted. So whilst AmTrust may have intended for this section of the policy to only cover water ingress issues, that intention is not clearly expressed by its chosen policy wording. So I don't think it would be fair for it to decline the claim on this basis.

The June 2023 report also mentions that there is potentially a lack of waterproofing between the glazing and the blockwork upstands. So overall, I'm satisfied that there is a defect in one of the parts of the property listed in the policy.

I've seen the video provided by Ms C and Mr R and the photos in the specialist's report which clearly show mould and water staining which I'm satisfied is physical damage caused by the defect and therefore falls within the definition of Major Damage.

AmTrust has said there has been a claim for this previously and the previous owner was responsible for the effectiveness of the repair. But as our Investigator mentioned, the previous claim was for a different issue. The settlement covered decking removal, damp proofing and fixing of render – which aren't related to the lack of air circulation and ventilation. So I don't think the previous claim is relevant to this complaint.

AmTrust has also said the lightwell does not form part of the habitable property and should not therefore be considered part of the basement. But it hasn't explained why a claim for a defect in the same area was considered for the previous owners. And the definition of Housing Unit includes all non-load bearing elements and fixtures and fittings for which the Policyholder is responsible, and doesn't specify that these have to be habitable parts of the property only. So I'm not persuaded that this is a fair reason to decline the claim.

I've also considered compensation for delays and the handling of the claim. The insurance industry regulator, the Financial Conduct Authority (FCA), has set out rules and guidance about how insurers should handle claims. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS). ICOBS 8.1 says an insurer must handle claims promptly and fairly, provide reasonable guidance to help a policyholder make a claim, give appropriate information on its progress and not unreasonably reject a claim. They should

also settle claims promptly once settlement terms are agreed. I've kept this all in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

AmTrust offered £500 for its handling of the claim. I agree that the claim handling could've been handled better here and that there were avoidable delays. Differing reasons were given for AmTrust declining the claim and this caused Ms C and Mr R confusion and frustration. AmTrust also hasn't been able to explain, either to Ms C and Mr R or to this service, why a previous claim for the lightwell area was accepted and a settlement was paid out to the previous owners when it told Ms C and Mr R that the lightwell wasn't covered by the warranty. Overall, for the distress and inconvenience caused to Ms C and Mr R, I'm satisfied that £500 is fair and reasonable in the circumstances, due to the time taken to deal with the complaint and the conflicting messages given, which impacted Ms C and Mr R for over a year. This is also in line with what I would've awarded had no offer been made.

For the reasons I've explained, I'm satisfied that the claim has been declined unfairly and should be reconsidered under the remaining warranty terms and so I'm upholding this complaint. And I'll require AmTrust to pay Ms C and Mr R the £500 compensation it offered, if it has not already done so.

### **Putting things right**

AmTrust Specialty Limited should reconsider Ms C and Mr R's claim in line with the remaining terms and conditions of their warranty and pay them £500 compensation for distress and inconvenience if it has not already paid this.

### **My final decision**

My final decision is that I uphold this complaint and I direct AmTrust Specialty Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr R to accept or reject my decision before 24 April 2025.

Ifrah Malik  
**Ombudsman**