

The complaint

Mr and Mrs B have complained about Amtrust Europe Limited because it has declined their claim made under their building warranty.

What happened

Mr and Mrs B bought a new build property which had a ten-year building warranty provided by Amtrust. The warranty offers cover for defects in the first two years, or for damage caused by a defect in years three to ten.

In year four of the cover Mr and Mrs B noticed cracking around some corner stones, or quoins, on the exterior of their home. They noted several quoins were moving outwards. They discovered several of their neighbours had had a similar problem in the first two years of their warranties, with the builder having resolved the issue by removing each quoin and tying it to the inner leaf blockwork. Mr and Mrs B made a claim to Amtrust.

Amtrust declined the claim. Across two letters it set out the relevant policy wording to show why it felt the claim reasonably wasn't covered. Even though Mr and Mrs B provided an engineer's report and complained about the decline, Amtrust wasn't minded to change its view on the claim. Mr and Mrs B complained to the Financial Ombudsman Service.

Our Investigator noted the engineer's report. He felt that Mr and Mrs B had shown there was a defect which Amtrust was reasonably responsible for resolving. He said it should settle the claim, reimburse the cost of the engineer's report and pay £150 compensation.

Mr and Mrs B were happy with the outcome. Amtrust said it disagreed with it. The complaint was referred to me for an Ombudsman's decision.

I wasn't persuaded that the complaint should be upheld. It seemed to me that they were claiming, outside of the period granted by the warranty for cover for resolving defects, for resolving a defect (the quoins moving because they aren't tied in). I felt that was really the issue at the heart of Amtrust's decline of the claim – although Amtrust hadn't, in my view, expressed that very clearly. I issued a provisional decision to explain my views to both parties. In it I said:

“As I noted above, and Amtrust noted in its decline and final response letters, the warranty provided by Amtrust gives certain cover for certain things at certain times. Under the warranty Amtrust will be responsible for resolving defects in the build of the property – but only where the defect is discovered and notified to the developer within the defects period and to it within the first six months thereafter. The defects period for Mr and Mrs B's warranty ended in July 2022. It was only in 2024 when Mr and Mrs B noticed a problem at their home and made their claim.

Unfortunately for Mr and Mrs B then, that means that the period during which Amtrust was liable for resolving a defect at their home has passed. In the subsequent years of the policy Amtrust is not responsible, with the exception of chimneys and flues, for resolving any actual defect. Rather its liability changes to that of resolving the consequences of a defect.

The cover in these later years is explained at section 3.3 of the policy – the structural insurance period. The policy says Amtrust will be liable for the cost of rebuild or rectification work to a part of the home which has been affected by major damage.

The policy defines major damage as:

“Either:

- a) Destruction of or physical damage to any portion of the Home for which a Certificate of Insurance has been issued, caused by a Defect in the design, workmanship, materials or components of:
 - i. the Structure; or*
 - ii. the waterproofing elements of the External Envelope; and which is first discovered during the Structural Insurance Period.**

Or:

- b) A condition requiring immediate remedial action to prevent actual destruction of, or major physical damage to, any portion of the Home for which a Certificate of Insurance has been issued, caused by a Defect in the design, workmanship, materials or components of:
 - i. the Structure; or*
 - ii. the waterproofing elements of the External Envelope; and which is first discovered during the Structural Insurance Period.”**

In respect of this definition, Amtrust says the structural integrity of the home and its watertightness, have not been compromised by the quoins moving. Mr and Mrs B clearly disagree with that. However, I think this is where the lack of clarity from Amtrust has played a part. Given the cover in place, Amtrust has not been talking about the same issue which has been concerning Mr and Mrs B. Its focus has been on major damage whereas theirs has been on the quoins not being tied in, which they believe is a defect and which they'd like Amtrust to resolve.

The quoins themselves, with the exception of one I'll discuss later, are not destroyed or showing signs of physical damage. If they continue to move, they might cause a problem with the structural stability of the home. The movement might, eventually, allow water ingress to the property to occur. The condition of movement might progress to a point where immediate action is required to prevent damage occurring. But there is no suggestion that any of this was occurring at the point the claim was made. And Amtrust, I think, focussed its answer on whether or not the alleged defect – the moving quoins – was causing major damage. Effectively, if the movement of the quoins (the alleged defect) had caused major damage, Amtrust would be responsible for the costs of resolving that major damage.

I've reviewed Mr and Mrs B's engineer's report to see if it is felt that damage is occurring as a result of the quoins not being tied.

The engineer didn't identify any issues internally. So it seems that any movement of the quoins has not so far affected the structure in such a way that internal damage is being caused. Nor does it seem water ingress is occurring. There is nothing to suggest damage will be caused imminently if movement is not arrested.

Externally cracking to the mortar around the quoins was noted. With one quoin also showing a significant crack to its face. There was no suggestion that any major physical damage would occur imminently if movement continued.

The engineer attributes the mortar cracking to the movement of the quoins, caused by a lack of tying in. I'd note here that Amtrust doesn't agree the quoins are not tied in – but that

argument goes to the heart of whether or not there is a defect. For the moment the issue is whether there is major damage.

Referring back to the definition of major damage set out above, the important factor is destruction or physical damage. I think it's fair to say that mortar which is cracked is physically damaged. I also think it's fair to say that mortar is a part of the walls and so is part of the structure of the home. So it seems that the cracked mortar, assuming it's a consequence of the alleged defect with the fixing of the quoins, would fall for cover.

However, regarding cracked mortar, Amtrust has referred to an exclusion to cover. The exclusion says cracking of mortar "which does not impair the structural stability or weather tightness [of] the home" is not covered. Mr and Mrs B's engineer has not suggested the cracked mortar is affecting the structural stability or weathertightness of the home. So it seems that the major damage to the mortar is reasonably excluded by the policy.

Regarding the quoin with the cracked face, Amtrust, during the complaint process, has said this is something, which, in theory, it would offer cover for – with it thinking this individual stone has been damaged in isolation and not as the result of any movement. However, it says that, in this instance, it would not accept liability for resolving this issue because the cost of doing so would be less than the policy excess. Amtrust hasn't shown any evidence of the likely cost. However, I'm mindful that this cracked quoin did not form the basis of Mr and Mrs B's claim or complaint. With their claim and subsequent complaint focussing on the quoins moving because they are not tied. So I won't comment on this singular damaged quoin further. If Mr and Mrs B want to claim for this one stone they can contact Amtrust – but they may want to bear in mind what Amtrust has said already about the cost of repair.

I am aware that Mr and Mrs B raised a query with Amtrust about the policy excess. It seems Amtrust did not answer this issue in its final response letter. Amtrust had told Mr and Mrs B that the excess is index linked. Mr and Mrs B said they thought Amtrust was confused in this respect – with index linking likely only applying to the policy limit.

I can understand why Mr and Mrs B might think the index linking would likely apply only to the policy limit. However, the policy wording does say the policy excess is subject to index linking too. So I think Amtrust acted fairly when it said the excess was subject to index linking.

So the only damage identified by Mr and Mrs B's engineer, which might be considered as major damage under the policy, caused by movement of the quoins, was the cracked mortar. I've found that the mortar cracking was reasonably excluded. Further, I've found that there was no indication that immediate remedial work was required. I've also explained why Amtrust reasonably had no liability for resolving defects at the point the claim was made. As such I think Amtrust has reached a fair and reasonable conclusion in declining Mr and Mrs B's claim. Which means I can't reasonably uphold the complaint that Amtrust acted unfairly."

Amtrust, in reply, said it had no comment to make. Mr and Mrs B were, understandably disappointed by my findings.

Mr and Mrs B said they only received the full policy wording once they asked for it in around February 2023. Prior to this they had to rely on a few explanatory documents they'd received when they bought their home. They said this meant they had no certainty of contract and Amtrust had breached the Consumer Duty. Noting also the wording seemed unclear, such that the Investigator had interpreted it differently to the Ombudsman.

They said this was definitely a defect, with cover under the policy starting after two years, clearly separately to the defects insurance period. They said the first two years of the policy were just for the developer to resolve snagging issues – with their defect being something major, with potential for harm (one of the stones in a neighbouring property had fallen, meaning theirs likely will too, at some point).

Mr and Mrs B said that when they claimed, Amtrust had asked them to find a surveyor, at a significant cost to them. This gave an implied expectation the claim would be accepted. They said it's not fair they had to pay, that Amtrust never visited their home itself to look at the damage. They believe they've shown the cover under b) i and b) ii should apply, and definitely, as the quoins continue to move, watertightness and stability will become issues. The warranty, they believe, is surely designed to respond in this situation.

In conclusion Mr and Mrs B said they had understood a warranty like this would respond to any issue of latent damage and they would not have bought their home without such protection. They said that if it is felt the wording of the cover doesn't support their claim, which they contest, Amtrust should be made to cover it because of poor communication of terms and misrepresenting the cover. In their view the warranty, if it does not cover this instance, is not fit for purpose.

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.

I understand how frustrating this is for Mr and Mrs B. But I can assure them that I've read and considered all of the available evidence and arguments when considering their complaint. I've also taken into account relevant legislation and guidance. However, ours is an informal Service and we don't reference all of that detail in our decisions. Instead, whilst thinking about what is fair and reasonable, we focus our findings on those points most relevant to the heart of the complaint and which best explain the key reasons for our outcome.

I realise that the view initially put forward by our Investigator has ultimately caused upset for Mr and Mrs B because it gave them hope that Amtrust would need to resolve this problem they have with their home. As a Service we strive for consistency – but there are times when an Ombudsman will take a different view to that set out by our Investigator. When that happens, the Ombudsman will issue a provisional decision, as I have here. But a view on a complaint changing like this, even when part of the complaint is about application of policy wording, does not mean the wording itself is unclear. I'm satisfied it is clear.

A warranty like this is not sold to a homeowner. Rather Amtrust has an arrangement with the developer and the warranty then is attached to the sale of the house. So whilst it's unfortunate that Mr and Mrs B did not receive the full policy documents and did not, therefore, understand how the warranty works, during that first two-year period – that is not something I could blame Amtrust for.

In any event, and whilst I note their comments regarding the Consumer Duty (legislation which applies from July 2023 and can't be applied retrospectively), the warranty period began in 2020, with the defects period ending in 2022. It was then only in 2024 that they noticed the moving quoins. So they weren't prevented from making the claim during the defects period because they did not have the policy wording – rather they weren't aware of the issue until after the defects period had ended.

I know Mr and Mrs B think that the 'defects period' really only seeks to offer cover for minor issues. But it's worth noting here that the warranty doesn't set out to offer cover for different kinds of defects at different times. Rather the warranty will only respond to resolving defects in the first two years – with primary responsibility for doing so during that time lying with the developer. Which is why the warrantyholder is encouraged to contact the developer first during that period, with Amtrust becoming involved as an insurer only in certain circumstances. As I've explained, after two-years, the warranty doesn't place any liability on Amtrust for resolving defects (excepting for chimneys and flues) – only for resolving damage caused by defects.

I can see why Mr and Mrs B might think that b) i and b) ii would apply here. I've set that wording out provisionally and won't repeat it in full again. But what Mr and Mrs B have said is that they think it applies because it promises *"that immediate remedial action will be made to PREVENT in its terminology future destruction or major damage"*. Rather the warranty looks to cover (my emphasis): *"A condition requiring immediate remedial action to prevent actual destruction of, or major physical damage to..."*. So, only if the situation requires immediate action to prevent harm. And I said provisionally that the available evidence didn't suggest immediate action was required here.

It isn't unusual that an initial claim handler won't say whether or not there is a bar to cover. Rather they will follow the insurer's procedures for claims. In this case that meant asking Mr and Mrs B to obtain a report on the problem. The details of that report were then reviewed by Amtrust when considering the claim, with Amtrust concluding it did not need to view the property itself. I can see why that is frustrating for Mr and Mrs B. But I have found that Amtrust's decline, in this instance, was fair and reasonable.

I appreciate that Mr and Mrs B thought they had bought a home which came with the added protection of a warranty that would cover them if they had any problems. I can assure them that they do have a warranty which does offer them some protection – that just isn't quite as broad and all encompassing as they believed it to be. If, as they suspect will happen, the quoins continue to move and damage is caused, or immediate action is required to prevent harm, then they can make a claim to Amtrust. But, in the circumstances as they existed at the point this claim was made, I'm satisfied that Amtrust's decline under the warranty wording was fair and reasonable, and I've found no other grounds which might give me cause to think Amtrust should be covering this claim.

With regret for the further disappointment I know this will cause Mr and Mrs B, having reviewed their comments, made in reply to my provisional findings, my view on the complaint has not changed. As such, my provisional findings, along with my comments here, are now those of this, my final decision.

My final decision

I don't uphold this complaint. I don't make any award against Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 17 March 2025.

Fiona Robinson
Ombudsman