

## **The complaint**

H has complained about the fees charged by Ark Insurance Group Limited ('Ark') when it cancelled H's warranty.

## **What happened**

In May 2020, H accepted a quotation provided by Ark as Scheme Administrator for a Residential New Build Latent Defects Insurance Policy (the 'warranty'). At that time, H paid the premium and other charges included in the quotation.

In October 2023, Ark informed H that it was withdrawing the warranty (the 'cancellation') and would retain an administration fee of £48,000 (the 'cancellation fee').

H complained to Ark, on 5 January 2024, about the cancellation and retention of a cancellation fee which equated to 20% of the premium. H said that the fee was unreasonable and excessive, and it was unfair of Ark to withdraw the warranty before H had been able to take any benefit under it.

On 2 March 2024, Ark sent H its final response on the complaint. Ark explained it was satisfied that the cancellation was in accordance with terms set out prior to H's acceptance of the policy. Ark also said that the cancellation charge was based on a number of factors including the time costs to administer the warranty and the level of senior oversight required.

Unhappy with how Ark had responded to its complaint, H referred it to this Service. One of our investigators looked into what had happened and issued a view on 16 January 2025 explaining why part of the complaint was in our jurisdiction to consider. She confirmed that H did meet our eligibility criteria, so we could consider its complaint about the cancellation and fee charged by Ark. However, as the charging of other fees that H was unhappy about were not connected with a regulated activity, our investigator concluded that we had no power to consider those parts of H's complaint.

The parties accepted our investigator's jurisdiction conclusions. She then completed her investigation into the cancellation and the charging of the cancellation fee by Ark that H had complained about and issued a view not upholding the complaint on 28 January 2025. In summary, our investigator concluded that, having considered Ark's justification for the £48,000 cancellation fee, it had been fairly charged in the circumstances.

H didn't accept our investigator's conclusions on the complaint. It said (among other things) that:

- the cancellation fee was arbitrary and comprised 20% of the premium;
- the cancellation costs should have no relation to the premium paid;
- Ark had the full use of the warranty cash of £240,000 without taking on any risk (as the warranty never came into effect) and had the benefit of interest on that for 41 months;

- the history of the building was widely known and the fact it had started in 2007 cannot have any bearing on a warranty policy that would not have been in force until completion;
- the complexity of a build process has no bearing on a warranty post completion as long as building control and building regulation requirements have been complied with;
- as Ark unilaterally cancelled the contract without good reason, H should be compensated for being wrongfully penalised;
- given H had been established to complete the project for the benefit of buyers in a 'not-for-profit' rescue, as such, the cancellation fee was essentially being taken out of the purchaser's personal savings; and
- the schedule of information requests and defects H provided included a multitude of minor and non-relevant points that were raised by the technical architect, demonstrating that Ark was never prepared to fulfil the insurance contract.

After considering H's responses to the view, our investigator confirmed that H's submissions and further information provided had not led her to come to a different conclusion on the complaint.

H didn't accept our investigator's conclusion and requested an ombudsman's decision on the complaint.

### **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 come to the same conclusion as our investigator. I will explain why.

The first issue I have considered is whether it was fair for Ark, as Scheme Administrator, to withdraw the offer of a warranty for the reasons it did.

Ark explained in the FRL that part of the insurer's strict quotation conditions included that Ark's Senior Underwriter was to oversee the risk throughout the duration of the contract. An inspection report was issued on 1 June 2021, in which the Surveyor commented that the missing historical information would make it challenging for insurers to assess the risk. Ark's Senior Underwriter warned H, on 2 June 2021 that if numerous queries and outstanding information requests were not satisfactorily dealt with promptly, it is unlikely that Ark would be able to continue with the project.

The FRL provided a detailed timeline of the communications between Ark and H up to 12 October 2023, when Ark decided it could not continue with the risk, and promptly returned the balance of the premium to H's broker so alternative insurance could be obtained.

The quotation document dated 4 May 2020, under the heading the '*Scheme Administrator's Right to Cancel*' said: '*In the event that the policy does not reach the stage of the Insurance Period Certificate being issued for any reason, such as the Scheme Administrator deciding the project does not pose a normal risk to the insurer, any return of premium is solely at the Scheme Administrator's discretion*'.

In addition, the quotation document explained that after each site audit the Scheme Administrators would inform H's insurance broker of any items which were highlighted as

unsatisfactory in the form of a remediation notice. It said that in such circumstances, the following may occur:

- Cover will be offered excluding the defects highlighted in the report;
- At the insurer's sole discretion; the defects may be remediated with specific evidence being provided to confirm the defects have been remediated, or by arranging an additional audit inspection at your expense; or
- At the insurer's sole discretion; the residential property may be deemed as an unacceptable risk to the insurer and result in not proceeding to cover inception.

Ark said that after it had been made aware that it had been given an incorrect date of construction for the building in the insurance proposal, it had agreed to continue on with the risk, strictly on the basis that the historic structural engineers' calculations were provided. Ark explained that the contract was cancelled as a result of H's failure to provide those calculations.

However, H didn't agree that the cancellation was fair or in accordance with terms set out prior to H's acceptance of the policy. H said the schedule of information requests and defects it provided in response to the investigator's view included a multitude of minor and non-relevant points that were raised by the technical architect, demonstrating that Ark was never prepared to fulfil the insurance contract.

I have considered the schedule of information requests and defects provided by H. I note that it contained 36 information requests and included 104 defects. I accept that some of the defects included in the schedule do appear to be minor, for example:

- D1-027 – seals to doors are missing
- DI-036 – missing washers to balustrade fixings in some locations
- D3-014 – smashed pane [sic] of glass.

However, other defects appear to be indicative of more serious concerns, for example:

- DI-002 – Significant water ingress into the basement levels
- D3-010 – plate connections to structural steel beam appear distorted or not tightened
- D3-015 – No movement joints were observed in the blockwork walls, some of which were longer than 6m

So, while I've thought about what H has said, I think that Ark had reasonable grounds to withdraw the warranty and was permitted to do so in the circumstances, by the terms agreed between the parties. Taking everything into account, I'm satisfied that Ark didn't act unreasonably in cancelling the contract and withdrawing its offer of a warranty.

I have next considered the issue of the refund. I can see that there are some cancellation terms within the documents. The quotation document dated 4 May 2020 said that following cancellation, any return of the premium is at the Scheme Administrator's discretion.

The quotation document didn't specify an amount of cancellation fee that Ark could charge on withdrawing the warranty. So, under the terms of the agreement between the parties, Ark was not prohibited from deducting a fee from the premium.

In response to comments made by H when replying to the view, Ark said that if the cancellation had been processed on a pro-rata basis (for the 1280 days it was involved) the fee would have been significantly more, almost double what it retained.

In its submissions to this Service, Ark also said that it could have voided the policy and retained all of the premium in response to H's failure to make a fair presentation of the risk in the insurance proposal, which said the building had been constructed in 2016.

However, in both of those circumstances I would still need to consider whether Ark has treated its customer, H, fairly. The starting point is that where administration fees are charged, they should fairly reflect the work completed by the business.

H doesn't accept that the work Ark has completed in relation to the warranty justifies a fee of £48,000. In H's view, all that Ark did was to have its Senior Underwriter review approximately 200 emails, which wouldn't equate to £48,000 of time.

However, Ark says that H accepted survey fees of £45,000 and the level and amount of technical services provided by the Surveyor were equivalent to those provided by the Senior Underwriter.

In addition, Ark said that the administration of a complex commercial risk required significant time and resources in respect of senior underwriting policy management, negotiations and subsequent renegotiations of terms and acceptance with the insurer. It also involved carrying out detailed analysis and review of complex data, analysis of detailed and lengthy survey audit inspection records and technical documents including engineers' reports throughout the period. Ark also had to ensure H's compliance with the subjectivities by reporting on and collecting follow up information from H's broker. Ark also highlighted that the development was originally declared as scheduled to be completed within 12 weeks. But it continued for over three years and generated a significant amount of additional senior underwriting resource requirements.

In response to H's broker's request for an explanation of the cancellation charge, Ark explained:

- The risk required protracted negotiations with insurers to offer terms;
- The Senior Underwriter was specifically required by insurers to oversee the project throughout;
- Cover was incepted in May 2020 and Ark had been working on this case for 3 and ½ years involving:
  - c.200 emails read, written and reviewed;
  - large number of telephone calls with the broker, insurer and surveyors;
  - Review of all survey reports and remediation trackers; and
  - Collation and review of a large number of technical documents.

Taking account of H's concerns, and Ark's justification of the £48,000 fee, I have concluded that Ark has acted fairly and reasonably in retaining that fee to cover the work it has completed. I therefore do not uphold this complaint.

**My final decision**

For the reasons given, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 5 June 2025.

Carolyn Harwood  
**Ombudsman**