

The complaint

Mrs M and Mr M complain that AmTrust International Underwriters DAC (“AmTrust”) unfairly declined a claim they made under their new home warranty.

What happened

Mr and Mrs M purchased a newly built property which was completed in 2016 and came with a 10-year building warranty. Some years later, they discovered water staining to their ceiling. They contacted the roofing company which had manufactured the membrane for their roof and had provided a guarantee, but following an inspection, the roofing company concluded that its membrane hadn’t failed, and that the issue was condensation-related.

In 2023, Mr and Mrs M made a claim under their AmTrust warranty. AmTrust considered the claim under the Structural Insurance Period section of the policy. But it declined the claim on the basis that the policy excluded damage caused by condensation unless it was caused by an ingress of water into the roof. AmTrust said, as there wasn’t evidence of an ingress of water caused by a defect in the roof, the exclusion applied and there was no cover available.

Mr and Mrs M commissioned their own expert report, together with a neighbour who had noted similar issues at their property. That report was followed up with a supplementary letter from the expert, which said the humidity exclusion hadn’t been applied correctly, because humidity constituted a concentration of water vapour in the air, and this had directly ingressed because of the defects – thus meeting the requirements for the exclusion not to apply. AmTrust responded to the report, saying the condensation was not the result of water ingress into the roof void. So it maintained its position that the exclusion was applicable.

Mr and Mrs M made a complaint about the claim decision. In its response to the complaint, AmTrust said it hadn’t declined the claim unreasonably. It reiterated that the damage had been caused by interstitial condensation within the roof which hadn’t been caused by water ingress and was therefore excluded from cover.

Mr and Mrs M didn’t accept AmTrust’s response, so they referred their complaint to the Financial Ombudsman Service. Our Investigator considered the complaint, but concluded that AmTrust hadn’t applied the exclusion unfairly or unreasonably. As Mr and Mrs M didn’t agree with our Investigator’s conclusions, the complaint has now been referred 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 Mr M, Mrs M and AmTrust have provided. Instead, I’ve focused on those I consider to be central to the issues in dispute. But I would like to reassure both parties that I have considered everything submitted. And having done so, I’m not

upholding this complaint. I'll explain why.

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 and give appropriate information on its progress; and not unreasonably reject a claim. I've kept this in mind while considering this complaint together with what I consider to be fair and reasonable in all the circumstances.

The terms of Mr and Mrs M's Build-Zone Warranty

Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy and isn't excluded from cover.

In Mr and Mrs M's policy, the following cover is provided in years 3-10 (the Structural Insurance Period) of the warranty, during which the claim was made:

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

- 1. The cost of complete or partial rebuilding or rectifying work to the Housing Unit which has been affected by Major Damage provided always that the liability of the Underwriter does not exceed the reasonable cost of rebuilding each Housing Unit to its original specification.*
- 2. The cost of repairing or making good any Defects in the chimneys and flues of the Housing Unit causing an imminent danger to health and safety of occupants."*

The Housing Unit is defined as:

"The property described in the Certificate of Insurance comprising:

- The Structure;*
- All non-load bearing elements and fixtures and fitting for which the Policyholder is responsible;*
- Any Common Parts retaining or boundary walls forming part of or providing support to the Structure;*
- Any path or roadway specifically providing access for the disabled and for which the policyholder is responsible;*
- The below-ground drainage system within the perimeter of such property, serving the Housing Unit and for which the Policyholder is responsible;*
- Any garage or other permanent out-building".*

Structure is defined as:

"The following elements comprising the Structure of the Housing Unit:

- Foundations;*
- Load-bearing parts of floors, staircases and associated guard rails, walls and roofs, together with load-bearing retaining walls necessary for stability;*
- Roof covering*
- Any external finishing surface (including rendering) necessary for the water-tightness*

- of the Waterproof Envelope;*
- *Floor decking and screeds, where these fail to support normal loads;*
- *Wet applied plaster*
- *Multiple glazed panels to external windows and doors.”*

And Major Damage is defined as:

*“Any Defect in the design, workmanship, materials or components of the;
Structure;*

Or

Waterproofing component of the Waterproof Envelope;

Or

The below-ground drainage system within the perimeter of such property, serving the Housing Unit and for which the Policyholder is responsible;

Affecting or causing destruction of or physical damage to the Housing Unit for which a Certificate of Approval has been issued by the Site Audit Surveyor and which is first discovered during the Period of Insurance.

and/or

Causing a condition requiring immediate remedial action to prevent actual destruction or physical damage to the Housing Unit for which a Certificate of Approval has been issued by the Site Audit Surveyor and which is first discovered during the Period of Insurance.

For the purpose of this Policy the definition of Major Damage is deemed to include any physical loss, destruction or damage caused by contamination or pollution as a direct consequence of a Defect in the design, workmanship materials of the Structure of the Housing Unit.”

And the Waterproof Envelope is defined as *“the Habitable Area of Basement level(s) ground floors, external walls, roofs, skylights, windows, doors, of a Housing Unit.”*

In addition to the wear and tear exclusion in the policy which AmTrust has referred to, the main exclusion AmTrust has relied on says:

“The Insurer shall not be liable to the Policyholder for any:

Humidity

Loss or damage caused by or in consequent upon humidity in a Housing Unit that is not a direct result of the ingress of water caused by a Defect in the design, workmanship, materials and components of the waterproofing elements of the Waterproof Envelope of the Housing Unit”.

Has AmTrust applied the humidity exclusion fairly?

When making a claim on an insurance policy, it is for the insured – so in this case Mr and Mrs M – to demonstrate they’ve suffered a loss covered by the policy. If they can do so, then AmTrust will need to accept the claim unless it can show it can fairly rely on a valid exclusion to decline it.

The report provided by Mr and Mrs M mentions that a valid claim may exist in accordance with Section 5.2 of the warranty, which covers repairs if there is a present or imminent danger to the physical health and safety of the occupants of the property, because of a failure to comply with Building Regulations.

But whilst it's not in dispute that there is a defect in the construction of the property, the report doesn't refer to evidence of a present or imminent danger; all the evidence points to staining on the ceiling, but not a current or impending risk to the safety of the occupants. It's for Mr and Mrs M to demonstrate that there is an insured risk, to show they have a valid claim, and I don't consider they've done this.

Mr and Mrs M have also pointed to other parts of the policy – for example, the policy's coverage of damage caused by contamination or pollution as a direct result of a defect. Some of these aren't defined terms, so bearing in mind the everyday meaning of "contamination" and "pollution", I'm not satisfied that the policyholders have shown there is a valid claim here either.

But in fairness to Mr and Mrs M, and for the sake of completeness, I've proceeded on the basis that a valid claim exists. However, I'm afraid that even if it did, I don't consider the policy would provide cover, as I'm not satisfied AmTrust has applied the humidity exclusion, which applies to all sections of the policy, unfairly. I'll explain why, with reference to the key evidence I've relied on in this case.

Mr and Mrs M first arranged an inspection by their roofing company. Its report concluded that there hadn't been a failure of the membrane or an installation error – and that the damage was caused by condensation, which had resulted in deterioration from the inside.

The report also determined: *"There was also no evidence seen of damage to the roof membrane and it appears to be performing to its intended function.... The level of degradation evident in the plywood deck appears to be consistent with potential condensation issue... It's possible that the build up of condensation internally has taken a long period of time (since 2015) to reach a level where it has now appeared on the ceiling... Had this been a workmanship issue we could reasonably expect to have seen it appear much sooner after installation."*

The report is sufficiently detailed, with images to support the commentary, so I'm satisfied it's reliable. And it confirms that the condensation problem was not caused by water ingress.

The Build-Zone Structural Warranty Preliminary Report dated 13 November 2024 was produced following AmTrust's instructions and an inspection. It said the following:

"Here we are considering condensation due to the defective workmanship due the Vapour Control Layer not being installed and due to a lack [of] cross ventilation in the construction of the flat roof.

The humidity is the result of a poor construction but not due to water ingress occurring.

The Policy Exclusion pertaining to Humidity, and to a lesser degree Wear and Tear is applicable and this claim is therefore excluded under the Policy."

The Chartered Building Surveyor's Report dated 16 February 2024, which was commissioned by Mr and Mrs M, with their neighbours, together with a supplementary letter from the expert, concluded that the water staining and damage was caused by the lack of vapour barrier or vapour control layer on the warm side of the insulation. This rendered

the ventilation of the cold deck roof ineffective. The subsequent letter explained:

- The damage was the result of a failure of, or defect in, the construction as there was no vapour control layer on the warm side of the insulation.
- The purpose of ventilation is to disperse water vapour that ingresses the roof void. As humidity is a measure of water vapour in the air, the absence of a vapour barrier had permitted water to directly ingress the roof structure, as water vapour.
- The humidity exclusion did not therefore apply, as this exclusion states damage caused by humidity was excluded unless not a direct result of water ingress, but the water vapour had directly ingressed because of the defects identified.

Based on the majority of the expert opinions I've considered, I don't think the damage can be said to have occurred as a direct result of water ingress. And I'm satisfied this is what the exclusion refers to when it says "*humidity...that is not a direct result of the ingress of water.*"

The exclusion refers to the humidity itself being a direct result of water ingress – not the overall damage being a result of water ingress. And in this case, the expert opinions all demonstrate that the humidity was caused by the defect (i.e. the lack of vapour barrier and adequate ventilation) – but that the roof itself was watertight. I'm therefore satisfied the exclusion has been applied fairly.

I agree it wouldn't apply if the humidity was caused by water ingress, but that hasn't happened here. I say this because it's clear the roof has remained watertight and the humidity has been caused by a build up of internal condensation. There's no persuasive evidence to show that the humidity is a result of water ingress, rather than the build up of interstitial condensation caused by moisture migration within the building, i.e. the build up of humid air moving around inside the building, coming into contact with the cold surface and forming liquid water condensation.

I appreciate that Mr and Mrs M's expert report argues there is an ingress of water vapour, but even if this were so, this cannot be said to be the main cause of the humidity. The humidity itself has arisen due to the defect in the construction – and as I've said there's no evidence of water ingress through the waterproof envelope as the experts say the roof is watertight.

I've considered the various other arguments raised by Mr and Mrs M, including the following:

- They've said the roof doesn't form part of the Waterproof Envelope and it's only Habitable Areas that do. I'm not persuaded by this interpretation as the term "Habitable Area" is defined in the policy and refers to an area used for residing or sleeping. The term "Basement" is also defined as either being a Habitable Area or non-Habitable Area. In the circumstances, it's clear that the term "Habitable Area" refers only to Basement level, and not to the other areas on the list within the definition of "Waterproof Envelope". This is further supported by the fact that roofs are commonly known to constitute the Waterproof Envelope of a property for the purposes of building insurance policies – this is because roofs, walls, windows and doors are all critical components to ensure the watertightness of a building. So whilst an occupant could use roof space to reside or sleep in, the same can't apply to skylights, windows and walls.
- They've said the cover has been misrepresented. I don't agree with this statement as whilst I accept a customer should expect most structural problems to be covered, a

quick read of the policy terms would make clear that there are limitations to the cover and not all the exclusions can be adequately highlighted in all materials. And generally, it's for the policyholder to read the terms of their warranty to familiarise themselves with what cover the policy provides.

- They've also said the humidity exclusion is an unfair contract term. In addition to what our Investigator has already said about the Build-Zone policy, it's not for me to take a formal view on whether a particular term of an insurance contract is unfair (relevant legislation here includes the Unfair Contract Terms Act 1977). That's a matter for the courts. But I've taken into account the potential for the term to be declared unfair and I think it's unlikely, because it's not an unusual term in insurance contracts and I've not seen sufficient evidence to persuade me that the term would fail a reasonableness test.

Overall, as the evidence demonstrates that the cause of the damage is not a direct result of water ingress due to a defect in the waterproof envelope, I'm satisfied AmTrust has relied fairly on the humidity exclusion here.

It follows, therefore, that whilst I'm sorry to disappoint Mr and Mrs M, I won't require AmTrust to do anything differently in relation to their complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 27 October 2025.

Ifrah Malik
Ombudsman