

## **The complaint**

Ms L and Mr R complain about Amtrust Specialty Limited's handling of their buildings guarantee claim.

All references to Amtrust also include its appointed agents.

## **What happened**

Our service previously considered a complaint regarding Amtrusts' handling of Ms L and Mr R's complaint. My findings focus on events following Amtrust's previous final response in January 2024 up to its final response in September 2024.

Below is intended to be a summary of the events forming this complaint. It isn't therefore a full timeline of every point raised.

- Ms L and Mr R purchased a new home with a warranty provided by Amtrust.
- Ms L and Mr R said they discovered potential issues with the foundations and notified Amtrust.
- They said Amtrust carried out monitoring at the property for around 12 months and concluded that no subsidence had occurred. Following this, Ms L and Mr R said they engaged independent excavations and inspections – for which they incurred costs.
- As there had been no movement or resultant damage, Amtrust said there was no damage arising from a defect, meaning there was no insurable peril covered under the policy.
- Ms L and Mr R said Amtrust commissioned a second inspection from a structural engineer ("A") in February 2025. This report is detailed as a revised second issue. Ms L and Mr R are unhappy the first issue of A's report has not been shared with them.
- Ms L and Mr R have also raised issues with other defects at the property they said remained unresolved. Including issues regarding the roof. Ms L and Mr R said Amtrust had made cash settlement offers for other minor defects but has raised concerns regarding the amounts and that they are inadequate.

Ms L and Mr R also set out the following concerns:

- Failures by Amtrust to adhere to regulatory rules.
- Excessive delays in handling their complaint and their claim.
- Missed deadlines in handling their complaint.
- Backtracking on commitments made - Ms L and Mr R said Amtrust agreed to pay for the independent excavations and inspections but then changed its stance.
- Poor communication and not being kept updated on matters relating to the claim.
- They also felt Amtrust had been inconsistent in offering to repair other defects at the property however not extending this to include the issues with the foundations.
- The issues with the foundations and other issues at the property, have caused emotional distress and the loss of peace of mind. They are also concerned about the

impact this will have on the potential sale of the property – and whether they would need to declare the issues with the foundations. Ms L and Mr R have set out in detail the impact this has had on them.

Amtrust did not initially provide a final response to Ms L and Mr R's complaint, but did provide them with referral rights to our service in August 2024. Following this Ms L and Mr R brought their complaint to our service.

Amtrust later issued a final response letter in September 2024. It acknowledged its communication and handling of the claim had been poor at times, and that this had caused Ms L and Mr R unnecessary distress in recognition of this it offered them £300 compensation.

However, it maintained its decision and reasoning in declining the foundations claim.

#### *Our investigator's view*

Our investigator recommended the complaint be upheld. She said:

- Ms L and Mr R's request to see the 1<sup>st</sup> version of A's report was reasonable. But as the available evidence, including results of monitoring and the conclusions from Amtrust, consistently indicated there was no ongoing or active structural failure occurring at the property, so she didn't feel the 1<sup>st</sup> version of the report was relevant to the outcome she'd reached
- The reports confirmed the foundations did not meet the technical requirements set out by Amtrust, but there was no evidence of any damage resulting from this. So therefore, she was satisfied Amtrust had acted fairly under the terms of the policy.
- She was satisfied Amtrust had made decisions to repair other areas of the property, such as the roof, driveway and render based on their own internal assessment and that these related specifically to works Amtrust itself had carried out – and she would expect it to put right any damage caused while carrying out its own works. However, she wasn't persuaded this meant this should also apply to the issues with the foundations.
- She hadn't seen any evidence that Amtrust agreed to cover further investigation costs regarding the foundations. She said she had seen an email in which Amtrust had informed Ms L and Mr R they would have to cover these costs themselves, which they acknowledged in a reply.
- She felt Amtrust's proposal to assess any deterioration to defects on the roof was fair.
- She also considered Amtrust's failure to provide a final response letter to Ms L and Mr R's complaint. She explained our service cannot consider complaint handling as it isn't a regulated activity, however she had considered the service element as part of her consideration about the handling of the claim itself. In doing so she didn't feel Amtrust's failure to provide a final response had a material impact on Ms L and Mr R or any tangible detriment as it had not obstructed them from bringing their complaint to our service.
- She felt Amtrust's handling of the claim could have been better. She said Ms L and Mr R had to regularly chase for updates and Amtrust failed to keep them informed which she said would have been particularly stressful for Ms L and Mr R regarding the foundations issue. She felt the compensation offered by Amtrust didn't fairly reflect the additional stress and disappointment caused by how the claim had been

handled overall, and the number of months it has taken for Amtrust to reach an outcome, including coming to an agreement about the defect list for the roof and what it would cover. She said this took about six months and clearer communication would have prevented a lot of the distress caused to Ms L and Mr R.

- To put things right she recommended Amtrust increase its compensation offer from £300 to £1,000 as she felt this fairly reflected the distress and inconvenience its action had caused Ms L and Mr R.

Amtrust accepted our investigator's view of the complaint.

Ms L and Mr R didn't agree with our investigator's view of the complaint. They asked for an ombudsman to look at the matter highlighting the following:

- They felt the contents of the first issue of A's report should be viewed by our service.
- They felt the interpretation of the policy regarding resultant damage from a defect was flawed when it came to the foundations issue.
- Amtrust had been inconsistent in what it agreed to settle under the terms of the policy.
- The financial and legal hardship caused by the issue with the foundations.

### **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 Ms L and Mr R feel strongly about what's happened, this is their home and as they have set out in their correspondence to us, is supposed to be their sanctuary. I'm sorry to read of how distressing this has been for them, and they have my natural sympathy.

They've provided detailed submissions in support of their complaint, and I want to assure them I've read and considered these very carefully.

However, I wish to clarify the role of our service. Our service isn't a regulator, or construction experts. I have power to require businesses to compensate for loss or material distress or inconvenience, and to direct a business to act in relation to an individual. My findings focus on what I consider to be the central issues of the complaint.

My role isn't to make a finding on the property's construction. My role is to decide whether Amtrust have acted fairly and reasonably in line with the terms and conditions of the insurance element of the policy. Which is the section our service has the power to consider.

This means I will not be addressing all the points raised. This isn't meant as a discourtesy to Ms L and Mr R or that I haven't considered everything. I have. But the purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by all parties and reach what I think is a fair and reasonable decision based on the facts of the case

I appreciate my decision may come as a disappointment to Ms L and Mr R but I'll explain the reasons for my findings.

### ***The foundations***

- The relevant section of the policy says it will indemnify the policyholder during the relevant period against the cost of repairing, replacing or rectifying any defect and

resultant damage to the home. A defect is defined in the policy as a failure to comply with the functional requirements set out in the warranty provider's technical manual.

- It's not in dispute by either parties that the foundations were not built according to the technical manual. However, for a valid claim, there also needs to be resultant damage arising from the defect. This isn't unusual and is common in warranties of this type.
- Structural reports, and a period of monitoring have been carried out at the property. And I've not seen any evidence or that it has been identified there is any kind of active movement at the property. So, I'm satisfied Amtrust have acted fairly in declining the claim.
- I appreciate Ms L and Mr R's comments about the foundations, and their concerns about what might happen, but I can only look at what *has* happened. And as I'm not persuaded there is any resultant damage, I don't think Amtrust have acted unfairly here.
- I note Ms L and Mr R's question about the foundation measurements and their request for our service to ask Amtrust for a copy of version 1 of A's report. However, I don't feel either of these are relevant to the decision I need to make here. I've not seen any evidence of damage caused by the foundations and this includes reviewing evidence and reports that post-date A's initial report. Amtrust have confirmed it will handle Ms L and Mr A's request for this report as part of an information request.
- I also note the comments Ms L and Mr R have made about inconsistent treatment regarding other defects. Amtrust is entitled to make commercial decisions where it sees fit to settle elements of a claim. This doesn't necessarily mean they should apply this to all elements of any claim. And I don't think it needs to do so here. For the reasons I've already provided, I'm satisfied Amtrust have acted fairly regarding the outcome of the foundations claim.

#### *Reimbursement of costs*

- Ms L and Mr R paid for further investigations and inspections to be carried out. However, I can't see that this has altered the course of the claim. Amtrust have maintained its decision to decline the claim regarding the foundations, and I've set out why I believe this to be fair.
- I can see Ms L and Mr R raised that Amtrust agreed to cover costs they incurred but then backtracked on its decision. I haven't seen any evidence that persuades me of this. I have seen emails between Amtrust and Ms L and Mr R where it confirms that any further investigations, they chose to carry out would be at their own expense. I also see that Ms L and Mr R acknowledged the content of this correspondence.
- Considering what I've set out above, I don't think it reasonable to ask Amtrust to cover these costs.

#### *The roof*

Amtrust set out its position that it would review any defects Ms L and Mr R felt had further deteriorated. Having considered this, I think this is reasonable.

If Mr R and Ms L become aware of any further defects, they should refer this to Amtrust in the first instance.

However, if Ms L and Mr R remain dissatisfied after it has been referred to Amtrust, it may consider a further complaint to our service.

## Complaint handling

- The extent of our powers, as set by the Financial Services and Markets Act 2000, is set out in the dispute resolution section of the regulator's handbook of rules and guidelines. This is commonly referred to as DISP and the handbook can be found online. There are several factors that determine whether we can consider a complaint, ranging from where the activity took place (our territorial jurisdiction) to whether the activity complained about is something we can investigate.
- DISP 2.3.1R says *"The ombudsman can consider a complaint under the Compulsory jurisdiction if it relates to an act or omission by a firm in carrying on one or more of the following activities."* Following that is a list of activities that we can investigate. That means we can only investigate Ms L and Mr R's complaint if the actions of Amtrust in handling the complaint are a regulated or otherwise covered activity.
- Regulated activities are a specified list of activities that the Financial Conduct Authority regulate and authorise financial businesses to carry out. I won't repeat the full list here as it contains many activities. But having considered that list it doesn't include complaint handling. As the activity isn't one the regulator authorises and it isn't an otherwise covered activity under the rules, I can't consider Ms L and Mr R's point about Amtrust breaching FCA timeframes in not providing a final response. However, I have factored this point when considering the service, they've been provided and the impact on the handling of their claim.
- However, having considered this, I'm not persuaded, Ms L and Mr R have been impacted in bringing their complaint to our service by Amtrust not issuing a final response letter prior to September 2024. The key purpose of a final response letter is to provide clarity on a business's position and to confirm the customer's right to refer their complaint to the Financial Ombudsman Service if they remain dissatisfied.
- In this case, Ms L and Mr R were aware of their right to escalate the complaint, Amtrust also provided referral rights to Ms L and Mr R in August 2024. Therefore, I do not believe Ms L and Mr R have been obstructed or prevented from presenting their arguments, providing supporting evidence and ultimately presenting their complaint to our service.

## Claim handling and delays

- While I've set out why I believe Amtrust have fairly declined the claim, I believe the way its decision was reached caused unnecessary distress to Ms L and Mr R.
- At times the claim has been handled poorly by Amtrust. I can see from correspondence it wasn't initially clear to Ms L and Mr R whether the foundation issue would be covered, and they regularly had to attempt to clarify matters and seek updates from Amtrust. Which Amtrust did not respond to consistently.
- Given the severity and the complex technical nature of the issue—I can appreciate why this caused Ms L and Mr R significant worry, which they had also regularly expressed to Amtrust.
- In addition, it took several months to provide a clear answer regarding resolving further issues with the roof, causing further frustration and worry to Ms L and Mr R which could've been prevented by clearer communication,
- Having considered everything available I think Amtrust's actions have caused Ms L and Mr R sustained distress, upset and inconvenience. I think the additional £700 compensation recommended by our Investigator is in the region of what I would direct in the circumstances. So, I think this is fair in recognising the impact to Ms L and Mr R because of Amtrust's actions.

So, for these reasons, I uphold this complaint.

**Putting things right**

To put things right Amtrust should pay Ms L and Mr R a total of £1,000 compensation.

**My final decision**

My final decision is that I uphold Ms L and Mr R's complaint.

To put things right I direct Amtrust Specialty Limited to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr R to accept or reject my decision before 13 June 2025.

Michael Baronti  
**Ombudsman**