

The complaint

Mr and Mrs H have complained that AmTrust Specialty Limited (“AmTrust”) unfairly declined a claim they made under their building warranty.

What happened

In 2021, Mr and Mrs H bought a newly built property which came with a 10-year building warranty, which was underwritten by AmTrust.

In 2022, they contacted AmTrust about defects they’d noticed in their home, which included an issue with the timber frame causing unevenness in the flooring due to the walls being built at different levels, ill-fitted cladding which was falling and causing a serious health and safety risk, and cracks in the garden wall. They’d reported the problems to their developer previously, which had failed to rectify the issues.

AmTrust declined the claim, saying Mr and Mrs H hadn’t contacted it on time, as the policy specified they’d need to contact it within six months of the expiry of the Defects Insurance Period (“DIP”). AmTrust said the developer was responsible for rectifying the problems which had been identified within the first two years of cover – which it said was from 27 March 2020 to 27 March 2022 – even though the purchase wasn’t completed until January 2021. And it said if the developer had failed to carry out the required work, Mr and Mrs H could have referred the matter to AmTrust – but that they would’ve had to do so within six months of when the DIP ended, and by 27 September 2022 at the latest.

Mr and Mrs H considered this unfair, so they made a complaint. They said they bought their property on 29 January 2021, so the DIP should’ve ended two years after that date, on 28 January 2023, which would mean they had told AmTrust about the problems within six months of the end of the DIP when they notified it about the problems in late 2022 and at the start of 2023. They said they were never provided with policy documents or the relevant information about the time limits and would’ve notified AmTrust sooner if they had been.

In its response to their complaint, AmTrust maintained its position to decline the claim but identified some service failings. So it offered Mr and Mrs H £100 compensation for those failings. Mr and Mrs H didn’t agree with AmTrust’s position. So they referred their complaint to the Financial Ombudsman Service.

Our Investigator considered the complaint, but didn’t think it should be upheld. She said the Certificate of Insurance clearly showed the dates relating to the relevant parts of the policy, and the policy documents made it clear when the insurer would need to be notified in order for there to be a valid claim. She said Mr and Mrs H should raise the issue of not receiving their documents with the seller of their policy and that AmTrust wasn’t responsible for this. She concluded AmTrust hadn’t acted unfairly in declining the claim for the reasons it did.

Mr and Mrs H didn’t accept our Investigator’s opinion, and raised a new claim under a different section of their policy – the Structural Insurance Period (“SIP”). But AmTrust said that section of the policy didn’t provide cover as the issues had first become evident before the SIP commenced on 27 March 2022.

That complaint was also referred to this service, but our Investigator again didn't think AmTrust had acted unfairly by declining the claim for the reasons it did. She said that the SIP part of the policy covered major damage caused by a defect which was first discovered during the SIP. But that the damage claimed for was first discovered during the DIP, so there was no cover under the SIP.

As Mr and Mrs H didn't agree with our Investigator's opinion, the complaint was 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 and Mrs H and AmTrust have provided. Instead, I've focused on those I consider to be key or 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.

I've checked the terms of Mr and Mrs H's policy. Section 3.3 of the warranty sets out the cover available during the SIP. It says:

"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".

The Structural Insurance Period is defined as *"The period specified in the Certificate of Insurance for each Housing Unit".*

The Housing Unit is defined as *"The Property described in the Certificate of Insurance comprising: the Structure".*

Major Damage is defined as:

- "a. destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter.*
- b. 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; or
below-ground drainage for which the Policyholder is responsible;*

which is first discovered during the Structural Insurance Period.”

Taking all the definitions into account, it's clear that for there to be a valid claim under Section 3.3 of the warranty, any major damage has to have been caused by a defect which has first been discovered during the SIP. But that's not what happened here. I appreciate Mr and Mrs H say they weren't aware of the structural problems during the DIP and only became aware of them during the DIP, but they did report the various defects during the DIP, even if they didn't know the cause of them. The policy doesn't say the cause has to have been identified during the SIP – only that the damage has to have been discovered during the SIP.

Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document, together with any limitations on cover, such as cost limits or time limits. The test then is whether the claim meets all the criteria for cover at that time.

Mr and Mrs H first reported the issues with their property to the developer in 2021 and early 2022, not after the start of the SIP which commenced on 27 March 2022. So, having considered the terms of the policy carefully, I'm satisfied that the damage wasn't discovered during the SIP, but during the DIP. It therefore doesn't meet the criteria for a valid claim under Section 3.3 of the warranty. And any damage that's been reported to the developer within the DIP would remain the developer's responsibility. Mr and Mrs H have said the damage they reported was purely aesthetic, not structural, and that the dates we've been given are incorrect. But the evidence doesn't support what they've said here because it shows they complained about the defects to their developer during the DIP. And whilst the issues may have seemed only aesthetic at the time, the damage was still reported as I've mentioned – even if the cause of it was unknown.

Mr and Mrs H have raised a number of points, including that they weren't provided with policy documents, so couldn't have known about the time limits. But they had a considerable amount of time, between discovering the damage and making the claim, to obtain those documents if these hadn't been provided from the outset. And as our Investigator has pointed out, AmTrust wouldn't be responsible for providing those documents after the sale of the property. It would be the seller of the policy that would've needed to provide the key information. Mr and Mrs H can consider complaining to the seller of their policy about that particular issue.

Mr and Mrs H have said that AmTrust misled them into thinking it was considering the claim under the SIP section of the policy. AmTrust has accepted it could've been clearer about this, and should've explained it wasn't actually doing that, but it's offered reasonable compensation for the lack of clarity here, which I think is fair.

Mr and Mrs H also said their decision to contact their insurer when they did was solely influenced by the decision of the Independent Dispute Resolution Scheme (“IDRS”), which confirmed that their 2-year defects period began when they completed the purchase of the property. I've considered this, but can see that the IDRS decision only binds the builder/developer of the new home, and not the insurer. Whilst I appreciate this influenced Mr and Mrs H's decision to contact AmTrust when they did, AmTrust has still acted in line with the terms of its warranty.

I'm afraid therefore, that for the reasons I've given, I'm not persuaded that AmTrust has

unreasonably declined Mr and Mrs H's claim. If Mr and Mrs H consider the policy was mis-sold to them, they'll need to raise this with the seller of the policy.

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 Mr and Mrs H to accept or reject my decision before 24 October 2025.

Ifrah Malik
Ombudsman