

## **The complaint**

Mr M and Mrs P complain AmTrust Specialty Limited has unfairly declined a claim they made on their building warranty.

Mr M has been the main correspondent for this claim and complaint, as such, I've only referred to him in this decision.

## **What happened**

Mr M bought a newbuild property which benefitted from an AmTrust warranty. The ten-year warranty ran between October 2013 until October 2023.

Around 2022, Mr M says he became aware of damp issues in the property. He consulted various experts who he says told him there wouldn't be an issue with damp, owing to the age of the property. He says he was informed by various experts that there must instead be a leak causing the issue.

In 2024, Mr M says he became aware that other properties on his same development had also suffered issues with damp. Having consulted the contractors working on the neighbouring properties in the development, Mr M was told it had been found there had been a lack of damp proofing installed in the properties in the development. As such, Mr M made a claim on his AmTrust policy in October 2024.

AmTrust declined the claim. It said a claim hadn't been raised to it before the end of the warranty and as such there was no cover available.

Mr M complained about AmTrust's decision. He said other properties on the development had made claims to AmTrust before the end of his structural warranty period, and so AmTrust (as well as the developer) were aware of the issues. He said the claim on his property should be considered as an extension to the claims made on other properties, which had been made during the structural warranty period.

AmTrust didn't agree to change its position on the claim, it said the certificate of insurance covers Mr M's property only, and it isn't required, under the terms of the warranty, to review all properties on a development for issues, where a claim for damage to those properties hasn't been made under the policy.

Unsatisfied with AmTrust's response, Mr M referred his complaint to the Financial Ombudsman Service. As a resolution he wanted AmTrust to accept liability for repairs.

Our Investigator didn't recommend that the complaint be upheld, she was satisfied AmTrust was entitled to decline the claim on the basis it hadn't been reported during the ten-year warranty period. She didn't think any delay in AmTrust accepting a claim on a different property in the development meant it was reasonable to require it to consider Mr M's claim, made outside of the warranty period.

Mr M didn't accept that outcome, he said by agreeing AmTrust has fairly declining the claim, this Service is encouraging insurer's to deny and delay accepting valid claims, as AmTrust has done on the neighbouring properties.

He said the catalyst for him making a claim was seeing contractors undertaking extensive work on other properties. He said he asked the contractor for details of the damp expert used for those properties, and only after that expert confirmed he had the same issue in 2024, was he in a position to make a claim. Mr M says he now knows that those properties being repaired were only being done because complaints had been made to this Service about AmTrust declining repairs under the warranty. So, he said but for AmTrust's delays in accepting those claims, the repairs to neighbouring properties would've taken place in 2022. And had that happened, he'd have been able to make his claim before the end of the structural warranty period. He said this Service hadn't placed enough weight on *why* the claim was referred to AmTrust 'too late'.

Mr M further said he'd recently found emails between himself and the estate agent and contractor, from late 2013. In these emails Mr M had shared concerns that could be related to the now known damp issues. He thought this should be taken into account.

Our Investigator wasn't minded to change her outcome based on the further information provided. As such, the matter has now come to me to decide.

### **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.

Whilst I appreciate this will come as a disappointment to Mr M, I agree with the outcome reached by that of our Investigator, for broadly the same reasons. I've explained why below.

The relevant section of the warranty Mr M seeks to make a claim under runs from years three to ten of the policy and is referred to as the Structural Insurance Period. It provides cover for "*major damage*" caused by a "*defect*" in the design, workmanship or materials. But the term requires, for a valid claim, that the damage be "*discovered and notified to the underwriter during the Structural Insurance Period*".

Whilst Mr M was aware of some issues with damp from around 2022, it wasn't until 2024 that he made his claim, so he is outside of the Structural Insurance Period. There is no provision in the policy for claims made outside of the period of Insurance because the issue hadn't yet been discovered when the policy was in force. The term specifically states the issue must both be "*discovered and notified*" before the end of the ten-year period.

Mr M's argument is that whilst the claim was made outside of the warranty period, it should be accepted, because the late notification of the claim was due to AmTrust's failure to:

- Carry out a review of the development, having had sight of issues with a lack of damp proof course in neighbouring properties. And/or,
- Handle other claims made by neighbours' under the Structural Insurance period in a timely manner. Meaning his loss couldn't have been discovered whilst the warranty was in place.

AmTrust's position on that is that it doesn't have a responsibility to invite claims, as such it wouldn't proactively contact Mr M, even if it knew of issues in neighbouring properties which could also affect his. I don't consider that to be an unreasonable position for AmTrust to take. It is a principle of insurance that the insured – so in this case Mr M – must first show that he's suffered damage which is covered by the policy, in order for a policy to respond. It isn't for insurers to proactively reach out to policyholders to check for issues on a property.

The insurance certificate Mr M was issued with was for his property only, it does not cover all of the properties on the entire development. So his claim can't reasonably be considered – as he's argued – as an extension of a neighbouring property's claim. Mr M needs to make a claim on his own warranty, within the ten-year period, for it to be considered. And he hasn't done that.

And even if I accept AmTrust delayed the progression of other claims, for the same issue, on other properties, that still doesn't mean it's reasonable for AmTrust to consider the claim after the policy is ended. Because, as set out above, AmTrust had no obligation to Mr M in responding to those other claims.

I don't accept that in reaching this position that this Service is encouraging insurers to delay claims. This Service has regard to the regulatory rules of insurers, including the Insurance Code of Business Sourcebook (ICOBS). ICOBS 8.1 says claims must be reviewed promptly. But this refers to *claims*, and in the circumstances here, Mr M hadn't made a claim. And he can't complain to this Service about delays AmTrust might have caused on other people's claims, because he isn't eligible to do so.

I don't doubt this has been stressful and frustrating for Mr M. It's not unreasonable when buying a newbuild property, to assume it will be free from major issues, so I can appreciate the difficult position Mr M is in, seemingly due to a major error by the developer. But the AmTrust warranty that came with the property had ten years of cover. That has now come to an end, as such, there is no cover available for Mr M under the policy.

I've also considered Mr M's argument that AmTrust has been negligent in signing off the warranty. However, the issuing of the warranty itself isn't something this Service can consider. That is because the actions leading up to a warranty being provided are not a 'regulated activity', which is required for our consideration, as set out in the dispute resolution rules (DISP).

Mr M has recently found emails he provided to the estate agent and contractors from 2013. He says these show his concerns of early signs of damp. In the first two years of the policy, a different part of the warranty operates (between 2013 – 2015 for Mr M). This is known as the "defects insurance" period. I'm satisfied Mr M can't make a claim under that section either, because any valid claims made under that section of the warranty needed to be notified to AmTrust within six months of that section of the warranty ending. In Mr M's case that would have been in 2016. As Mr M's claim wasn't notified to the underwriter until 2024, there can be no cover under this section of the warranty either.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs P to accept or reject my decision before 16 October 2025.

Michelle Henderson  
**Ombudsman**