

## **The complaint**

Mr and Mrs M have complained about Amtrust International Underwriters DAC's decision to decline a claim they made under their Build-Zone Structural Warranty Policy.

## **What happened**

The subject of this complaint is a building comprised of multiple flats. Some of the issues complained about affect common parts of the building, which means other leaseholders, in addition to Mr and Mrs M may have been impacted. However, this complaint has been brought solely by Mr and Mrs M and so this decision relates to what Mr and Mrs M are entitled to under their individual warranty policy.

There have been various individuals and businesses involved in this complaint, acting as agents or representatives of either Amtrust or Mr and Mrs M. For simplicity, I'll only refer to Amtrust and Mr and Mrs M by name throughout, even when referring to evidence or arguments put forward by their respective agents/representatives.

Mr and Mrs M purchased a flat in a newly converted development in 2020. The property was covered by a Build-Zone Structural Warranty Policy underwritten by Amtrust.

In 2023 Mr and Mrs M raised a claim with Amtrust about ineffective noise insulation with their property. They also highlighted defective fire prevention works and some cracking to brickwork. Amtrust declined Mr and Mrs M's claim primarily on the basis the issues hadn't been notified in line with the policy reporting requirements. Unhappy with this, Mr and Mrs M referred a complaint to the Financial Ombudsman Service.

An investigator considered Mr and Mrs M's complaint but didn't think it should be upheld. She was persuaded that Mr and Mrs M were aware of the noise issues within the first two years of cover which meant the issues needed to be reported to Amtrust within a set period for cover under the warranty to apply. She explained that the issues weren't reported in time and so it was fair for Amtrust to decline that part of the claim.

The investigator explained that the warranty contained a separate section of cover for fire safety issues caused by a breach of building regulations, but only where building control had been carried out by an approved inspector. She said that wasn't the case for Mr and Mrs M's building, and so that section of cover wasn't included on their policy.

And in terms of the cracked brickwork, the investigator explained this was to part of the building which wasn't covered under the warranty because they weren't works which were part of the conversion that the warranty was purchased to cover.

Mr and Mrs M didn't accept the investigator's opinion. So, because no agreement has been reached, the complaint has been passed 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.

Having done so, while I appreciate it will likely come as a disappointment to Mr and Mrs M, I've reached the same conclusions as the investigator. I'll explain why below.

#### Noise issues

Mr and Mrs M's warranty document explains the cover it provides under the various sections of the policy. Amtrust says the relevant section which applies to Mr and Mrs M's claim is section 4.2. This section of cover is for issues which are evident during the first two years after completion and is also referred as the Defects Insurance Period.

Mr and Mrs M's policy document explains Amtrust's responsibilities under this section of cover on page eight:

#### *"4.2 The first 2 years after completion (Defects Insurance Period)*

*If during the first 2 years after completion the Policyholder notifies the Developer of any Defect, the Developer is required to*

- i) Effect a repair, replacement or rectification of such Defect as soon as is practicable thereafter;*
- ii) Reimburse the Policyholder for all necessary and reasonable costs including lifting and refitting carpets, storage and alternative accommodation should the nature of any repair, replacement or rectification be such that the Policyholder and/or the occupants have to vacate the Housing Unit whilst such repair replacement or rectification is carried out.*
- iii) Once notified of Defects during the Defects Insurance Period the Developer remains liable as above after the Defects Insurance Period ends, unless specifically agreed in writing by the Underwriters.*

*The Underwriters will indemnify the Policyholder during the Defects Insurance Period against the cost of repairing, replacing or rectifying any Defect in the Housing Unit for which the Developer is responsible and which is discovered and notified to the Developer during the Defects Insurance Period and which is notified to the Underwriters within 6 months of the expiry of the Defects Insurance Period."*

Mr and Mrs M's policy certificate confirms that for their property, the full period of cover under the warranty runs between 14 February 2020 and 13 February 2030. The Defects Insurance Period covers the first two years, which means that ended on 14 February 2022. This means any issues discovered during this period needed to be reported to Amtrust by 14 August 2022 in order for cover under the warranty to apply. But in this case, Mr and Mrs M didn't report the noise issues until late 2023 – significantly outside of the reporting requirements of section 4.2. And this was the reason Amtrust declined this part of their claim.

Mr and Mrs M have argued that it's unfair for the issue to be considered under section 4.2 on the basis they didn't know they had cause to raise a claim. They say they'd never lived in a flat before and so it was only over time and through discussions with neighbours that they realised the noise issues weren't typical for a property of that nature.

I've thought carefully about this point as well as about the specific claims procedure highlighted within the policy booklet. The latter explains the following:

*“9.2 Notifying a Claim after Completion – Policy Section 4.2: The first 2 years after completion (Defects Insurance Period)*

*In the event of the discovery of any occurrence, which could give rise to a claim, the Policyholder should immediately notify The Developer if it falls within the first 2 years following completion (Defects Insurance Period)*

*The Policyholder should carefully consider the nature of the claim and whether the circumstances actually fall within the definition of Defect. If the Policyholder is unsure of the nature of the occurrence or Defect they should contact the Scheme Administrator...*

...

*Developer’s Responsibilities during the Defects Insurance Period*

*The Developer is responsible for Defects that arise during the Defects Insurance Period. The Policyholder should make notification to the Developer in writing as soon as possible after discovery of the problem.*

*Note: The Policyholder must make any notification regarding a Defect or occurrence to the Developer prior to the expiry of the Defects Insurance Period. If after notification the Developer fails to respond, the Policyholder should notify the Scheme Administrator within 6 months of the expiry of the Defects Insurance Period. Failure to make notification within the time frames may invalidate your cover.”*

I appreciate that Mr and Mrs M didn’t establish, as a matter of fact, that the noise insulation was defective until they received their own surveyor’s findings in 2023. But, based on the above, I don’t think it would be reasonable to say that a defect needs to be identified and fully diagnosed within the Defects Insurance Period, before needing to be notified to the underwriter. Rather, I think an issue or concern needs to be reported within the required timescales, in order to potentially be covered under this section.

I also appreciate Mr and Mrs M’s point about never having lived in a flat before. But I’m mindful of their explanations as to how severe the noise issues were, effectively from the outset. They’ve said they could hear footsteps, music and conversations from neighbouring properties as if the noises were coming from within their flat, and that they could also hear conversations from communal areas with complete clarity. And whether having lived in a flat before or not, I think this level of noise penetration ought reasonably to have alerted them as to a potential issue.

The claims procedure, set out in the policy booklet, is also clear that where a policyholder is unsure whether an issue would be considered a defect they should contact the scheme administrator – which I can’t see that Mr and Mrs M did.

Based on the above, I think it was fair for Amtrust to consider that section 4.2 was the relevant section of cover, as the noise issues were first discovered during the Defects Insurance Period. And as the reporting requirements for section 4.2 weren’t met by Mr and Mrs M, I consider that Amtrust was entitled to refuse this part of their claim under the terms and conditions of the policy.

I know Mr and Mrs M feel it’s unfair for the Financial Ombudsman Service to focus so heavily on the policy terms and conditions. And that they feel some of the policy wording is confusing, misleading or deliberately ambiguous. But when considering complaints about a claim decision, the natural starting point is the policy terms and conditions as these highlight

the cover the insurer has promised to provide, and the circumstances under which said cover will and/or won't be applied.

In this case, I think the relevant terms of the warranty make it sufficiently clear that section 4.2 is the only section of cover which would be relevant to this claim, because of when the issues were first apparent. And that cover under section 4.2 will only be provided subject to the reporting requirements being met, as well as what those reporting requirements were. So, as those requirements weren't met, I consider it was fair for Amtrust to rely on the policy terms and conditions to decline Mr and Mrs M's claim under that section of cover.

### Fire safety issues

In addition to the noise insulation issues, Mr and Mrs M's surveyor's report identified the following fire safety concerns,

*"Inadequate and incorrectly specified partition separation and compartment walls and ceilings for the prevention of the spread of fire and smoke with adjoining demises."*

Mr and Mrs M's warranty booklet does contain a section of cover for fire safety issues – section 5.2. The booklet explains the cover provided under this section, and when it applies:

*"5 Additional Cover during years 3 -10 (Where an Approved Inspector carried out Building Control*

*This section of the cover applies if a Build-Zone Appointed Approved Inspector carries out Building Control in England and Wales. Your Insurance Certificate will clearly show this...*

...

#### *5.2 Physical Health and Safety of Occupants*

*The Underwriter will indemnify the Policyholder during the Structural Insurance Period against the cost of necessary repairs where there is a present or imminent danger to the physical health and safety of the occupants of the Housing Unit because the Housing Unit does not comply with the Building Regulations that applied to the work at the time of construction or conversion in relation to the following:-*

...

- *Fire Safety"*

What the above means in practice is that the entirety of Section 5 will only apply where an approved inspector carried out the building control function. And in those circumstances, section 5.2 would cover breaches of building regulations in relation to fire safety which result in a present or imminent danger to the health or safety of the occupants.

I accept Mr and Mrs M's surveyor's findings that there are fire safety issues with Mr and Mrs M's property, and I sympathise with their position. But in order for Amtrust to be responsible for rectifying this, an approved inspector needs to have carried out the building control. And based on their insurance certificate, this didn't happen. I say this because their insurance certificate clearly shows that Section 5 is not applicable to their policy.

Based on the above, while I appreciate this will be disappointing, I don't think Amtrust are responsible for remedying the fire safety issues with Mr and Mrs M's property.

## Section 6

Mr and Mrs M have also argued that section 6 of the policy booklet should apply given the evident breaches of building regulations. Sections 4, 5 and 6 are explained within the policy booklet as follows:

- “4. Cover detailing the precise details of cover.*
- 5. Additional Cover during years 3 – 10 detailing cover applicable where an Approved Inspector carried out Building Control.*
- 6. Additional Extensions detailing extensions of cover under policy sections 4 and 5”*

Amtrust says this means section 6 is not an independent section of cover, it is an extension to sections 4 and 5. And having considered the wording of the policy booklet I agree. So, as there is no cover under section 4 (due to the late reporting) or section 5 (because an approved inspector didn't carry out building control) it follows that there is also no cover under section 6.

## Cracking issues

When investigating the noise issues, Mr and Mrs M's surveyor highlighted cracking to some brickwork and a potential defect in the installation of a beam. The surveyor acknowledged this could relate to existing works with the building, rather than works undertaken as part of the conversion – which are what the warranty covers.

Amtrust explained the works didn't form part of the conversion, and so would be excluded from cover. Amtrust also pointed out that, in any event, as the issues were discovered outside of the first two years, the relevant section of cover would require 'Major Damage' in order for the issue to be covered. It said the issues highlighted would not amount to 'Major Damage', as defined in the policy.

The investigator was persuaded that these issues were to part of the existing works, rather than the conversion. Based on this she said the following exclusion applied:

*“Defects in Existing Works  
Loss or damage due to or arising out of any Defect in the design, workmanship, materials or components of the Housing Unit that was installed or constructed prior to the conversion, refurbishment or renovation works that are the subject of this insurance.”*

It's not clear whether this part of Mr and Mrs M's complaint remains in dispute as no further comment on this issue has been made in response to the investigator's findings. But for completeness, I confirm that I too am persuaded, on the balance of probabilities, that these issues most likely relate to existing works, based on the images I've seen of the brickwork and the conversion works.

That said, should this matter remain in dispute, and should Mr and Mrs M be able to obtain evidence which demonstrates the beam was installed as part of the conversion, I would expect Amtrust to reconsider its position. Should this happen, and result in a hypothetical future dispute, Mr and Mrs M would be free to refer that new complaint to the Financial Ombudsman Service, subject to our normal rules and timescales.

### **My final decision**

Based on everything I've said above, I don't uphold Mr and Mrs M's complaint against Amtrust International Underwriters DAC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 5 November 2025.

Adam Golding  
**Ombudsman**