

The complaint

L, a limited company, complains AmTrust Speciality Limited (referred to in the policy documents as AmTrust Europe Limited) unfairly refused to provide a warranty for two properties.

L is being represented in bringing this complaint by a director. For ease I've referred to all comments and actions as being those of L.

Any reference to AmTrust also includes its appointed agents.

What happened

In 2014 AmTrust agreed to provide warranties for a number of new homes L was building. L says most of the units were finished by 2020, but, in July 2023, L was told that AmTrust wouldn't be able to provide warranties on the remaining two properties. It said as the build period set out in the agreement had been exceeded, it wouldn't issue a warranty for those.

L complained, but AmTrust didn't agree to change its position and so L referred its complaint to the Financial Ombudsman Service. It said it wanted the warranties to be provided or a refund of the premium for those units, plus compensation for the likely loss of value on the properties as a result of them not benefitting from a new-build warranty.

Our Investigator recommended that AmTrust should provide warranties for the final two properties. She said AmTrust had created an expectation that the warranties would be provided on those units by carrying out inspections beyond the build period set out in the policy. L accepted that outcome, AmTrust didn't. It said it had decided not to offer the warranty as not only had the build period been exceeded, but there were no sales or reservations in place for the properties.

As the matter wasn't resolved, it came to me to decide. In May 2025 I issued a provisional decision on this complaint. I said I didn't intend to require AmTrust to provide the warranty for the remaining two properties. I also didn't think AmTrust needed to provide a refund to L for any of the premiums paid. A copy of my provisional findings is below:

The terms of L's warranty say: "the premium may be cancelled without returning any premium in the event of...the building works exceeding three years from the start date notified to the Scheme administrator when the original application was made".

The start date notified on the application was 12 October 2014. So, under the terms, AmTrust is able to cancel the warranty for any builds that weren't completed before 12 October 2017.

L says as it issued warranties for other properties post 2017 and had carried out inspections on the remaining two units post 2017, it is then unfair not to offer the warranty on the remaining two properties. It also said it wasn't aware that this three-year build period existed until it was informed in 2023 that the warranties wouldn't be provided. AmTrust says as the build period had been exceeded by such an amount of time, it considered the properties high risk and as such invoked its cancellation rights as the policy allows it to do so.

Having considered matters, I don't think AmTrust acted unfairly in refusing to provide the warranty for those final two housing units. I accept it did provide warranties for others that had exceeded the build time, but it seems to me based on L's comments that those were all

completed in 2020. So AmTrust may have taken the view at that stage to allow the issuance of the warranty even though the build period had been exceeded. But I don't think that means it essentially removed its right to rely on the cancellation term for properties completed later. And I also don't think that it carrying out site investigations means it cannot fairly rely on the cancellation term.

The site investigations are part and parcel of AmTrust reviewing whether it will or won't offer a warranty at the completion of the build. I don't think continuing the investigations on an ongoing build, even one that exceeded the build time set out on the policy, means it then cannot refuse to provide a warranty later on.

I also consider that I don't think L has lost out as a result of AmTrust continuing to carry on those, L did have the benefit of the site visits and the assurance they will have provided as to the ongoing build.

L has said it wasn't aware of this cancellation term, and it wasn't told at any point prior to 2023 that the warranty might be affected by the build period on the policy being exceeded. The term is in the policy documents.

But I need to be clear that as this complaint is against AmTrust, and not the seller of the policy, I'm not considering what might have happened at the point of sale and L's comments around how it saw the building taking place over an extended period of time. Any complaint about that would need to be considered against the seller of the policy. Although given the length of time since the sale of the policy, it's possible that we wouldn't be able to consider any complaint referred to our Service in that respect.

I've considered whether I think Amtrust, as the underwriter, should've done more to remind or inform L that the build period had been exceeded at some point. But even if I think it should've done this, I don't think L would've acted differently, based on what I've seen. From its comments it seems work on the two units in question hadn't started until 2020, with the COVID-19 pandemic then meaning the works were effectively mothballed for a period. I can't see what difference it would've made if Amtrust had, when work restarted for example, reminded L that it was beyond the build period set out in the policy terms.

Taking all of the above into account, I don't think I can fairly and reasonably require AmTrust to provide the warranties for the properties. So, I've then considered whether its offer to refund part of the premium (leaving an outstanding amount to pay of around £1,400) was reasonable.

L says that isn't correct, and it is actually owed a refund of around £2,200. It said it had provided calculations to AmTrust, I haven't seen a copy of those. L can provide them in response to my provisional findings and I'll consider them. However based on what I've seen from L, I'm not minded to decide AmTrust's acted unfairly in saying there's an outstanding balance to pay.

AmTrust has said owing to the number of site inspections made, it retrained the full technical audit fee of £8,000. I don't think that's unreasonable; it's not in dispute that site visits were carried out on the units, including the two that it then didn't issue a warranty for. So I intend to decide its acted reasonably in retaining the full technical audit fee. AmTrust said it issued a refund of around £800 based on the units being removed, so there is still a balance to pay.

I've reviewed the terms of the policy, which say the policy may be cancelled without returning any premium in the event of the building work exceeding the three years. So based on what I've seen, I'm not minded to decide AmTrust has acted unfairly in saying there is still a balance to be owed.

AmTrust didn't provide a response to my provisional findings, L did. It said it was disappointed. It said it had never complained to AmTrust and it didn't have a reason to. It said its complaint was about the broker, P, not acting in its best interests as its agent in relation to the handling of the warranty. It also said it hadn't previously been told it was a

“bad risk” and asked whether it could engage with P on this point. It also said P could have offered a warranty for completed houses.

L also said it shouldn't pay any costs relating to the last two properties, including for site inspection reports.

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 accept that the complaint L made was against P, who arranged the policy. But I don't agree that this Service has incorrectly considered matters against AmTrust. L's complaint to this Service was that the warranties for the final two properties had been refused. As a resolution, L wanted warranties on the last two properties to be issued.

AmTrust, as the underwriter of the policy is responsible for deciding if a warranty will be issued or not, as that is the party who assesses the risk and would meet any claims, should a warranty be issued. So, given the complaint was about the refusal to issue the warranty, this needs to be considered against AmTrust.

I also don't agree with L that P is its appointed agent. I've seen the Terms of Business (TOB) for P. The TOB says P is acting as an agent for the insurer, AmTrust, not L.

I've already said in my provisional findings that I've considered if AmTrust (or its appointed agents, which would include P) should have done more to highlight the end date on the schedule for the build. L's comments don't persuade me to reach a different outcome on that.

I did also say that I hadn't considered a complaint about the sale of the warranty, as I couldn't see a complaint had been made about that. Any complaint about the sale would still need to be made to the seller, or the business responsible for the seller. I hadn't, when issuing my provisional findings considered who might respond to a complaint about the sale, as it wasn't relevant to the complaint I was considering.

L says it hadn't been made aware AmTrust considered the properties a “bad risk”, it asked whether it could respond to those comments. There is nothing to stop L engaging further with AmTrust in relation to the warranties or asking whether it will offer the warranty now the build is complete (assuming it is). But I ultimately have to decide, based on the evidence that I have, whether AmTrust has fairly and reasonably relied on the policy terms to cancel the policy for the two buildings in question. And for the reasons set out in my provisional decision (copied above), I'm satisfied that it has. At the point the complaint was made, it seems to me the properties weren't complete, so I haven't considered whether AmTrust could, or should, have offered a warranty for a completed house build.

Whilst L has made some comments about the premium, including that AmTrust should charge for site inspection reports, it hasn't provided any further information to support its view that a refund is due. The comments L's made on the premium don't persuade me to alter the findings I reached in my provisional decision.

As such my provisional findings, as well as the findings set out above, are now those of this, my final decision.

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 L to accept or reject my decision before 9 July 2025.

Michelle Henderson
Ombudsman