DRN-5782161

The complaint

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

What happened

The circumstances of this complaint are well known to both parties so I won't repeat them in full, but I'll summarise the key events.

Mr and Mrs L bought a property in 2014 which was covered by a new homes warranty, underwritten by AmTrust.

In 2015 Mr and Mrs L found that the first-floor floorboards began to detach from the joists. They contacted their developer, and it investigated by lifting the boards in part of the main bedroom. It found that strutting had been fitted incorrectly, and remedial works were undertaken to retrofit the strutting. Mr and Mrs L say they were assured that the remedial works complied with Building Regulations.

After some years, Mr and Mrs L noticed there was cracking in the area around the fitted wardrobes and the floorboards were creaking. And in 2023, Mr and Mrs L noticed water staining on their sitting room ceiling, underneath their utility room. They arranged for a plumber to carry out trace and access work to determine the cause of the leak. The plumber commented that the flooring under the bath was unstable and this had likely caused the wastewater unit joint to leak, allowing water to escape whenever the bath was in use.

Mr and Mrs L made a claim in October 2023 for the damage to their home and told AmTrust about their plumber's findings. They say AmTrust refused to deal with the matter without a report from a qualified person. So Mr and Mrs L commissioned their own structural engineer to investigate and prepare a report, at a cost of £672. The developer requested to be in attendance at the site visit which took place in November 2023. The developer also suggested lifting the flooring to see what had been done during remedial works in 2015. This investigation confirmed that the new flooring had been fitted to joists in certain places by screws, whereas the original flooring had only been glued but not screwed in. It also confirmed that the strutting hadn't been installed in the correct positions.

The report, dated 7 December 2023, was then sent to AmTrust. But AmTrust rejected the claim saying that for there to be a valid claim under the policy, there would need to be evidence of Major Damage (as defined in the policy terms) and that the report confirmed there was no evidence of cracking or movement to the ceramic floor tiling to the bathroom. It also said there was no physical damage to the Housing Unit and its structural integrity wasn't compromised, so the problem didn't constitute Major Damage, as required by the policy.

A second claim was made in March 2024 following a leak. Mr and Mrs L said the unstable floorboards were the developer's fault as it had failed to screw and glue the floorboards to the joists during original construction in 2014, and the glue had therefore failed when there'd been a leak. They also said that the developer had failed to retrofit the strutting in line with Building Regulations. A loss adjuster attended and shared their findings with AmTrust, but it declined the claim on the basis that Mr and Mrs L should've reported in 2015 that the developer hadn't retrofitted the strutting according to regulations.

Mr and Mrs L complained. They said the claim had been declined and handled unfairly, with different reasons being given in each response from AmTrust. Their complaints included that they'd incurred substantial costs to provide a report and to rectify the damage to their property, which AmTrust was ultimately liable for. And they said that the requirement to report the poor retrofitting on time wasn't one that could be complied with, because they didn't know in 2015 that the retrofitting hadn't been done in line with regulations.

In response to their complaints, AmTrust said it was fair for it to request a report as the policy required this in order to show that there was a valid claim, and that a report from an expert was best practice. It also maintained its decision to decline the claims, saying that as some of the issues had been apparent since 2015, and the policy required the underwriter to be notified within a certain timeframe, there was no cover as AmTrust had only been made aware of the problems in 2023. It further stated that issues such as the water leak were not covered by the warranty and would be better suited to a building insurance claim. Ultimately, it reiterated that the issues with the flooring didn't constitute Major Damage.

As Mr and Mrs L didn't accept AmTrust's responses, they referred their complaint to this service. Our Investigator considered the issues but didn't think the complaint should be upheld. He said although the developer had failed to carry out remedial work in line with Building Regulations, this wasn't something the warranty provided cover for. And that the damage AmTrust could consider, wasn't major structural damage for which there was policy coverage.

Mr and Mrs L didn't agree with our Investigator's opinion. They said AmTrust never should've asked for an expert report if it could've easily rejected the claim on the basis that Mr and Mrs L hadn't notified it of the damage on time. They said it should've been immediately obvious that this policy condition hadn't been complied with, so the cost of the report should be reimbursed. And they mentioned that a key facts document wasn't provided to them, so they were unaware of the need to report all defects to AmTrust during the relevant period.

They also said that Mrs L was critically ill when AmTrust sent a loss adjuster to visit, and the unnecessary attendance of a loss adjuster at that time put her under undue stress and had an adverse impact on her health.

As Mr and Mrs L asked for an Ombudsman to review their concerns, the complaint 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.

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 L or AmTrust have provided. Instead, I've focused on those I consider to be central to the key 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.

Mr and Mrs L will already be aware that we can't consider complaints about their builder as these aren't within our jurisdiction, due to the fact that the developer isn't regulated by the FCA and the activity carried out isn't one of the regulated activities set out in the relevant rules that govern this service. But we can consider a complaint about how AmTrust has dealt with their claims.

It's important to note that insurance policies aren't designed to cover every eventuality or situation. An insurer will decide which risks it's willing to cover and set these out in the terms and conditions of the policy document. The test then is whether the claim falls under one of the agreed areas of cover within the policy.

When making a claim on an insurance policy, it is for the insured – so in this case Mr and Mrs L – to demonstrate they've suffered a loss that's covered by the policy. If they can do so, then the insurer must accept the claim unless it can show it can fairly rely on a valid exclusion to decline it. In this case, I'm not satisfied based on the available evidence that Mr and Mrs L have a valid claim under the policy for the following reasons.

I've checked the terms and conditions of the new home warranty, and as Mr and Mrs L's claim was made during years 3-10 of the policy period, it was considered under the *"Structural Insurance Period"* section of the policy. For there to be a valid claim under this section, there has to be *"Major Damage"* requiring complete or partial rebuilding or rectifying work to the Housing Unit.

"Major Damage" is defined in the policy as:

"i) *Destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter;*

ii) 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;*

which is first discovered during the Structural Insurance Period."

The *"Housing Unit"* is defined as:

"The property described in the Certificate of Insurance comprising:

- *the Structure;*
- *all non-load bearing elements and fixtures and fittings for which the Policyholder is responsible;*
- *any Common Parts retaining or boundary walls forming part of or providing support to*

the Structure:

- *any path or roadway within the perimeter of such property;*

- *the drainage system within the perimeter of such property for which the Policyholder is responsible;*

- *any garage or other permanent out-building."*

And the definition of *"Structure"* includes things like load-bearing parts of floors, and floor decking and screeds, where these fail to support normal loads.

It's not in dispute that there was an issue with poor workmanship regarding the flooring of Mr and Mrs L's new home. It's clear from what I've seen that the developer didn't follow best practice when attempting to secure the flooring to the joists as both glue and screws weren't used. This resulted in the creaking and movement of the floorboards as well as some of the other issues Mr and Mrs L have complained of.

But as the policy definitions clarify, for there to be a valid claim, the identified issue must have caused *"Major Damage",* which is destruction or physical damage to the areas defined above, which I don't consider has been evidenced here. Whilst the problems that were identified had an impact on Mr and Mrs L's enjoyment of their property, this doesn't mean the issues constituted *"Major Damage"* and would necessarily be covered by the warranty.

I say this because the structural report dated 7 December 2023 says:

"I can confirm that our work involved undertaking a non-intrusive inspection to identify matters of a structural nature pertaining to the structure of the building, covering issues such as subsidence, bulging and unrestrained walls, sinking or subsiding floors and, where visible, internal and external structures of the roof and peripheral issues that could have an impact on the structural stability of the property, such as geology, proximity of trees and drains."

The report, which is described as *"a specialist structural report on the items contained therein"* goes on to draw the following conclusions:

- The roof structure covering and cappings were observed to be generally sound with no indication of disturbance.

- The external elevations of brick were inspected and there appeared no evidence of cracking or movement present to indicate potential structural issues with the build.

- No evidence of cracking or movement appeared present to the ceramic floor tiling within the bathroom.

- The cause of the various minor incidences of cracking and movement was considered to be of recent origin consistent with a relatively abrupt rise in the moisture content of the air from normal levels.

- There were no indications of excessive deflections of the floor joists to warrant structural concerns as to their being undersized.

- The strutting prevents buckling but doesn't contribute to the strength of the floors.

The final report by the loss adjuster dated 20 July 2024 confirms there to be no evidence of

"Major Damage", reiterating the findings of Mr and Mrs L's surveyor.

Whilst, understandably, the loss adjuster's findings are disputed by Mr and Mrs L, I'm afraid I haven't seen any contradictory expert evidence to persuade me that the conclusions reached by the loss adjuster aren't reasonable.

Mr and Mrs L refer to their surveyor's comments about the lack of screws used and the fact that floorboards were simply glued down – but at no point does any expert say this constitutes a major structural problem. In fact, Mr and Mrs L's surveyor says this is quite common with newly-built homes, although it isn't best practice.

I've considered the opinion of Mr and Mrs L's plumber who said the bath did not appear to be stable – but I wouldn't consider the professional opinion of a plumber regarding structural matters to carry as much weight as that of structural experts. So I'm more persuaded that there aren't any major structural issues at the property, as confirmed by the structural experts in this case. It follows therefore that I don't consider it was unreasonable for AmTrust to request an expert report from Mr and Mrs L when it was advised of the opinion of their plumber. As I've mentioned, it's up to policyholders to demonstrate and evidence that they've a valid claim under a building warranty.

Regarding the fees for their expert's report, I'd generally only ask AmTrust to reimburse these if the expert report confirmed that there were major structural problems with the property which meant the claim would be covered under the Structural Insurance Period section of the policy. As it stands, however, the report didn't confirm this and so the evidence Mr and Mrs L provided didn't show they had a valid claim under the warranty. It wouldn't therefore be fair to require AmTrust to cover the cost of the report in the circumstances.

Although the policy definitions refer to the problems being first discovered during the Structural Insurance Period, I think it's fair to say Mr and Mrs L discovered some of the issues during the Defects Insurance Period (years 0-2 of the policy). This section requires there to be a breach of a functional requirement in the Technical Manual – which, again, hasn't been proven in this case. And whilst Mr and Mrs L referred their concerns to the developer at the time (which then carried out some work and assured them it had put things right), they didn't notify AmTrust as required by the policy. So I don't consider it unfair for AmTrust to have also declined the claim on this basis.

Mr and Mrs L have said they couldn't have known at the time that the developer hadn't rectified the issues, so they only raised the matter with AmTrust when they found out about this. I appreciate their point and don't think what they did was unreasonable in the circumstances. But unfortunately, the policy is clear about what's required, and there's no small print. Even if matters are being dealt with by a builder/developer, to make a claim under the warranty Mr and Mrs L would've had to notify AmTrust of the defects within six months of the expiry of the Defects Insurance Period. There's no key facts document which sets this out, but it is set out clearly in Section 3.2 of the policy, which says indemnification will be provided for a defect *"which is discovered and notified to the Developer during the Defects Insurance Period and which is notified to the Underwriter within 6 months of the expiry of the Defects Insurance Period".* I'm afraid I don't agree with Mr and Mrs L that this is a draconian requirement, and this isn't an unusual term in building warranties, such that I'd expect it to be specifically highlighted in a separate document, for example.

I have a great deal of empathy for the circumstances Mr and Mrs L have described regarding Mrs L's critical illness and the distress and inconvenience they experienced as a result of the loss adjuster's visit. Having considered the loss adjuster's report, I can understand why AmTrust felt the need to send him to the property and I don't consider the two hours he spent there to be an unreasonable length of time. I do think AmTrust could've sent the loss adjuster out to Mr and Mrs L when they first complained of the issues, as they'd provided commentary from their plumber which indicated that there may be a defect. Instead, AmTrust required Mr and Mrs L to obtain their own expert's report.

But as I've said, I'm not requiring AmTrust to reimburse Mr and Mrs L for their structural engineer's report. Firstly, I've already mentioned the need for policyholders to prove their claim, so the request wasn't unreasonable. And secondly, although Mr and Mrs L say AmTrust could've reached the conclusions it did without the need for them to spend £672 on their expert report, having looked at the information AmTrust based its decision on, and the reasons it declined the claim, I don't agree. While Mr and Mrs L say AmTrust declined the claim because the flooring had been retrofitted in 2015 (which it knew from the outset) – this isn't what all the claim decline letters say.

The first letter dated 8 November 2023 said the claim was declined because there was no evidence of major damage. The letter dated 22 December 2023 also said there was no major damage. And the letter on 12 January 2024 refused the claim because the expert evidence didn't confirm there was major damage. On 5 June, the claim was declined on the basis that the insurer hadn't been notified of the issues on time – but this was long after Mr and Mrs L had commissioned their own expert report. The letter sent on 2 September 2024 also referred to the lack of major damage. Overall, I don't agree that the reasons for the decline could've been given as robustly without sight of the expert report provided by Mr and Mrs L. I think it was fair for AmTrust to have required Mr and Mrs L to prove their claim – and to have considered their expert evidence, before communicating its decisions on liability.

In the circumstances therefore, and whilst I'm very sorry to disappoint Mr and Mrs L, I'm afraid I'm not upholding their complaint.

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 Mrs L and Mr L to accept or reject my decision before 25 September 2025.

Ifrah Malik
Ombudsman