

## **The complaint**

Mr P complains about AmTrust Specialty Limited's decision to decline a claim made under his buildings warranty policy.

## **What happened**

The background to this complaint is well known to both parties, so I'll provide only a brief summary here, concentrating on the key issues.

Mr P has a Social Housing Warranty underwritten by AmTrust to cover his home.

He made a claim in September 2024, having discovered issues with the foundations of the property when he was carrying out ground works prior to building an extension.

In short, AmTrust declined the claim. They told Mr P the warranty didn't provide cover for defects in the construction of the property unless those defects had also caused major damage.

Mr P wasn't happy with the claim outcome and made a complaint to AmTrust. And when AmTrust maintained their position, he brought his complaint to us.

Our investigator looked into it and didn't think AmTrust had done anything wrong.

Mr P disagreed and asked for a final decision from an ombudsman. He believes the warranty should – and does – provide cover for the issues he's found at his property.

## **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.

Mr P has provided detailed evidence, including reports from a suitably qualified structural engineer to show that the foundations of his property are defective. They were not built according to the relevant technical regulations, guidance, and standards.

Mr P has therefore had rectification works carried out at his own expense, to ensure that the property isn't at risk of any damage as a result of the defective foundations. His claim was, in essence, for AmTrust to cover those costs.

Mr P has also had issues at the property relating to damp and to his door – which had dropped. He's brought these to our attention because he believes they show that the builder of the property didn't do a very good job.

These issues didn't form part of his claim – or the substantive complaint to us now – because the rectification works cost less than the excess set out in the warranty.

So, Mr P's complaint to us is that AmTrust should accept and pay the claim for the rectification works to the foundations.

Of course, exactly what AmTrust are going to cover is set out in the policy terms. I'll turn to those now.

The terms relating to the relevant insurance period (section 3.2 of the policy booklet) say that AmTrust will indemnify the policyholder for the cost of any rectification or rebuilding work where the property has been affected by “*major damage*”.

Major damage is defined (in section 2 of the policy booklet) as: “*destruction of or physical damage to any portion of the [property]*”; or “*a condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of [the property]*” – and only where that (in either case) is caused by a defect in the design or construction of the property

A defect is defined (in section 2 of the policy booklet) as a failure to comply with the functional requirements set out in AmTrust’s technical manual.

So, in brief, under the terms of the policy, AmTrust will provide cover where there is major damage to the property caused by a defect in the way the property was designed or built.

On the basis of the evidence I’ve seen, I don’t think there’s much room for doubt here that there was indeed a defect in the way the property was built. That’s made absolutely clear in the detailed report provided by Mr P’s structural engineer. The fundamental question here then is whether that defect has caused major damage.

Mr P has been quite open about the fact that there is – as yet – no “*destruction of or physical damage to*” any part of the property (see the definition of major damage quoted above). So, the question becomes - is there “*a condition requiring immediate remedial action to prevent actual destruction of or physical damage to*” any part of the property?

Mr P’s own structural engineer’s report explains that there *is* a defect (and what it is). It goes on to say that the defect “*poses a substantial risk to the structural integrity of the property and is likely to lead to serious long-term damage*”.

It concludes that the defect introduces “*significant risks*” to the integrity of the property and that remedial action was necessary to “*ensure long-term durability*”. It says the failure to do that will “*inevitably lead to the failure of the building over time*”.

I have no reason to doubt the engineer’s report. And of course, Mr P has my sympathy – no-one would want to find themselves in the position he was in. Assuming the report to be accurate, Mr P has been let down by the builder and/or developer of his property and/or by building control.

However, the question for me when I look at the terms of the policy is whether, when Mr P made his claim, *immediate* remedial action was necessary to prevent destruction of or damage to the property.

That appears to me to be a relatively high bar. AmTrust are basically saying that if there’s a failure by the builder or developer which has already caused damage – or is imminently about to do so – they’ll step in. But they have no appetite to cover longer-term risks to the property.

Of course, AmTrust are entitled to make clear in their policy terms what it is they’re covering - and what it is they aren’t willing to cover. They do not have to cover every risk to the property caused by the builder’s failings.

And I also note here that AmTrust didn’t sell the policy direct to Mr P. They sold it to the builder or developer who passed on the warranty when the house was sold to Mr P. And there’s (obviously) no complaint from them about AmTrust misleading them as to what the policy covered. The terms are in any case reasonably clear and unambiguous.

I don’t believe then that there was any immediate remedial action required to prevent major damage at Mr P’s property.

I note that the warranty came into effect in 2016, so the house had stood without manifesting any signs of damage through to 2024 (i.e. for around eight years) when Mr P started

groundworks for his extension. So, it's unlikely it was *imminently* about to suffer damage due to the foundation defect.

I also note that Mr P's own surveyor's report refers to "*risks*" to Mr P's property – slightly contradicting the later assertion that damage is inevitable. And it refers to those risks likely manifesting in the "*long term*" and/or "*over time*". Again, this supports the argument that there was no *immediate* remedial action required to prevent damage to the property.

According to my reading of the terms and conditions of the policy then, AmTrust are entitled to decline Mr P's claim.

For the sake of absolute clarity, I should point out that there is further cover under the policy terms which applies when AmTrust or their agents are in effect providing the building control function at the time the property is being built.

However, they weren't doing that in this case – as the certificate of insurance makes clear. And in any case, those provisions only kick in where there is imminent danger to physical health due to a defect in the build. There was no such imminent danger here.

AmTrust did carry out site inspection audits. But as the terms of the policy make clear, they were solely for the purpose of assuring the underwriter that the property represented a normal risk for insurance purposes. The policy terms are very clear that no-one should infer that those inspections were for any other purpose.

In his correspondence with our investigator, Mr P has referred to case law which he says supports the idea that a claim might successfully be made where there are latent defects in construction that haven't yet manifested in damage to a property.

I understand Mr P's arguments, but the case law in question is about recovering costs from contractors or suppliers who carried out the defective work. It is at best debatable whether that would carry across to an insurer, especially given that the intention of the legislation under consideration by the court was that those responsible for the defect or error should pay for remediation of unsafe buildings.

Mr P has also suggested that when he contacted AmTrust, he explained what remedial works he intended to carry out to mitigate any risk to his property. He says he was advised verbally to carry out those works. And he says when he later mentioned that in emails, AmTrust didn't object.

I'm sure Mr P will understand that in the absence of any record of what exactly was said in the phone call, it's difficult for me to draw any conclusions about whether or not AmTrust were indicating that they accepted his claim. There is a clear difference between a verbal acceptance of the claim and a verbal confirmation that there was a problem which needed to be addressed (which no-one has denied).

When the later emails were exchanged, the context shows that it's very clear that AmTrust still had the claim under consideration. Their failure to comment on Mr P's proposed remediation work couldn't reasonably be taken as any form of undertaking about AmTrust accepting the claim and/or paying for the proposed works.

In summary, I'm not upholding this complaint – and that's because I'm satisfied the warranty policy is not intended to provide cover in these circumstances.

As I say, I have every sympathy for Mr P. And I agree with him that there *should* (morally) be some recourse for him to have the issues with his property put right. He will no doubt wish to consult his own legal advice about the prospects of him being able to seek redress from the builder, developer and/or building control.

Fundamentally though, insurers are entitled to decide what risks they are willing to cover – as long as they make that clear in their policy documents. In this case, AmTrust clearly state that they are, in essence, willing to cover major damage to a property caused (or imminently

about to be caused) by a builder or developer's failings.

The policy terms are clear that AmTrust are not willing to cover *every* failure by a builder or developer to construct a property in accordance with the relevant technical rules or guidance. They will only cover major damage (or imminent major damage) to a property caused by such a failure.

And, to put it straightforwardly, Mr P has not experienced major damage (or imminent major damage) to his property. So, there is no cover provided by the warranty.

### **My final decision**

For the reasons set out above, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 January 2026.

Neil Marshall  
**Ombudsman**