

## **The complaint**

Mrs B and Mr B complain about AmTrust Specialty Limited's decision to decline a claim made under the new-build property warranty.

## **What happened**

The background to this complaint is well known to both parties, so I'll provide only a brief summary here, focussing on the key issues. No discourtesy is intended by this. And both parties can be assured that I've considered all the evidence they've provided.

Mrs B and Mr B are joint policyholders, but I'll mainly refer below to Mr B, who has been our main contact in this case.

Mrs B and Mr B bought their new build property in 2020. It was covered by a warranty underwritten by AmTrust.

They made a claim in January 2024 relating to cracking to the exterior of their property, which they believe was caused by a defect in the build – basically a failure to properly tie in cornerstones.

AmTrust declined the claim. They pointed out that the claim was made in year four of the warranty and so fell in a period (years 3-10) when cover applied where there was a defect (a failure to build according to relevant regulations and standards) causing major damage (issues with the structural integrity or watertightness of the property). In their view, there was no major damage and so, there was no cover.

Mr B complained to AmTrust about their claim decision. And when AmTrust maintained their position, he brought his complaint to us.

We issued a final decision on that complaint in February 2025. We didn't uphold the complaint. In essence we thought AmTrust were correct to say that there was no major damage and therefore no cover (we noted damage to the mortar but also noted that was specifically excluded under the terms of the warranty).

Mr B has now brought a further complaint to us. He says that he initially raised the issue with the cornerstones with the developer of the property (albeit via a neighbour acting on his behalf) in the first two years of the warranty – when cover is provided (by AmTrust) for defects (whether or not they cause major damage) if the developer fails to put things right for the policyholder.

Mr B believes AmTrust should therefore accept the claim under the 'defects period' (years one and two), where cover applies to all defects (whether or not they cause major damage).

AmTrust's view is that it's not clear that Mr B did in fact raise the issue with the developer in years one to two. But even if he did, he failed to comply with the contractual requirement to notify them of a potential claim (through the scheme administrator) by – at the very latest – six months after the 'defects period' (years one to two) ends.

Our investigator looked into Mrs B and Mr B's complaint and didn't uphold it. He thought AmTrust were entitled to decline the claim under the terms of the warranty.

Mr B disagreed and asked for a final decision from an ombudsman.

### **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 we've already explained to Mr B – and as I believe he understands – we can't go back and re-consider now the final decision made to resolve his previous complaint.

In short, I therefore have to take it as given that there was no (covered) major damage to the property at the time the claim was made (in January 2024). And that AmTrust were therefore entitled to decline any claim made within the 'structural insurance' period (years 3-10) – which covers defects only where there is resulting major damage.

Mr B's argument now is that he in fact made the claim in the 'defects period' (years one and two) – where cover applies for any defect (except where specifically excluded) whether or not there is consequent major damage.

He's provided a copy of an email from the developer to his neighbour and himself, saying that the developer will carry out repairs to the cornerstones. Whilst that email is dated around a month after the end of the 'defects period', it's clearly part of an on-going exchange.

Given the timescales, it seems likely to me then that Mr B had in effect (and albeit via his neighbour) raised the issue with the developer during the first two years of the warranty.

However, in order for the 'defects period' cover to kick in (and in effect for AmTrust to take over the developer's responsibilities, if the developer hasn't resolved the issue), policyholders are also required to notify AmTrust (via the scheme administrator) in writing and within six months of the end of the 'defects period'.

I'll quote the relevant policy terms in full since they are so important in this case:

*“The Underwriter will indemnify the Policyholder during the Defects Insurance Period against the cost of repairing, replacing or rectifying any Defect and resultant damage to the Home for which the Developer is responsible and which:*

*a) is discovered and notified in writing to the Developer during the Defects Insurance Period; and*

*b) is notified in writing to the Scheme Administrator no later than 6 months after the expiry of the Defects Insurance Period.”*

As I say, I think it's more likely than not, based on the evidence we have, that Mr B raised the issue of the cornerstone with the developer before the end of the 'defects period'.

However, there's no evidence to suggest that Mr B notified the scheme administrator (acting for AmTrust) - in writing – at any point before he made the claim in January 2024. That's fully a year after the end of the six month notification period (in January 2023) which followed the end of the 'defects period' (in July 2022).

Indeed, I don't believe Mr B is claiming that he *did* notify the scheme administrator – whether in writing or otherwise – at any point between July 2022 and January 2024.

So, I'm satisfied Mr B didn't meet the second criteria in the policy terms (b, in the section quoted above) to have his claim considered under the 'defects period'.

When I look at Mr B's response to our investigator's view on this case (which explained the above), I don't think Mr B is disputing that he didn't (technically) satisfy the requirements set out in the terms of the policy. He makes, in essence, two further arguments.

One, he says he contacted the scheme administrator *before* he (or his neighbour on his behalf) engaged with the developer. He says the administrator referred him to the developer, given the point at which the contact was made (which would be the correct advice at that time).

It's Mr B's view that the administrator, at that point, ought to have made a record of his call – and ought to have followed it up later to check with him whether the developer had resolved the issue.

Two, he says that the policy terms are inherently unfair – and/or the strict application of them is unfair in this case. His property has a problem, caused by the builder's failings, which he's paid around £12,000 to put right. And that's exactly the scenario the warranty ought to cover and was intended to cover.

Whilst I have a great deal of sympathy for Mrs B and Mr B about the situation they've found themselves in (through no fault of their own) I'm afraid I don't agree with Mr B's arguments.

There's no evidence to support Mr B's claim that he called the scheme administrator about the problem during the 'defects period'.

But even if we assume that he did, by his own account they provided him with the correct advice at the time. And there was no obligation for them to record that contact (which in any case was not in writing) as a notification that a claim might be coming down the track.

It wouldn't be unreasonable, at that point, for the administrator (acting as AmTrust's agent) to assume that if Mr B had any difficulty in getting the developer to resolve the issue, he would refer the matter back to them as and when that difficulty arose.

And it wouldn't be unreasonable for them to assume – at that point – that any such difficulty would become apparent to Mr B long before the expiry of the notification period (which, at the time of the call, was more than six months away).

So, I don't think AmTrust (via their agent) were under any contractual obligation to record that call – or follow it up – and nor do I think they were under any moral obligation to do so either.

I also note that the email from the developer was in effect one month into the six month notification period. Given that the developer hadn't resolved the issue – or indeed, been to the property - in the following five months, Mr B might have reasonably been expected to go back to the scheme administrator to notify them that the developer had failed to fulfil their obligations.

On Mr B's second point, I understand his frustration about the complexity of the contractual terms, but I don't agree that they are inherently unfair. Insurers are entitled to set out the terms of the risks they wish to cover.

In this case, the policy was sold to the developer, to be passed on to the purchaser of the property. And AmTrust clearly weren't willing to provide cover on the basis that 'defects period' claims might in effect be made throughout the full lifetime of the policy (for understandable reasons). That was clear in the policy terms - and that's what the developer bought and passed on.

So, I'm satisfied on balance that AmTrust haven't acted unfairly or unreasonably in declining Mrs B and Mr B's claim, as it was most recently presented (that is, as a claim under the 'defects insurance' period).

Mrs B and Mr B didn't comply with the (reasonable and clear) policy requirement to notify AmTrust's agent (in writing) of the issue with their property within six months of the end of the 'defects insurance' period.

In essence, in January 2024, they made a claim which in truth fell within the 'structural insurance' period (years 3-10). Our previous final decision (in February 2025) determined that AmTrust didn't act unreasonably or unfairly in declining that claim.

### **My final decision**

For the reasons set out above, I don't uphold Mrs B and Mr B's complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 8 May 2026.

Neil Marshall  
**Ombudsman**