

complaint

Mr and Mrs G are unhappy with the way Amtrust Europe Limited has handled the claim under their building warranty.

background

Mr and Mrs G made a claim after tiles started to fall off their roof shortly after they bought and moved into the property. Initially there were arguments about whether or not the warranty was in place. At a later stage after Mr and Mrs G came back to Amtrust as they weren't getting any satisfaction from the developer Amtrust offered the conciliation service. This is included within the warranty and confirms that it is down to the developer to deal with any issues. Mr and Mrs G wanted the agents acting on behalf of Amtrust to step in when the developer didn't carry out all the repairs they wanted.

Our adjudicator didn't uphold the complaint. He said this service can't look at issues around the conciliation service as this isn't a regulated activity and not something we can consider. Our adjudicator did consider if Amtrust could have stepped in but didn't think it acted unreasonably given the circumstances of the complaint. Mr and Mrs G didn't accept this and asked for their complaint to be passed to an ombudsman for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This service can't get involved in certain aspects of these building warranties. An example of this is any defect uncovered within the first two years of the warranty is the responsibility of the developer and isn't an insurance policy. This option is noted under section 3.2 of the warranty. Also within this section is the conciliation service which was offered by Amtrust and again isn't insurance. The developer getting the chance to do the work and the conciliation service are not regulated activities and so I can't comment on them.

Mr and Mrs G felt that not all of the work in the original survey was carried out. They said the lower roof also needed replacing and hadn't been done. Amtrust said that the lower roof work was done in line with what the claims investigation surveyor said. As noted above I can't get involved in this as it's still part of the conciliation but I note that Mr and Mrs G have recently said that after they threatened legal action the work has now been done.

However, Amtrust may sometimes need to step in, as Mr and Mrs G requested on this occasion, if the developer doesn't do what Amtrust asked it to do. The policy is clear that Amtrust would do this if the developer refuses to respond, won't engage with the conciliation process or doesn't comply with Amtrust's requests. But I can't see that any of these circumstances apply here.

The issue Mr and Mrs G have focussed on is that the surveyor set a three month deadline for getting the necessary repair work done. It's clear that the work wasn't done and so Mr and Mrs G feel at this point Amtrust should have taken over. Amtrust pointed out that the developers were unable to get the work done and had to bring in a new specialist contractor to do it which took some time. There was some dispute about the surveyor's findings which led to further debate with the surveyor and also the roof tiles were checked and tested to see if they were "*fit for purpose*". Amtrust said these issues meant the three month deadline just

couldn't be complied with. Although I can totally understand Mr and Mrs G's frustration at the delays I don't think it would be fair to expect Amtrust to have stepped in here. The developer was involved in the process and hadn't failed to do what was required of them by the warranty.

The developer never stepped away from the process or refused to do repair work. So I don't think Amtrust acted unreasonably when it didn't take over the repairs. I think it acted as the warranty allowed it to. It did take time to move matters along as highlighted by Mr and Mrs G's timeline but lots of parties were involved at different points. In the circumstances I don't think Amtrust acted unfairly.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 8 April 2016.

John Quinlan
ombudsman