

The complaint

Miss M complains Amtrust Europe Limited unfairly declined a claim she made on her building warranty.

What happened

When Miss M bought her leasehold property in early 2022, it came with a building warranty in place with Amtrust (the warranty started in November 2020). In June 2023 she made a claim under the policy. She said water was leaking into the property from the top corners of a window.

Amtrust assessed the claim but said Miss M hadn't complied with the terms of the warranty. It said the claim wasn't reported to it within six months of the defect insurance period ending, in line with the requirement to do so, set out in the policy terms. So it declined to offer assistance.

Miss M complained to Amtrust. She said on the policy document she'd received during the house sale, there was no time limit that applied to making a claim under the defects section of the policy. Amtrust didn't agree to change its position, it maintained the terms it had quoted were the ones that applied. It said it wasn't responsible for her not having the correct policy terms.

Unsatisfied with Amtrust's response, Miss A brought her complaint to the Financial Ombudsman Service for an independent review. Our Investigator thought Amtrust's decision to decline the claim was in line with its policy terms.

Miss A asked for an Ombudsman to consider matters, she said the six-month referral clause for a claim shouldn't apply, as she wasn't aware of it. She also said the reason for her late notification of the claim was down to assurances from the developer that the matter would be resolved, which it then failed to do.

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.

Having done so, and whilst I know it will cause Miss M disappointment, I am in agreement with the outcome reached by our Investigator, for broadly the same reasons.

The building warranty was already in place when Miss M bought her property, it is something the developer takes out, with the benefit being transferred to those who then purchase the new-build properties, as well as subsequent buyers within a set period. I don't doubt what Miss M is saying, that she didn't receive the full terms and conditions outlining the time period for a valid claim under section 3.2 of the policy. However, for me to say that is a failure of Amtrust - and so it should then set aside the time limit for a claim as a result - I'd need to be satisfied that it had an obligation to provide them to her when she purchased her property from the previous owner. Unfortunately for Miss M that is not the case.

Amtrust says it doesn't reissue any documents as the warranty automatically transfers when a house sale is completed, in line with its definition of '*policyholder*' which is defined (for the relevant section 3.2) as

“the owner acquiring a freehold or leasehold interest, or their successors in title, or any mortgagee in possession or lessor”

And given the warranty purchase is between the developer and Amtrust, I think this means Amtrust wasn't responsible for ensuring Miss M was in receipt of the correct policy document when her purchase went through. Indeed, after a property is built and the warranty comes into force, Amtrust would have no direct contact with property owners – unless or until they contacted it. If Miss M had called Amtrust to ask for policy details, or information about the warranty, I think it would have given that to her. But I can't reasonably have expected it to know she had purchased the property, pre-empt that she might not have received the documents are part of the property's sale and, therefore, send them to her.

Miss M has asked where her solicitor would have found the document, if not provided by Amtrust. I don't know the answer to that, but I don't think it shows Amtrust failed in any obligations to Miss M. And it also seems that document which Miss M was provided, which is essentially a handbook rather than the policy terms which apply to Miss M's home, is available online to download by anyone.

So I'm satisfied that the terms and conditions, as quoted by Amtrust, apply. And those terms say the following:

“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 Underwriter no later than 6 months after the expiry of the Defects Insurance Period.”

Miss M did notify the developer within the defects insurance period. However, the defects insurance period ended in November 2022. Miss M didn't notify Amtrust as the underwriter, until June 2023. As that is outside of the six-month period, I'm satisfied Amtrust has acted reasonably in saying the claim wasn't brought in time.

Miss M says the reason for the delay was due to the developer. I can see she was in regular contact with the developer and despite assurances to investigate matters, it doesn't appear to have done so. However, this Service doesn't have any jurisdiction to investigate the actions of the developer. And I can't see that the Amtrust policy makes any allowances (for example in exceptional circumstances) for claims arising late due to any issues with a developer.

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 Miss M to accept or reject my decision before 30 October 2024.

Michelle Henderson
Ombudsman