

complaint

Mr and Mrs W are unhappy that Amtrust Europe Limited won't deal with their building warranty claim for damage to their property's external render, caused by defective painting.

background

In January 2018 Mr and Mrs W made a claim to Amtrust following large patches of paint and render starting to fall away from the front of their home. They had purchased the property in 2016. They had been advised by a paint specialist that the exterior render was a lime render which had been painted with the wrong sort of paint. Lime render requires a particular breathable mineral paint, but the render had been coated with an acrylic paint which allowed moisture to get in behind the paint, causing it to start peeling away and exposing the render. The only way to repair it would be to remove all the paint and repaint it with the appropriate paint, repairing the render where necessary.

Amtrust fully accept that the damage was caused by the wrong type of paint being used. But it said the paint was purely a decorative finish and wasn't part of the structure or the waterproof envelope of the house. So it said the claim wasn't covered under the warranty.

On referral to this service our adjudicator said that Amtrust should deal with the claim. He said that the paint was covered under the warranty. The paint, he said, was part of the structure of the building as "*any external finishing surface (including rendering)*" as set out in the warranty/policy.

Amtrust continued to assert that the claim wasn't covered and the matter has been referred to me for consideration

my findings

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

The policy says that "*The Housing Unit is insured for a period of up to 10 years against the risk of Major Damage, ingress of water through the Waterproof Envelope...*"

And "*Major Damage*" is defined as "*Destruction of or physical damage to any portion of the Housing Unit.*" or "*a condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the Housing Unit.....in either case caused by a defect in the design, workmanship, materials or components of the Structure.*"

Rendering (as I've set out below) is part of the Housing Unit. In my view it is in this case susceptible to damage by water because of the defective paint. So, I have to decide first of all if the paint finish causing this damage can be said to be part of the "*Structure*".

So "*Structure*" includes "*any external finishing surface (including rendering) necessary for the watertightness of the external envelope.*" I note that Amtrust can't point to any exclusion in the policy concerning paint finishes. It relies on the fact that it believes the paint to be purely aesthetic, a decorative finish and so not "*necessary*" for the watertightness of the external envelope. Effectively I think Amtrust's argument is that the render was painted purely to look aesthetically pleasing and by extension not necessary to keep the render watertight.

I don't agree with that argument. First of all the reports/estimates Mr and Mrs W have submitted recommend the application of a new paint coating, once the old coating is removed. Secondly the render itself is starting to show signs of damage where it is exposed. Paint has a decorative function but it also can be necessary for waterproofing. I don't think it was appropriate to leave the render bare and unpainted any more than any external woodwork could be left unpainted. There may be alternative types of render which may not need painting but the lime render used on Mr and Mrs W's property does in my view require painting. Amtrust hasn't shown me any evidence that the render could have been left unpainted and still have kept the building watertight. So I think that the paint is an external finishing surface and that it is necessary for the watertightness of the "*external envelope*".

In my view the claim should be covered. This is because as I've found that the paint is part of the "*Structure*" then there is clearly a defect in the workmanship and the materials. And I have considered estimates and reports submitted by Mr and Mrs W. Those reports, together with Amtrust's own assessment confirm to me that the paint is causing moisture to get trapped behind it which requires remedial action to prevent actual or physical damage to the render. I also think it likely that, if left the paint will continue to cause damage to the external render. Immediate action needs to be taken to remove it and repair any damaged render.

So I think the claim is covered and Amtrust should settle it accordingly. I've set out above the work that I think needs doing, namely the removal of the paint, repair of any damaged render and the repainting with a paint finish suitable for lime render.

my final decision

I uphold the complaint and require Amtrust Europe Limited to settle the claim in accordance with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 17 May 2019.

Ray Lawley
ombudsman