

## **The complaint**

Miss C and Mr M complain about esure Insurance Limited (“EIL”) and the offer put to them to settle the claim made on their home insurance policy.

Miss C has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Miss C or Mr M as “Miss C” throughout the decision where appropriate.

## **What happened**

The claim and complaint circumstances are well known to both parties. So, I don’t intend to list them chronologically in detail. But to summarise, Miss C held a home insurance policy, underwritten by EIL, when her conservatory roof was damaged during a storm. So, she contacted EIL to make a claim.

EIL instructed an independent expert, who I’ll refer to as “M”, to attend Miss C’s property and inspect the damage. Having done so, M agreed that four of the nine polycarbonate sheets had been damaged by hailstones. But due to the age and condition of Miss C’s conservatory roof, they didn’t think a repair of these four sheets would be possible without the entire roof being replaced. So, EIL offered to pay Miss C a cash settlement based on what this repair would’ve cost, had it been a possible option. Miss C was unhappy about this, so she raised a complaint.

Miss C didn’t think it was fair for EIL to offer her a cash settlement that was for a significant amount less than a full replacement of the roof would cost her. She explained this wasn’t something she could afford and she didn’t think it was fair for EIL, her insurer, to leave her in a position where she had a conservatory roof with storm damage that hadn’t been repaired. So, she wanted EIL to cover the full cost of a roof replacement, as she didn’t think it was her fault that a repair of just the damaged roof panels couldn’t be completed. Miss C also raised concerns about the conduct of M at the home visit.

EIL responded to the complaint and didn’t uphold it. They didn’t think they could say for certain that M had acted unreasonably at the site visit considering M’s denial of this, but they apologised to Miss C for any upset caused. And they explained why they thought the settlement they had paid to Miss C, based on what it would cost to replace the four damaged panels, was a fair one, in line with the policy terms Miss C held. So, they didn’t think they needed to do anything more. Miss C remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They thought EIL were fair to limit their liability under the claim to the four damaged sheets, considering M’s opinion regarding the condition of the rest of the roof. And they thought EIL had acted in line with the policy terms when taking this decision. So, they didn’t think EIL needed to do anything more.

Miss C didn’t agree, providing comments setting out why. These included, and are not

limited to, her continued unhappiness with M's opinion and why she maintained it was unfair to leave her in a situation where her roof remained unrepaired, which would ultimately lead to further deterioration in the condition of the roof itself. As Miss C continued to disagree, the complaint has been passed to me for a decision.

### **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, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Miss C and Mr M. I don't doubt the worry and upset they would've felt when they discovered damage to their conservatory roof following the hailstone storm. And I appreciate they would've taken out the policy with EIL to assist them both practically and financially in a situation such as the one they found themselves in. So, when EIL's settlement offer didn't allow them to repair their roof to a satisfactory standard that they felt prevented further damage to the conservatory and their home, I can understand why they'd feel unfairly treated and choose to complain.

But for me to say EIL should do something differently, for example increase their settlement offer to cover the total costs Miss C and Mr M would incur replacing the entire roof, I'd first need to be satisfied EIL did something wrong. So, I'd need to be satisfied EIL failed to act within the terms and conditions of the policy Miss C and Mr M held when paying the settlement amount they have so far. Or, if I think EIL did act within these, I'd need to be satisfied they acted unfairly in some other way. In this situation, I don't think that's the case and I'll explain why.

Before I do, I think it would be useful for me to set out clearly what I've been able to consider, and how. It's not my role, or the role of our service, to re-underwrite the claim as we don't have the expertise to do so. So, I won't be speculating on how I think the claim should be settled personally. Instead, it is my role to think about the actions EIL have taken during and when settling the claim, including the evidence available to them, to decide whether I think they acted fairly and reasonably. And when doing so, I must take into consideration the expert opinion that has been provided, which in this case is the opinion provided by M, as well as the policy terms and conditions.

In this situation, I don't think it's in dispute that there were storm conditions, or that there was damage caused by this storm. So, I won't be considering this in any further detail. Instead, I've turned to the policy terms and conditions and thought about EIL's actions against these.

The policy makes it clear, under the heading "*Storm/Flood*" that EIL will "*pay for the loss of or damage to your building or contents as a result of storm or flood*". And under the heading "*How we settle your claim*" it explains that EIL can choose to "*pay the cost of the work carried out to rebuild, replace, or repair your buildings; or arrange for your buildings to be rebuilt, replaced or repaired.*"

So, based on the above, I would expect EIL to pay for the repairs required to the damage caused by the storm conditions. And I think EIL were able to decide whether this would be settled by way of a cash settlement, or a repair arranged through them. So, I don't think they were unfair to offer to settle the claim on a cash settlement basis.

But crucially, I would only expect EIL to pay for the damage caused directly by the storm. And when deciding what this damage is, I would expect them to rely on the opinion provided by the expert, who in this situation is M.

I've seen M's opinion communicated to both EIL and Miss C through a separate complaint process. And this sets out clearly M's opinion that only the four panels were damaged by the hailstone storm. Crucially, M sets out their opinion that the raining in was caused not by the storm, but by an issue most likely linked to wear and tear, considering the age of the conservatory itself.

Within the policy terms and conditions, within the general exclusions section, it's made clear that EIL "*will not pay for loss, damage or any liability resulting directly or indirectly from: wear and tear or loss of damage that happens gradually over time*". So, as M felt the other issues with the roof were caused by wear and tear, I don't think I can say EIL acted unfairly when not offering to cover the costs required to repair the raining in.

And because of all the above, based on the opinion of M, I don't think I can say EIL were unfair when offering Miss C a settlement that covered the costs EIL would incur replacing the four panels damaged by the storm itself, as the storm was the insured event.

But I do note both M, and Miss C's own contractors, have set out it would not be possible to just repair the four damaged panels. So, I do understand why Miss C feels the entire roof should be replaced, as this is the only way the storm damage can be repaired.

But crucially, I don't think this is the case. Nor is this something I am able to direct EIL to do. This is because if I were to direct EIL to replace Miss C's entire roof, or cover the costs of this, it would be placing Miss C in a position of betterment, as she would be receiving a new roof with panels being replaced that weren't damaged by the storm. And this isn't something our service is able to do, nor is it something the insurance policy EIL provided is intended to cover.

So, while I do appreciate the financial burden placed on Miss C and the fact the storm has most likely expedited the need for Miss C to replace the conservatory roof, I do think this roof replacement is something Miss C is always likely to have needed to do, at a cost to herself, considering M's opinion on the roof and its condition and the fact that Miss C's own contractors have explained a full roof replacement will be needed.

Because of all the above, I think EIL's settlement offer already paid to Miss C, covering the costs they would've incurred to replace the storm damaged panels and the costs Miss C incurred seeking alternative quotes is a fair one, in line with the policy terms and conditions. And so, I don't think they need to do anything more on this occasion.

I also want to explain to Miss C that while I have considered her concerns about the conduct of M in person, I'm unable to say for certain what did happen when M was at the property as I wasn't there. And I note M's testimony disputes Miss C and Mr M's recollections. But I do think EIL took reasonable steps to consider Miss C's complaint about this, asking M for their own testimony which EIL then considered, apologising for any offence caused. As I can't be sure of what did and did happen, I think EIL acted fairly in response to this complaint point.

### **My final decision**

For the reasons outlined above, I don't uphold Miss C and Mr M's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr M

to accept or reject my decision before 1 October 2024.

Josh Haskey  
**Ombudsman**