

The complaint

Ms K complains about esure Insurance Limited (“EIL”) and their decision to decline the claim she made on her home insurance policy. Ms K also complains about the delays she feels she experienced during the claim process.

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, Ms K held a home insurance policy, underwritten by EIL, when her garden outbuilding was damaged during a storm. So, she made a claim on the policy.

But EIL eventually declined the claim, relying on a surveyor report which deemed the damage to have been caused by wear and tear or a lack of maintenance. Ms K was unhappy about this decision, so she raised a complaint.

Ms K didn’t think the decision to decline the claim was fair, as it was made based on photographs taken following temporary repairs to the outbuilding rather than photographs of the outbuilding before the damage. And she also complained about how long it had taken EIL to reach this decision. So, she wanted the claim decision to be overturned and for EIL to cover the costs needed to rebuild the outbuilding, which had since been dismantled.

EIL responded to the complaint and didn’t uphold it. They thought they had declined the claim fairly, in line with the policy terms and conditions. And they thought they had acted promptly, once they received the information required to assess the claim. So, they didn’t think they needed to do anything more. Ms K 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 rely on the opinion of the surveyor, who I’ll refer to as “B”, as they were the expert in this situation. So, considering B were no longer able to assess the building in person as it had been dismantled, and without further photographic evidence to show the outbuildings state before the damage, they didn’t think they could say EIL had declined the claim unfairly. And they didn’t think they could say EIL unreasonably delayed the claim, as they had no evidence to show Ms K had sent EIL the photographs needed to assess the claim between March to August 2022. So, they didn’t think EIL needed to do anything more.

Ms K didn’t agree. She thought the outbuilding was fit for purpose as it had been storing items as it was intended to do, regardless of whether it had been repainted on the outside.

So, she didn’t think it was fair for EIL to base their decision on the photographs of the outbuilding taken after the damage to decline the claim and she maintained her view that EIL had acted unfairly and unreasonably. Our investigator’s view remained unchanged and so, 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 Ms K. I appreciate Ms K took out an insurance policy with EIL to help assist her both practically and financially in situations such as the one she found herself in. So, when EIL declined her claim leaving her needing to cover the costs to rebuild her outbuilding herself, I can understand why she'd feel unfairly treated and raise a complaint about this. I also recognise how Ms K's situation was no doubt made worse due to her ill health around the same time and I want to reassure Ms K this is something I've considered carefully.

But for me to say EIL should do something differently, such as accept the claim or compensate Ms K, I first need to be satisfied they've done something wrong. So, I'd need to be satisfied that, when declining the claim, they failed to act within the terms and conditions of the policy Ms K held. 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.

I've first considered what I believe to be the crux of Ms K's complaint, which centres around the decline of her claim. And to do so, I've look through the policy terms and conditions at length. From what I've seen, I don't think it's in dispute that there were storm conditions that led to the damage of her outbuilding. So, as I think this is accepted, I haven't commented on this in any further detail.

Instead, I've considered the policy terms and conditions applicable to claims of this type, specifically the exclusion EIL have relied upon. Within the general exclusions section of the policy, 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 or damage as a result of lack of maintenance"*.

And I've seen the report compiled by B, the surveyor and so, the expert in this situation, who state that *"the claim has been declined in full due to shed/outbuilding was in a poor state of repair prior to storm/highwind, which only highlighted a pre-existing condition"*. As B are the expert, I don't think I can say EIL were unreasonable to rely on B's opinion as this is what I'd expect any other insurer to do, in a similar situation. So, based on the above, I don't think I can say EIL have acted outside of the policy terms and conditions when declining the claim.

But, as I've explained above, I've also thought about whether I think EIL acted fairly when doing so. And I've carefully considered Ms K's testimony about the photographs B used to reach this conclusion, and when these were taken.

But crucially, by the time B were instructed, Ms K has confirmed the outbuilding had been dismantled and so, a physical inspection wasn't possible.

In this situation, I don't think I can say B, or EIL, were unfair to continue to validate the claim on photographs only, as this was the only evidence available to them. And I must make it clear before any insurance claim is accepted, we would expect an insurer to validate a claim to ensure the claim and its circumstances fall within the scope of the cover they provide. So, EIL weren't unreasonable when doing so here.

And while I do appreciate why Ms K thinks these photos weren't an accurate depiction of the outbuildings condition before the damage, crucially I can't see Ms K has been able to provide any photos of the outbuilding before the damage for EIL, and so B, to consider. So, without this evidence, I think B were fair to continue based on what evidence they did have. And, that EIL were fair to rely on the opinion B provided.

I also want to make it clear I have thought about the delay in B being instructed, and whether this prejudiced Ms K's position as a physical inspection was no longer possible. But I've seen EIL's claim notes and from these, I can see in an email sent in March 2022 Ms K confirmed she would send photos to them. But I've seen no evidence to show these photos were sent at this time and I don't think the onus was on EIL to chase Ms K for these at this point.

From the testimony I've read, I think it's most likely Ms K's own contractor was supposed to have sent the photos to EIL. And I've seen no evidence on EIL's system, or provided by Ms K directly, that her contractor did this. So, because of this, no further action was taken by EIL till Ms K chased them for an update in August, when the outbuilding had already been dismantled.

Because of the above, I don't think I can say a failure of EIL's led to a physical inspection not being possible. Nor do I think I can say EIL unreasonably delayed the claim as from Ms K's contact in August, I can see B were instructed in a reasonable amount of time, and a report compiled once photographs were made available from a representative of Ms K a few months later.

So, while I do understand the distress and inconvenience this situation has caused Ms K, alongside the financial impact of needing to cover the costs of any rebuild herself, I don't think I can say this has resulted from any avoidable mistake EIL made. So, because of this, I don't think I can say EIL have acted unfairly and I don't think they need to do anything more.

My final decision

For the reasons outlined above, I don't uphold Ms K's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 20 May 2024.

Josh Haskey
Ombudsman