

## The complaint

Mr C has complained about his building warranty provider Evolution Insurance Company Limited because it has declined his claim made to it for skylights. The warranty in question offers cover for certain defects and damage.

## What happened

Mr C and his neighbour live in a building with skylights in the roof. Mr C's property comprises three of the skylights, his neighbour's having two. In February 2022, the external pane of one of the neighbour's skylights blew off in a storm. The buildings' insurer accepted a claim for storm and, as part of the storm repair work, covered costs to reseal all five skylights.

Subsequently, Mr C noted water coming through onto the interior pane of his property's skylights. He made a claim to Evolution as he felt the design of the skylights was flawed and that this water penetration, along with the prospect of a pane being displaced by storm weather, meant major physical damage, as covered by the warranty, had occurred.

Evolution, having visited the property to assess the skylights, felt the warranty would not respond in this instance. It noted the warranty's definition for major damage, setting out two of its three requirements. It noted that both of those requirements were regarding "load-bearing" elements of the property. It said the panes of the skylights were not "load-bearing", so the policy couldn't assist.

Mr C was unhappy with that response. He set out why he was unhappy. When Evolution wouldn't change its position, Mr C complained to the Financial Ombudsman Service.

Our Investigator felt Evolution had fairly and reasonably declined the claim. So she did not uphold the complaint. Mr C was unhappy with that. The complaint was subsequently referred to me for an Ombudsman's decision. I was minded to uphold it and issued a provisional decision to explain my views. My provisional findings were:

### "Scope of my consideration"

*My background above is brief, I have not set out all of the arguments Mr C has made in an effort to show, not only that he has a claim under the warranty, but that his claim should succeed. I mean no discourtesy by not setting everything out, I can assure both parties that I've considered everything said and provided. However, ours is an informal service and part of my role is to focus in on the arguments and evidence most relevant to my findings.*

*In that respect, I note our Investigator has responded at some length to some of the points Mr C has raised. And I note Mr C has then disputed what's been said and raised counter-arguments. For the main, and again with no discourtesy intended, I won't be commenting on those disputes. That is because Mr C's arguments take things past the point of stalemate reached between him and Evolution. And that stalemate point – the issues in dispute at that point – is what I have to consider here.*

*In this case that means the fact that Evolution declined Mr C's claim, and its specific reason for doing so. Evolution's argument in this respect was quite limited and narrowly focused, referencing as it did only the major damage definition. And only part of it at that. So that is all I will consider here, I won't get into the in-depth arguments Mr C has put forward about all the other relevant phrases and terms of the policy. If I feel that, in declining the claim, Evolution has ignored or dismissed relevant terms – focussing only as it has on the major damage definition, and only part of that – then I may require it to consider whether other terms apply. I'll acknowledge here that Mr C has put forward arguments about other terms, explaining why he feels they might apply. But I won't come to a view in those respects in this decision, not where those arguments relate to terms Evolution itself has not yet considered.*

### The policy wording

*Mr C's claim arose in years three to ten of the warranty. The cover available in years three to ten is set out in section C.*

### Section C

*C1 offers cover in the event of "major physical damage". The policy offers a definition for "major damage" and it is that definition which Evolution says has not been met. Evolution thinks that as the "major damage" definition has not been met, the claim, under C1, cannot succeed.*

*C2 offers certain cover associated with breaches of building regulations. This cover is not dependant on there being major physical damage, nor for that matter, "major damage". Evolution, when declining Mr C's claim, didn't make any specific comment about the wording of C2.*

### Evolution should consider the claim under C1

*The warranty, under "Definitions" sets out that certain words and phrases will be used during the document which, when they appear in bold, will have specific meaning. The definitions section lists those words and phrases and sets out the specific meaning Evolution has chosen to give to each.*

*Within the definition list is the term "major damage". There are three instances; a), b) and c) which the definition explains will constitute major damage, the first two of which make direct reference to load-bearing elements of the property.*

*Importantly though, the definition list does not contain either the phrase or a definition for, "major physical damage".*

*C1 specifically references the need for "major physical damage" to have occurred, not "major damage". And "major physical damage" within the C1 wording is not set out in bold.*

*For me then, Evolution can't fairly and reasonably decline a claim under C1 on the grounds of the major damage definition not having been met. C1 does not seek to cover "major damage", and even if it could reasonably be said that "major damage" can be read instead to be "major physical damage" (which are two different phrases), it does not set those words out in bold. And it is only wording in bold which is given a specific meaning by Evolution under the warranty.*

*As such, I intend to require Evolution to consider Mr C's claim under C1 without reference to or reliance upon the "major damage" definition of the warranty.*

*There've been many arguments raised so far by Mr C about why his claim meets the major damage definition, including why the skylight and or parts of it are load-bearing elements of the property. Given what I've said here, that Evolution can't reasonably rely on the major damage definition regarding Mr C's claim, I won't consider within this decision the merits of the arguments in play about why that definition is felt to have been met.*

#### *Evolution should consider the claim under C2*

*I can see that Evolution's position – that "the warranty cannot assist" because the major damage definition has not been met – is also flawed regarding C2. Evolution may or may not be correct in saying the problem Mr C has falls outside the warranty. But by focussing its reasoning so narrowly it has not considered whether or not the warranty should reasonably respond under C2, with C2 making no reference at all to either major damage or major physical damage.*

*As such, I intend to issue a final decision requiring Evolution to consider the claim under C2 of the policy.*

#### *When Evolution replies to my provisional decision*

*Evolution might wish to respond, at least in part, with its view on whether or not the claim would succeed under C1 and/or C2 when taking into account the comments I've made above. However, I won't be able to consider its arguments, or any raised by Mr C, in these respects, as part of this complaint. It will first have to tell Mr C what it thinks about cover under C1 and C2, in light of my findings in any final decision I make, allowing him a chance to respond. If/once the parties then reach a stalemate position on any points in contention between them, Mr C will be able to bring his complaint about Evolution's response, at that time, to this Service.*

#### *In summary (Evolution's overall decision to decline the claim)*

*I've found, albeit provisionally, that Evolution's view that Mr C's claim should be declined because it does not meet the requirements of the major damage definition was unfair and unreasonable. I've found, as explained earlier in this decision, that Evolution, in considering the claim did not take into account the actual wording or the full cover offered by the warranty. So my view is that Evolution acted unfairly and unreasonably when it declined Mr C's claim and it must now consider it again.*

#### *Compensation*

*Clearly Evolution's decline has caused Mr C some frustration. I note he's felt all along that Evolution has overlooked certain important aspects, and I've found it did not apply the correct wording of the warranty or fully assess the claim. I think £100 compensation is fairly and reasonably due to Mr C."*

Evolution didn't provide any comment in reply to my provisional decision.

Mr C said he accepted that my decision could only consider the complaint as at its point of stalemate. He said though that he didn't agree that the major damage definition should be discounted. Mr C said the definition should still apply as "Major Damage" is used at page one of the policy in the "Your Cover" section. And under "Your Cover", "Major Damage" is linked directly to the cover available under sections B and C of the warranty (with his claim falling under section C). He explained then that, in light of that, it's reasonable to read the wording of section C1 (which only uses the phrase 'major physical damage') as distinguishing major physical damage which meets the definition of major damage, and physical damage which does not.

Mr C said that if the definition of major damage is discounted then that would leave him in an unfair position moving forward. He said without the definition agreed in the policy, Evolution could potentially re-write or reconsider what it believes major damage to be, tailoring its view to his disadvantage.

Mr C also argued that if I make Evolution disregard the policy definition, that would make all the warranties it has not fit for purpose. The term, seemingly an industry standard said Mr C, must have appeared in hundreds of warranties that have been subject to complaints considered by this Service. He said it would be exceptional for me to not consider the term in his complaint.

Mr C asked that I require Evolution to continue to apply the major damage definition when reconsidering his claim. He also asked that I require Evolution to answer points he made in a letter of 15 May 2024, about how the language of the policy applies to his claim.

### **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.

I appreciate that the phrase "Major Damage" does appear on page one of the cover booklet. But it is not used in the specific sections of cover which apply to Mr C's claim. I appreciate that Mr C thinks Evolution's choice of wording can be explained. But it is a principle of insurance that wording should be clear – words and explanations should not have to be added by the reader in order for the policy to make sense.

I maintain that this policy wording is not clear that the major damage definition applies to C1, and the phrase isn't used at all in C2. Yet Evolution's sole reason for declining the claim was based on the damage not meeting the major damage definition. So the fair outcome here is to say that it was not reasonable for Evolution to rely on the major damage definition to decline Mr C's claim.

That means that Evolution will have to reconsider the claim without reference to that specific definition. I understand why Mr C might be concerned about that. However, this does not mean that Evolution can now create a new, policy specific definition and apply it to the further claim considerations. An insurance policy works on the basis that unless a term in the policy is defined, words are given their everyday meaning. That doesn't necessarily mean that Evolution and Mr C will agree on things moving forwards of course, but I trust it settles Mr C's concern in this respect. In essence Evolution cannot now say, for example – oh well we think major physical damage doesn't fairly include anything that happened on a Tuesday – because that is not a normal everyday meaning for that phrase.

I note Mr C's concern about the other warranties issued by Evolution, and even that other complaints at this Service may have been considered against Evolution or against warranty providers with similar policies with similar wordings. But this complaint is not about other warranties Evolution or other providers have in place. Although, given what I've explained above about 'normal everyday meanings', I don't agree that my findings here make the warranty in general not fit for purpose. In respect of other complaints at this Service, none of our complaints set a precedent and each is considered on the specifics of the case and policy wording in place. Many building warranties may contain a similar definition to the one Evolution uses here – but their policy wording, and possibly other iterations of Evolution's wording if it has issued different versions, may be written clearly, such that in claims under those policies, the definition will be seen to reasonably apply.

Having reviewed the complaint and Mr C's reply, I'm not minded to change my view that Evolution should consider Mr C's claim, under section C1 and C2, without reliance on the major damage definition. If Mr C is ultimately unhappy with any outcome to that claim, he will be able to make a further complaint, to Evolution in the first instance and then this Service. As my direction is for consideration to take place, *without the major damage definition being applied*, I won't be directing Evolution to specifically answer Mr C's points from his previous letter, which are about the language used in the major damage definition. To be clear, I have not considered, in this decision, the points raised in that letter.

As my view has not changed, my provisional findings now form part of this, my final decision.

### **Putting things right**

I require Evolution to:

- Re-consider Mr C's claim under section C1 of the warranty cover, without reliance on or reference to the major damage definition – because that definition does not reasonably apply to the cover offered at C1.
- Re-consider Mr C's claim under section C2 of the cover.
- Pay Mr C £100 compensation.

### **My final decision**

I uphold this complaint. I require Evolution Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 January 2025.

Fiona Robinson  
**Ombudsman**