

## **The complaint**

Mr C has complained about esure Insurance Limited's decision to decline a claim he made under his home insurance policy for an escape of water (EOW).

## **What happened**

Mr C made a claim to his insurer esure for a burst pipe which caused water damage to his home in February 2023.

esure declined his claim as it said Mr C hadn't occupied the home in line with the terms of the policy. esure relied on utility bills which showed little or no usage in the months before the damage occurred.

Mr C complained to esure about its decision, but in July 2024 esure didn't uphold the complaint. So Mr C asked us to look at his complaint. He was also unhappy with the time it took esure to respond to his complaint.

One of our Investigators recommended the complaint should be upheld. He found that the cause of the EOW wasn't related to a lack of usage for utilities in the home, which was why esure said Mr C hadn't met the occupancy term under the policy.

The Investigator said that under insurance rules, esure must not unreasonably reject a claim which refer to terms that aren't relevant at the time of loss. He found that due to the cause of the EOW, even if there was no dispute about meeting the occupancy term, the damage would have occurred anyway as it wasn't related.

So the Investigator recommended esure deal with Mr C's claim under the remaining terms and conditions. He recommended esure pay Mr C £500 for the distress and inconvenience it had caused him, and to reimburse Mr C for reasonable out-of-pocket expenses.

Mr C called the Investigator and asked to discuss the view. The Investigator called Mr C back but wasn't able to speak to him.

esure didn't agree. It says there is no dispute that Mr C wasn't living at the property for 30 consecutive days before the event. esure says it won't pay for loss or damage caused by an EOW if the property is unoccupied, regardless of the cause of the EOW.

So esure wants an ombudsman to decide.

## **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.

esure initially accepted Mr C's claim. As part of Mr C's claim, he asked esure to reimburse him for additional utility costs due to drying equipment used at his home.

esure reviewed utility bills provided by Mr C which it says shows little or no usage at the property for around nine months before the event. This led to esure's decision to decline Mr C's claim in full. It did reimburse Mr C for the additional electricity costs for the drying out of his home. While Mr C says esure doesn't define what the minimum utility usage should be – and he's provided his reasons as to why his bills show little or no usage – esure is entitled to

rely on evidence to support a claim. I'm reasonably satisfied from the utility bills evidence that Mr C wasn't living at the property to satisfy the policy's occupancy term.

However, as the Investigator explained, we look at what is fair and reasonable overall, as well as relevant insurance rules and guidance.

Mr C says he had stayed at his girlfriend's house the night before, gone to work in the morning and returned to his home at around noon and discovered the EOW. He turned the water supply off at the stopcock immediately.

In this case, the EOW was reported by esure's appointed Loss Adjuster (LA) as caused by a failed push joint on the main water feed in the loft and was due to high water pressure. So, the cause of the EOW isn't relevant to whether Mr C met the occupancy term or not. If for example the cause of the claim was due to frozen burst pipes, this would be relevant to the term esure has applied as to why it has rejected the claim. I say this because the utility bills would show that Mr C hadn't used sufficient gas and electric to heat his property.

I've also taken into account the LA's comment on interviewing Mr C.

*"On balance the risk address was not unoccupied for a long period of time. The main waterfeed failed which is at high pressure. Had the water been escaping for a few days then there would be considerably more damage than what is evident."*

The Insurance Conduct of Business Sourcebook (ICOBS) sets out the context of rules by the Financial Conduct Authority (FCA) which firms need to follow. This includes fair handling of claims.

Under Rule 8.1.1 (3) the ICOBS says an insurer must not unreasonably reject a claim.

The ICOBS goes on to set out the circumstances under which an insurer might unreasonably reject a claim under 8.1.2A. These include misrepresentation – which esure hasn't referred to or applied here – and for breach of a term under section 11 of the Insurance Act 2015.

The relevant provision that applies in this case is as follows:

Under Rule 8.1.2A (2)

*"(b) section 11 places restrictions on an insurer's ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk"*

Section 11 of the Insurance Act 2015 expands as follows:

*"Terms not relevant to the actual loss*

*(1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—*

*(a) loss of a particular kind,*

*(b) loss at a particular location,*

*(c) loss at a particular time.*

*(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).*

*(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred."*

So, in this case, the risk of the loss did not increase because the occupancy term esure is relying on wasn't complied with by Mr C.

I'm satisfied that the term esure is relying on to reject the claim isn't relevant to the actual loss. So it follows that I think esure has unreasonably rejected Mr C's claim.

This means I'm upholding Mr C's complaint and I agree with the Investigator's recommendations to put things right. I think esure has caused Mr C distress and inconvenience by not agreeing to meet his claim. For this it should pay Mr C £500 compensation.

esure should deal with Mr C's claim under the remaining terms and conditions – and reimburse Mr C for any reasonable out of pocket expenses he's incurred as a result of esure rejecting his claim.

Mr C is unhappy with how long it took esure to respond to his complaint. We can only look at complaints about regulated activities which are set out by the FCA. Complaints handling itself isn't a regulated activity. This means that in Mr C's case, we cannot look at the way esure handled his complaint.

### **My final decision**

For the reasons I've given above, my final decision is that I uphold this complaint. I require esure Insurance Limited to do the following:

- Deal with Mr C's claim under the remaining terms and conditions of the policy.
- Reimburse Mr C for any reasonable out of pocket expenses incurred as a result of esure's decision to reject his claim, subject to reasonable proof.
- Pay interest from the date Mr C paid to the date of reimbursement at a rate of 8% simple interest a year.
- Pay Mr C £500 compensation for the distress and inconvenience caused.

esure Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If esure Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 May 2025.

Geraldine Newbold  
**Ombudsman**