

## **The complaint**

Mr and Mrs N complain that esure Insurance Limited unfairly declined a claim on their home insurance.

Both Mr and Mrs N are named policyholders on their esure policy, so any claim or complaint is brought by them both. But for simplicity, and because most of the information about the complaint has been provided by Mrs N, I'll refer mainly to Mrs N from here onward.

## **What happened**

Mr and Mrs N had an esure home insurance policy, bought through an intermediary. In December 2020, they made a claim on their insurance when they noticed water leaking through their kitchen ceiling.

esure appointed a third party surveyor (who I'll refer to as 'B' in this decision) to inspect the damage and assess the claim. B concluded the leak was due to failed sealant and grout in the bathroom. This type of damage was excluded under the policy terms and esure declined the claim.

Mr and Mrs N bought a new bathroom suite in January 2021 but couldn't install it until October 2021. During the installation, their plumber discovered a leak coming from a pipe below the bathroom floor. This had caused the damage to the kitchen ceiling, as well as several kitchen units. Mrs N complained to esure.

esure again appointed B to inspect the damage. B said Mr and Mrs N had failed to repair the sealant following its December 2020 inspection which meant water had been leaking into the kitchen ceiling for ten months. Based on this, esure said Mr and Mrs N had failed to mitigate the damage to their home and again declined the claim. Mrs N was unhappy with this and brought her complaint to this service.

Our investigator recommended that Mr and Mrs N's complaint should be upheld. She was satisfied that they had a valid claim because the damage was caused by a leak from a pipe, so was covered by their policy. She didn't agree that esure should pay for the new bathroom but thought it should settle the claim. She said Mr and Mrs N should send esure invoices showing the cost of any repairs to the pipe, kitchen ceiling, and the damaged kitchen units. esure should refund the cost of these repairs, less the policy excess.

esure disagreed with our investigator, so the case was passed to me to make a final 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.

Mrs N's policy booklet covers '*Escape of water/burst pipes*' ('*Your cover*', Section 7). This sets out what's covered by the policy, including "*loss or damage to Your Buildings or*

*Contents as a result of water escaping from water tanks, pipes, fixed equipment, any domestic appliance or fixed heating systems...*

The same section also says: *"We will not pay for loss or damage caused by failure or lack of appropriate sealant and/or grout"*. esure declined Mrs N's original claim based on this exclusion.

However, Mrs N's plumber discovered there was a leak from a pipe when he/she was installing the new bathroom. esure hasn't disputed this and B's November 2021 report noted the pipe had been replaced. I see no reason why the pipe would have been replaced if it wasn't damaged, so I'm satisfied that there was a separate leak from a pipe below the bathroom floor. I'm also satisfied that any damage caused by this leak was covered by Mrs N's policy.

I've thought about whether water might have been leaking through just the sealant in December 2020 and the pipe leak occurred separately sometime later, after B's original inspection. I think this is unlikely and there's enough evidence to show the pipe was leaking in December 2020. For example, esure's claim notes say Mrs N's plumber fixed the sealant but the leak persisted: *"All plumbers been out and repaired pipe under the bath and re grouted the tiles but seems to still be a leak..."*. B's December 2020 report says the same: *"...they had a leek [sic] coming through the ceiling plumber attend [sic] and advised it was failed grout, this repaired, but the leak continued another plumber attended said it was from a pipe..."*. So I think it's reasonable to conclude the damaged pipe was leaking at the time of the original claim.

esure has argued that Mr and Mrs N's new claim shouldn't succeed because they failed to fix the sealant in December 2020. This meant they didn't do anything to mitigate the leak which got worse over the next ten months. esure also says that if they'd fixed the sealant in December 2020, they'd have soon realised the leak was partly due to the failed sealant and partly due to the leak from the pipe.

This relates to the 'duty of care' policy term which requires Mr and Mrs N to do all that they *"reasonably can to prevent further loss or damage arising as a result of an event covered by Your Policy"* (*'General terms and conditions which apply to your policy'*, page 32).

I don't think esure's reliance on this term is reasonable in this case. As I've said above, Mr and Mrs N had tried to fix the sealant. When this didn't work, they reported the leak to esure. B said the source was the failed sealant. Given the later discovery of the failed pipe, this wasn't right and calls into question the thoroughness of the original inspection. I don't think Mr and Mrs N should lose out because of B's mistake.

In any case, B's December 2020 report includes photos clearly showing damage to the kitchen ceiling. The report also notes that the ceiling was *"starting to bow"*. So it's clear that the pipe and ceiling already needed to be repaired at that time.

I'm satisfied that there was a leak from a pipe in December 2020 that caused water damage to Mr and Mrs N's home. This was covered by their home insurance. If esure's surveyor had identified this leak in December 2020, I think esure would most likely have accepted the claim. I don't think it's fair for esure to blame Mr and Mrs N for not mitigating further damage when:

1. They'd already tried to do so.
2. B's conclusion about the source of the leak was – at least in part – wrong.
3. The pipe and kitchen ceiling were already damaged.

For these reasons, I think esure acted unfairly by declining Mr and Mrs N's claim.

### **Putting things right**

Mr and Mrs N would like esure to pay for their new bathroom because they replaced something that didn't need replacing. Like our investigator, I don't think that's reasonable. The leak didn't cause any damage to the bathroom and didn't mean it had to be replaced.

Their policy covered repairs to the pipe, kitchen ceiling, and kitchen units. I think esure should settle the cost of these repairs.

### **My final decision**

My final decision is that I uphold the complaint and require esure Insurance Limited to settle Mr and Mrs N's claim covering the replacement pipe, kitchen ceiling, kitchen units, and any related work in line with the remaining policy terms.

Mr and Mrs N should send esure evidence of the cost of these repairs if they've already been done, or quotes for any repairs that haven't been done yet. For the avoidance of doubt, esure can deduct the 'escape of water' policy excess from any settlement amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 13 September 2022.

Simon Begley  
**Ombudsman**