

The complaint

Mr K and Miss P are unhappy esure Insurance Limited declined their claim made under their home insurance policy for water damage to their property.

What happened

I issued a provisional decision on this complaint on 3 August 2022 detailing my intention to partly uphold Mr K and Miss P's complaint, I said:

The background of this complaint is well known to both parties and has been detailed by our investigator previously. So, I'll summarise the key points I've focused on within my decision.

- *Mr K and Miss P held a home insurance policy with esure from December 2020. In September 2021, they got in touch with esure to report mould in the playroom of their house.*
- *esure instructed its agent to inspect the damage. Its agent noted rot and fungus and said the damage had happened over time due to a broken rainwater gully. It declined the claim, stating the cause of the damage was a gradually operating cause, an event not covered by the policy.*
- *Mr K and Miss P complained. esure maintained its decision stating the cause of the damage was due a broken rainwater gully. It said the damage had happened over time, prior to policy inception. It said a gradually operating cause was excluded from cover.*
- *Mr K and Miss P responded stating its expert said the cause of the damage was a leak from the mains water supply. With no response from esure, a complaint was referred to our service.*
- *Our investigator considered the complaint. She was persuaded from the evidence presented that the damage wasn't caused by a one-off insured event and that the reason for the damage was excluded from cover.*
- *Mr K and Miss P provided their own expert report. It identified the cause of the water ingress from the mains cold water supply under the stairwell cupboard floor cavity.*
- *Our investigator looked into what happened again and upheld the complaint. She said:*
 - *The claim should be considered under the underground services part of the policy and not considered as an escape of water claim.*
 - *There is no evidence that the damage to the pipe was caused by wear and tear as suggested by esure. Its agent had yet to inspect the pipe.*
 - *To put matters right, esure should repair the pipe, reassess the claim for rectifying the damage and taking into account the impact the incorrect cause identified by esure's agents, reimburse for the leak detection reports obtained in October 2021 and March 2022 and pay £1,000 for the distress and inconvenience caused by failing to identify the cause of the leak in September 2021.*

- esure responded, asking for the complaint to be reviewed by an ombudsman. It said:
 - while the pipe is under the floor, it's above the ground and therefore not considered an underground service. Therefore, the claim is an escape of water.
 - It agreed that the cause of the water damage was misdiagnosed by its agent but that the size of the fungi suggested the leak had been ongoing for some time.
 - with the pipe being under the floor, it didn't seem to have been accidentally damaged by a one-off event but rather wear and tear.

What I've provisionally 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.

The claim

I think this claim falls under two sections of the policy.

- *Underground services*

*The policy provides cover for 'underground services'. It says esure "will pay for the cost of repairing underground pipes, cables and septic tanks providing services to and from **Your House**, which **You** are legally responsible for, and which break accidentally".*

I'm persuaded in the circumstances of this complaint that the leaking cold-water supply pipe is part of the 'underground services'. The pipe is protruding from underground and the ground level appears to have changed around the pipe, so it is partially buried underground with an element of it sitting at ground level but under the floor. And I think the spirit of this section of the policy is to provide cover for pipes, cables and septic tanks that provides services to and from the home.

For there to be a valid claim, the pipe needs to have broken accidentally. The word 'accidentally' isn't defined by the policy, so I think it's fair to use the general meaning that the break was unintentional and unexpected. And I think this is the case here. So, I think Mr K and Miss P have a valid claim under this section of the policy for the damage to the pipe.

- *Escape of water*

Moving to the damage caused by the pipe leaking, this falls under the escape of water section of the policy. The policy covers damage caused as a result of water escaping from pipes – but not when the damage is caused gradually.

Both the experts for Mr K and Miss P and esure visited the property around the time the claim was registered. I've noted the comments about what was found, including the size of the mushrooms, the collapsed floorboards, and areas of saturation. The damage found, in my view, suggested the escape of water had been happening for some time prior to the claim registration and the damage has happened gradually. This is regardless of whether this damage was caused by the pipe, rainwater gully or both. And I think the damage caused by the leak, particularly the mushrooms, would have been visible for some time before the claim was made.

There is a disagreement about whether the damage started prior to policy inception which I acknowledge. But essentially, I think the evidence supports esure's decision to exclude the

claim for damage caused by an escape of water from cover because the damage was caused by a gradually operating cause.

Trace and access costs

The policy schedule confirms trace and access cover up to £5,000. Under the Trace and Access section of the policy it says:

“What is covered?

*If the **Buildings** are damaged due to water escaping from water tanks, pipes, equipment or fixed heating systems in the **Home**, **We** will pay for the reasonable cost of removing and replacing any part of the **Buildings** necessary to find and repair the source of the leak and making good the removed or replaced elements of the **Building**.”*

It also says under this section what is not covered and refers to the general terms and conditions of the policy.

I've considered the trace and access part of the policy as well as the general terms and conditions. I'm unable to find anywhere within these sections that says there needs to be a successful claim under the escape of water section in order to make a claim for trace and access costs. Therefore, I think Mr K and Miss P have a valid claim under this section of the policy.

Mr K and Miss P have provided the following invoices to evidence trace and access costs.

*1 October 2021 – Invoice number 078096 - £1,238.40 – leak detection.
1 October 2021 – Invoice number 078100 - £881.47 – drainage (wastewater)
4 October 2021 – Invoice number 078366 - £941.32 – drainage (wastewater).
4 October 2021 – Invoice number 078378 - £1,479.60 – leak detection
25 March 2022 – Invoice number 103106 - £1,240.80 – leak detection.*

From what I've seen esure have made no comments regarding trace and access and so I think they should pay the invoices up to the policy limit.

Impact on claim handling

Whilst I don't doubt the stress that has come from this escape of water claim, I think esure's claim handling was reasonable. The repudiation of the claim was communicated soon after the claim was registered with reasons given. Once the leak was found Mr K and Miss P have a duty to mitigate the loss. But I can see Mr K and Miss P also feel if the leak had been diagnosed earlier by esure and it had paid for the pipe repair sooner it would've reduced the amount of water damage that now needs to be put right. But given the widespread water damage present at the outset of the claim, it's not clear that the continued leak would materially add to the damage or the cost of repairing it. And even if I accepted that it had, (which I don't) it would be for Mr K and Miss P to prove the additional damage and costs.

As I think the claim was handled reasonably and in a timely manner, I won't be recommending esure pay any compensation in this respect.

My provisional decision

I intend to direct esure Insurance Limited to do the following:

- *Settle the claim for the damage to the supply pipe. If Mr K and Miss P have already paid to do that add 8% simple interest from date of payment to settlement.*

- *Pay for trace and access up to the policy limit.*

Responses to Provisional Decision

Neither party has responded to my provisional 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.

As neither party responded, I have no further information to consider, I'm satisfied my provisional decision detailing my intention to uphold the complaint in part is fair and reasonable.

Putting things right

I instruct *esure Insurance Limited* to do the following:

- *Settle the claim for the damage to the supply pipe. If Mr K and Miss P have already paid to do that add 8% simple interest from date of payment to settlement.*
- *Pay for trace and access up to the policy limit.*

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Miss P to accept or reject my decision before 16 September 2022.

Angela Casey
Ombudsman