

The complaint

Mr P complains Esure Insurance Limited unfairly declined his home insurance claim.

Mr P's been represented at points during the claim and complaint. For simplicity I've referred to the representative's actions as being those of Mr P. For the same reasons I've referred to the actions of Esure's agents as being its own.

What happened

In November 2021 Mr P was made aware of water pooling in the void below the suspended ground floor of his property. This had resulted in damage – including to floor joists. In January 2022 he claimed for the loss against his Esure home insurance policy. At that point Mr P, based on the opinion of a damp specialist, believed the cause to be ground water.

After a site visit Esure declined the claim. It said the damage hadn't occurred as one-off incident. It felt rising ground water was the cause of the pooling water and damage. Esure added that's not covered by Mr P's policy as it considered a gradually operating cause of damage – something excluded by his cover.

In March 2022 Esure responded to a complaint from Mr P. It said the claim had been correctly declined in line with the policy terms. It pointed to exclusions for loss caused gradually over time and caused by gradually rising ground water. Esure said there was no evidence to support leaks or storm related damage.

In June 2022 a different contractor assessed the problem for Mr P. Its report explains the pooled water had entered the void due to roots penetrating brickwork and a bitumen subfloor coating below ground level. Mr P complains Esure didn't respond to this report and cause of damage.

To resolve his complaint Mr P would like Esure to accept the claim, covering the cost of repairs to the floor joists and resulting damage including to flooring and decorations. Our investigator considered the complaint, He felt Esure's decision to decline the claim was fair. So he didn't recommend it do anything differently. Mr P didn't accept, so the complaint was passed to me.

I issued a provisional decision. In it I explained why I intended to require Esure to accept Mr P's claim and reimburse him for works covered by his policy. As the provisional decision's reasoning forms part of this decision I've copied it in below. I also invited Mr P and Esure to provide any final points or information they would like me to consider. Esure didn't respond. Mr P said he accepted my provisional decision and had nothing further to add.

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.

Mr P's policy says Esure will pay for loss or damage to his building resulting from storm or flood. A flood doesn't have to be a sudden event. It can happen over time. But Mr P's policy has its own definition of flood - '... an invasion of the property by a large volume of water caused by a rapid build-up or sudden release of water from outside the Buildings'.

There was certainly an invasion of the property by a large volume of water. Photos show this. I'm satisfied the floor joists were damaged, requiring repair, by the pooled water. But as set out above the policy requires the water invasion to have been caused by a rapid build-up or sudden release of water. So I've gone on to consider if there was most likely a rapid build-up or sudden release of water – or if it was it a gradual process.

I've considered the reports and comments provided by Mr P and Esure. Having done so, I think it's most likely, in the absence of a competing persuasive explanation, that the water did enter as a result of root penetration of brickwork and the bitumen subfloor. Photos show the presence of established and lengthy roots in the floor void amongst the pooled water. Mr P had them removed and brick work repaired as part of the repairs.

Mr P's representative did say a rapid build-up or sudden release can't be strictly established. He said Mr P had no way of knowing of the build-up of water (until the electrician opened an inspection hatch in late November 2021). More recently Mr P explained the water wasn't there during the period of late June 2021 to September 2021. He says in that period trades (working on an extensive house refurbishment) including the electrician and a plumber accessed the void. And they didn't report a build-up of water.

If that's accepted, it would mean the water built up within the period of October 2021 to November 2021. Weather reports do show heavy rain over several days in late October 2021. So it's possible there was a rapid build-up during that period.

I note Mr P didn't previously explain about the June to September 2021 access of the void. But having spoken to him and considered the evidence I'm persuaded by what he says. Photos show a full refurbishment of his kitchen. Invoices refer to replumbing and rewiring of the same room. Further photos of the repairs claimed for do show wiring and plumbing in the void area.

So I think it's likely that the earlier refurbishment work would have required some access of the void area by the relevant trades. Furthermore I think it's likely, if there was a build of water at that point, the electrician or plumber would have noticed it and informed Mr P. As that didn't happen, on balance, I think the water wasn't there during June 2021 to September 2021. So it seems there was probably, in late October 2021, a rapid build-up of water from outside the building – resulting from the heavy rainfall.

So I currently intend to find the loss and damage to Mr P's property was most likely caused by one of the policy's insured events – flood.

Esure's referred to a couple of exclusions to decline claim – loss or damage that happens gradually over time and loss or damage caused by rising ground water levels which happens over time. As I'm persuaded the flood involved a 'rapid build-up' of water the damage didn't occur gradually. So I intend to find Esure can't rely on those exclusions to decline the claim.

My proposed outcome (subject to responses I receive to this provisional decision) is to require Esure to settle Mr P's claim for damage to the subfloor area in line with the remaining terms of the policy. As he's already paid for most of the work that will involve reimbursing him for works covered by the policy.

Mr P only provided a key determinant, the earlier use of the void, fairly recently. So I don't feel it would be fair to require Esure to pay interest on the settlement or compensation to reflect delay.

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 I didn't receive any final points or further information, in response to my provisional decision, I don't see any reason to change the proposed outcome. That means Esure will need to accept Mr P's claim and reimburse him for works covered by his policy

My final decision

For the reasons given above, I require Esure Insurance Limited to accept Mr P's claim and reimburse him for works covered by his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 November 2023.

Daniel Martin
Ombudsman