

## The complaint

Mr and Mrs R have complained that esure Insurance Limited hasn't paid a fair settlement when they made a claim for an escape of water under their home insurance policy.

## What happened

Around Christmas time in 2020, Mr and Mrs R said they noticed plaster bubbling on a hall wall. They believed this was caused by a leak from a shower in an adjoining room. Mr R said they contacted esure and were referred to the Home Emergency (HE) provider to assist in finding the source of the leak. Mr R explained that the wall tiles were very heavy and expensive and he had trouble finding a plumber who would look at the cause of damage.

Mr and Mrs R said the HE provider diagnosed some repairs were needed to the grout and sealant, which they said they had carried out. Mr and Mrs R said they were advised they didn't have a valid claim under their home insurance policy with esure.

Mr and Mrs R didn't renew their policy with esure, so were with another insurer when in October 2022 Mr and Mrs R noticed damp marks on the hall wall had become worse. Having contacted their current insurer, they were advised to contact esure as the home insurer at the time they first noticed the damage.

esure asked Mr and Mrs R to identify the source of the leak - so they arranged for a plumber to attend. The plumber found extensive water damage from a leaking pipe which supplied the shower. The plumber began stripping out the bathroom.

Mr and Mrs R said they had trouble getting through to esure on the phone and so made the decision to have the bathroom repaired and refitted. As requested by esure, they provided photos of the bathroom and the cause of damage.

esure agreed to pay a cash settlement for what it said it could identify as incident related damage under the claim. Mr and Mrs R said esure didn't pay enough to meet the costs of the repairs, which they said they had put on a credit card.

Our Investigator recommended upholding the complaint. She found the engineer's report identified the cause of damage as being a leaking pipe, which esure accepted. She found the cash settlement esure had paid was just above the equivalent of an invoice provided to remove and refit a shower tray and pipe. As she thought esure hadn't fairly settled their claim, the Investigator recommended esure do the following:

- reassess the claim and cover the cost of the removal of the shower, fixing the pipe, and refitting the shower, and the refitting of the damage caused to the floor and wall panels in the shower area. They should also contribute towards the cost of the wall panels necessary after the tiles that had to be removed.
- esure should pay simple interest at an annual rate of 8% on top of the settlement from the date it paid the initial amount.
- Mr and Mrs R also arranged to hire a dehumidifier to remove the damp from the property. On receipt of evidence of the cost to hire, esure should cover the cost of this, plus simple interest at an annual rate of 8% from when this was done.

The Investigator didn't think it fair for esure to meet the costs to replace a matching bath and sink because it wasn't evident how they could have been damaged by the incident.

esure disagreed. In summary it said it is an assumption that the damage was incorrectly diagnosed by a HE provider and made worse. There is little evidence as the photos show the bathroom at the stage where it had been completely stripped.

esure says the cost to fix the leaking pipe isn't covered under the claim. It would only be covered if Mr and Mrs R had accidental damage, which they didn't under their policy.

It says it has made a cash settlement based on incident related repairs. An invoice from a contractor doesn't necessarily mean that all work quoted for will be covered under the claim. Sometimes a contractor will quote for works that aren't covered.

Our Investigator replied to esure. She agreed the costs of fixing the pipe shouldn't be included in the revised settlement. She explained she hadn't asked esure to meet all of the costs Mr and Mrs R had paid to have the bathroom refitted. But she maintained that esure had accepted the escape of water claim was a valid one - and so she thought it fair for esure to cover the costs of the damaged floor and wall panels in the shower area.

esure didn't agree, and so the case was passed to me to decide. I issued a provisional decision on 17 February 2023. This is what I said:

### **My provisional findings**

Mr and Mrs R's policy with esure says the following in the event of a claim:

*"What you need to do:*

- ☐ *ring Us, as soon as possible to prevent further damage and We will register Your claim details, and talk You through the next steps*
- ☐ *if You have been a victim of theft or vandalism report this to the police as We will require a crime or loss reference number*
- ☐ *if an accident occurs and You think You might be at fault do not admit liability or promise to pay a claim without discussing with Us first*
- ☐ *please keep any damaged items for inspection – do not dispose of any items*
- ☐ *We will require evidence of ownership and/or proof of purchase, such as receipts/valuations – photographs will also help Us to proceed with the claim*
- ☐ *if You and Your Household receive any third party claim forms, summons, legal documents or any other letter about the claim, it is important you forward these on to Us as soon possible."*

Mr and Mrs R provided photos and - from the photos - kept damaged items in their garden for inspection by esure if necessary - as requested when Mr R called to make a claim.

The policy also says:

*"What we will do:*

- ☐ *for small claims, it is sometimes possible to process these over the phone through Our approved suppliers.*
- If We are unable to do this, We may ask for estimates or quotations from You to support Your claim*
- ☐ *for larger claims, it is likely We will arrange for a claims adviser, restoration company, building surveyor,*

*investigator or supplier to come out and visit You as soon as possible”*

Under General Conditions, esure says:

*“if You or Your Household do not comply with any part of these conditions,  
We have the right not to pay the claim*

*• do not repair any damage without Our consent”*

From the timeline in esure’s notes, Mr R called esure on 16 December 2021. He said he’d called a week earlier about an escape of water claim. The agent said there was no record of his call. Mr R explained that a plumber had advised there was a leaking pipe and had already carried out repairs and refitting of the bathroom.

Invoices provided by Mr R are dated between 1 and 15 December 2021.

On 16 December 2021 as requested Mr C sent esure a copy of the invoices and provided photos. On review esure arranged for a Surveyor to inspect the damage. Notes say the reason was because it was difficult to assess the claim from the photos provided. This took place on 17 January 2022, so a month later. By this time, the repair and refit works had been completed. This may have been the case when Mr R called on 16 December 2021.

Mr R said that they were in a predicament as to what to do for the best. He and Mrs R are in their eighties and needed a working bathroom. He said he had tried to call esure to discuss the claim but had trouble getting through due to a recent storm which meant there were long wait times. He’d had trouble getting a plumber to attend his home - and when he was able to find one - the damage was extensive. So he agreed for the works to be done with esure’s request for photos to be taken of the damage.

Three of the invoices dated between 1 and 7 December 2021 for materials add up to a total of £4,508.18. Mr R provided an additional invoice dated 15 December 2021 which quotes £1,485 including VAT as a total for materials and labour. This invoice doesn’t provide a breakdown. The works listed are:

*“remove shower screen and tray and tiles. Repair leaking pipe. Replaster shower area. Repair water damaged floor. Reclad walls and fit shower tray and screen”*

On 17 January 2022 the appointed Surveyor reported that repairs to the damp wall would cost £543.27 inclusive of VAT, and quoted £970.80 to carry out incident related repairs to the shower.

I note from the report that he asked esure to provide photos and quotes provided by Mr and Mrs R so the Surveyor could validate the claim. esure was in receipt of this information from 16 December 2021 which led to the appointment of a Surveyor to attend the property.

The Surveyor reported that the damage had occurred from one incident and was an insured peril. It seems clear from the report that the Surveyor wanted to view photos of the damage and the quotes in order to validate the claim. It’s not clear, but this suggests that the estimated costs of works for the damage may not have been a final settlement sum.

We asked esure to show how the Surveyor reached the settlement amount. In response on 2 August 2022, esure wrote:

*“Mr R had already begun stripping the damaged room which made it very difficult for our suppliers, (name of Surveyor inserted here), to fully validate the claim. They have based the settlement on what has been evidenced and what they feel is reasonable under the circumstances.”*

Mr R said that while the plumber was carrying out works, wall tiles fell away due to the damage to the wall and their weight, which led to the shower screen falling onto the bath causing damage.

There isn't evidence to show that esure should include the costs of the bath and sink as incident related repairs. The cause of damage to the bath doesn't appear to have been ancillary to the incident related damage.

However, I think it's reasonable to say from esure's notes in January 2021 that it's likely the cause of damage - given its location and description - relates to Mr R's calls for assistance at that time. It's possible that the HE provider made a misdiagnosis. But as they are a separate business to esure - and there wasn't any evidence of a valid claim to esure in January 2021 - I don't think esure did anything wrong before Mr R approached it again in December 2021.

We asked Mr R if he had any evidence of invoices or receipts for the works carried out in January 2021. Mr R said he doesn't have any.

Because the works were already completed by the time a Surveyor attended, it is very difficult to decide on a fairly outcome. But I don't think the cash settlement esure has paid goes far enough to fairly settle the claim. It's not clear as to what the quote for £970.80 relates to for the bathroom.

Mr R said they replaced the damaged wall tiles with cheaper wall panels. He said when the plumber removed the bath, they found floor tiles were soaking wet from the leak and had to be removed to replace water damaged floorboards.

I think it's plausible that surrounding wall tiles in the shower area and floor boards were water damaged. So I think esure should reconsider the cash settlement it has paid to include these costs as I think they are for incident related damage.

esure is correct to say that the repairs to the leaking pipe shouldn't be included in the claim settlement as this isn't covered under the policy .

### **My provisional decision**

I will consider any new representations both parties may wish to make. My provisional decision is that I intend to uphold this complaint in part. I intend to ask esure Insurance Limited to do the following:

- reassess the claim and cover the cost to remove and refit the shower, the refitting of the damage caused to the floor and wall panels in the shower area. If esure doesn't provide further information, and to reasonably conclude matters, I'm minded to ask it to increase its cash settlement to £3,000 as 50% of the costs of the total invoices provided, which comes to £5,993.18 (£4,508.18 plus £1,485).
- esure should pay interest on the cash settlement (or the difference if it's already paid an interim settlement) from 16 December 2021 to the date it pays Mr and Mrs R. at a rate of 8% simple interest a year.
- Reimburse Mr and Mrs R for the costs to hire a dehumidifier to remove damp from the property - subject to proof of payment. esure should pay interest at the same rate as above from the date of the receipt to the date it pays.

### **Response to my provisional decision**

esure didn't respond to my provisional decision. Mr and Mrs R made a number of representations. In summary they said:

- It is wrong for esure to say they didn't have accidental damage (AD) under the policy. They provided a copy of their policy schedule to show this. Based on this, they believe the costs to repair the leaked pipe should be included.
- The company that provided assistance under their HE claim were employed by esure. Their claim for damage to the bath should be met because it was damaged when the plumber removed a section of the shower screen as tiles further along the wall fell into the bath causing chip damage in several places.
- They haven't yet had the hall wall repaired and are looking to get a quote for this.
- They didn't cash the settlement cheque they received from esure.

Mr and Mrs R have provided a copy of the receipt for the humidifier hire.

So the case has been passed back to me 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.

For ease, I've set out the points Mr and Mrs R have raised in response to my provisional decision under headings below.

#### *The HE provider*

Mr and Mrs R's policy wording says the following:

##### *"Optional extras*

*If You buy Family Legal Protection (administered by business name inserted here and underwritten by business name inserted here), Home Emergency and Pest (administered by business name inserted here and underwritten by business name inserted here), Your premium and any fees will be collected by esure Insurance Limited who will act as Our agent when collecting Our fees and premiums for policies it does not underwrite. When Your premium is collected, transferred and held it is done as an agent on behalf of the Underwriters listed above. This means that once the premium is received it is treated as if it has been paid directly to the Underwriter. We do not hold client money."*

So I think it was made clear to Mr and Mrs R who the underwriter was for their HE. This wasn't esure. A separate underwriter was listed under their policy for a claim against the HE provider under the policy.

#### *Accidental Damage and Trace and Access*

Mr and Mrs R's policy has a separate option for Accidental Damage (AD) and Mr R is correct to say they had this cover. I think the fact that esure referred to this as a reason why it didn't cover the leaking pipe has caused unnecessary confusion as it doesn't apply to the circumstances in this case. Where there is an escape of water claim, some insurers offer 'Trace and Access' which provides cover to identify the source of the leak. Cover is provided for the costs to remove and replace parts of the buildings in order to find the course of the leak - but it doesn't cover the costs to repair the source of the leak. This isn't an unusual term under Trace and Access.

If Mr and Mrs R were to make a claim under AD, they would need to show the cause of damage was accidental and pay a separate excess to the escape of water claim for the AD. Mr and Mrs R's policy says:

*"Trace and access*

*What is covered?*

*If the Buildings are damaged due to water escaping from water tanks, pipes or equipment of 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.*

*What is not covered?*

- We will only pay for damage where a claim is made for water damage elsewhere under this Policy.*
- General Terms and conditions apply."*

So while Mr and Mrs R are correct to say they have AD under the policy with esure, it doesn't apply in this case as the source of the leak (the pipe) isn't covered. This means it doesn't change the outcome of my provisional - and final decision here.

*Damage caused while the bathroom was being refitted by a plumber*

I appreciate that Mr R has reiterated what happened when the plumber was removing the shower screen. But as I've said in my provisional decision, there is no evidence for me to be able to safely conclude that the costs for a replacement bath should be included in the settlement claim for an escape of water as incident related damage.

*Repairs to the hall wall behind the shower*

The appointed Surveyor reported that repairs to the damp wall would cost £543.27 inclusive of VAT. This was included in the cash settlement esure paid along with £970.80 for the bathroom.

As I haven't received anything to show me this part of the settlement is unreasonable, I don't intend to change my award here.

## **My final decision**

My final decision is that I uphold this complaint in part. I require esure Insurance Limited to do the following:

- reassess the claim and cover the cost to remove and refit the shower, the refitting of the damage caused to the floor and wall panels in the shower area. As esure hasn't provided further information in response to my provisional recommendations, and to reasonably conclude matters, I require it to increase its cash settlement to £3,000 as 50% of the costs of the total invoices provided, which comes to £5,993.18 (£4,508.18 plus £1,485).
- As Mr R says he didn't cash the settlement cheques he received, esure will need to send further payment for the above and add the £543.27 for the hall wall damage under the claim, based on the Surveyor's assessment, and cancel any uncashed settlement cheques for this claim.
- esure should pay interest on the cash settlement (or the difference if it's already paid

an interim settlement) from 16 December 2021 to the date it pays Mr and Mrs R. at a rate of 8% simple interest a year.

- Reimburse Mr and Mrs R for the costs to hire a dehumidifier to remove damp from the property - subject to proof of payment (copy receipt attached). esure should pay interest at the same rate as above from the date of the receipt to the date it pays.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 5 April 2023.

Geraldine Newbold  
**Ombudsman**