

## **The complaint**

Mr and Mrs P complain that esure Insurance Limited have poorly handled a subsidence claim made under their buildings insurance policy.

Any reference to Mr P, Mrs P, and esure, includes any respective agents or representatives.

## **What happened**

The background of this complaint is well known between parties. So, I'll summarise events.

- Mr and Mrs P's home suffered from subsidence damage. The cause was a nearby tree owned by the council and Mr and Mrs P's own vegetation. This was reported to esure in June 2020.
- esure carried out investigations and sought to have the council's tree removed – it said a lengthy period of monitoring would be necessary to obtain its agreement.
- Mr and Mrs P criticised delays and had their own structural report carried out by Company A. They subsequently had stabilisation works carried out. esure refused to cover these costs in full but made a contribution. It indicated the removal of vegetation on Mr and Mrs P's own property – which it said they refused to do – meant the stabilisation works weren't necessary.
- On the subject of a top bay window, esure said it would offer a 50% cash settlement towards replacement as it had said it had not been fitted correctly which had contributed towards window damage.
- A previous complaint came to this Service regarding esure's diagnosis of the cause of the damage being subsidence. This matter has been addressed separately and does not form part of this complaint.
- Mr and Mrs P complained about esure's handling and decisions that followed. They asked for costs related to their own reports, compensation, and for esure to waive its £1,000 excess.
- One of our Investigators looked into the complaint and upheld it. esure provided very limited information on the complaint so her assessment was based on the available evidence. She said:
  - esure was aware the removal of the council's tree was unlikely to be agreed. And that removal of the hedge on its own would not have stabilised the property. So esure should've explored other options at that time.
  - Mr and Mrs P's action to have stabilisation works carried out themselves was reasonable in the circumstances. And these works would've always been necessary had esure done what it should've done.
  - esure had failed to evidence why faulty workmanship had contributed towards window damage, so it should cover the full cost and not 50% contribution.
  - The report Mr and Mrs P had commissioned did not change the outcome of the claim nor prove the damage was not due to subsidence as they had believed. So

esure was not liable to pay for it.

- So, esure should pay the costs incurred by Mr and Mrs P to achieve stabilisation, and window related works on receipt of appropriate receipts/invoices. She also awarded 8% simple interest and said esure should pay £200 compensation.
- Mr and Mrs P agreed with the Investigator's findings. They since raised additional concerns about premium costs, and hairline cracks that have followed completion of the works. Our Investigator has explained these matters do not fall under the scope of this complaint.
- Our Investigator looked again and changed her mind on the subject of the window. She said it was evident Mr and Mrs P had put forward the damage to the window in question was not as a result of subsidence. So, it followed that esure's specialist reporting the most likely cause of the damage as faulty packing around the top window was persuasive. And in turn, esure's offer of 50% towards a cash settlement was reasonable given the exclusion related to faulty workmanship in the policy.
- Mr and Mrs P still stood by their position that the previous assessment of subsidence was incorrect.

So, the matter has come to me for an Ombudsman's 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.

Having done so, I'm upholding this complaint. I'll explain why.

- Mr and Mrs P have been clear they still believe the cause of the damage in this case is not subsidence. This matter was addressed in a previous decision so I will not readdress it.
- From esure's internal notes and communications it's apparent its own agents were of the belief the impacting council tree was unlikely to be removed by the council. The available evidence – detailed by our Investigator previously – also suggests the removal of vegetation on Mr and Mrs P's property alone wouldn't have resolved the subsidence.
- In instances where a third party's position is holding up the progression of a claim and unlikely to change, we'd expect the insurer to consider what other options would be available to it to stabilise a property.
- In this instance, it seems esure did not take these steps. So, I think Mr and Mrs P's instruction of a third party to carry out stabilisation works was reasonable in these particular circumstances. And were most likely steps esure would've needed to take to ensure an effective and lasting repair in line with its obligations – or at least esure has failed to demonstrate an alternative. It follows I am directing esure to cover these costs as I'm satisfied it is necessary as part of an effective and lasting repair.
- Mr and Mrs P said they want esure to waive their excess. An excess is the first part of a claim and set out in policy terms. Any distress or inconvenience caused by esure's actions will be factored into compensation. So, I'm not going to direct esure to waive this excess.
- esure has refused to cover the costs of the report Mr and Mrs P obtained. As our Investigator has outlined, this did not materially impact the claim. So, this isn't a cost I'd direct esure to cover.

- The window damage in question was put forward by Mr and Mrs P as not subsidence related. esure's position also concluded the damage was mainly caused by its faulty workmanship or design. So, I'm satisfied the available evidence suggests the damage was caused by faulty design. In line with esure's policy, I'm persuaded it was able to rely on specific terms that exclude that type of damage. And it follows its offer to pay 50% of the costs was reasonable in the circumstances.
- I'm satisfied esure hasn't handled this claim promptly and fairly. And in the circumstances it's evident this has caused avoidable distress and inconvenience to Mr and Mrs P. Taking into account the unavoidable stress attached to a claim of this nature, I'm satisfied the sum of £200 compensation awarded is fair and reasonable in these particular circumstances.

### **My final decision**

For the above reasons I'm upholding this complaint. esure Insurance Limited must:

- Settle the stabilisation costs outstanding upon receipt of appropriate evidence/invoices.
- Pay 8% simple interest on the above costs from the date Mr and Mrs P have paid them until payment is made.
- Pay £200 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 11 August 2023.

Jack Baldry  
**Ombudsman**