

## **The complaint**

Mrs C has complained that esure Insurance Limited declined a claim she made on her home insurance policy for damage caused by subsidence.

Reference to Mrs C and esure includes their respective agents and representatives.

## **What happened**

The circumstances of this complaint aren't in dispute, so I'll summarise the main points:

- Mrs C got in touch with esure in August 2018 after noticing crack damage to her porch. esure appointed a loss adjuster, who accepted the claim.
- The loss adjuster setup level monitoring and arranged for some of Mrs C's vegetation to be removed. It also contacted the local authority about two trees under its ownership, but it didn't agree to remove them. The loss adjuster then surveyed the drains, found damage, and had it repaired.
- In September 2021, the loss adjuster began the repair process. It organised for a schedule of work to be prepared and carried out. It was completed in February 2022 and the claim was closed.
- In June 2022, Mrs C said the cracks had reappeared in the same places. After inspecting the damage in July 2022, the loss adjuster said it would carry out further monitoring and carry out temporary repairs as the porch doors wouldn't open. By November 2022, Mrs C complained, as these steps hadn't been taken. Also, Mrs C's esure policy ended at the 2018 renewal and she took out a new one with another insurer, L. At the 2022 renewal, L didn't renew her policy because of the subsidence claim with esure. As a result, Mrs C no longer had home insurance.
- After Mrs C let esure know about the reappearance of cracking, esure conceded that its service had been poor and it offered £200 compensation. It also said it had arranged a site visit for the loss adjuster to consider the next steps.
- The loss adjuster visited in January 2023. It said the current damage was indicative of subsidence caused by shrinkage of the clay subsoil due to the local authority trees. It said that was a separate and different cause than the original damage, which had been brought about by the leaking drains. As esure said there was a new cause of damage, and its policy had long since ended, esure said it had no liability.
- Unhappy with this outcome, Mrs C referred her complaint to this Service. She said the current damage was in the same place as originally, and as a result of the same cause – the local authority trees.
- Our investigator thought the complaint should be upheld. She said the original damage was caused by drainage and trees – and the trees hadn't been fully dealt

with, which had led to the current damage. As a result, she recommended esure deal with the current damage and pay an additional £400 compensation. She also thought esure should offer Mrs C home insurance, including subsidence cover.

- esure didn't think this was a fair outcome. It accepted an arborist had initially identified the local authority trees as a cause of the damage, but it said this wasn't confirmation of the trees being the cause. It had turned to the drainage when the local authority said the damage wasn't consistent with clay shrinkage. And as Mrs C had chosen not to renew her esure policy, and didn't meet esure's acceptance criteria, it had no obligation to offer a policy.
- Our investigator wasn't persuaded to change her mind, so the complaint has been referred to me.

### **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.

- There's no dispute the 2018 claim for subsidence damage was covered by the policy. The question is whether esure is responsible for the damage which reappeared in 2022. And, if so, what it should do as a result.
- In a nutshell, esure says it isn't responsible because the 2022 damage is due to a new cause of subsidence – clay shrinkage rather than leaking drains. And because the esure policy ended in 2018, there's no esure policy in place to consider a new subsidence claim in 2022.
- On the other hand, Mrs C thinks all the damage has been caused, at least in part, by the local authority trees. So she considers the 2022 damage to be an extension of the 2018 damage – and therefore an extension of the 2018 claim.
- To decide between the two options, I've looked at the available information about the cause of damage.
- To begin with, I've considered the cause of the recent damage. I've only seen one report about this – the loss adjuster's from January 2023. Based on an inspection of the damage, they said the damage had been caused by 'shrinkage of the clay subsoil due to the moisture extracting influence of the local authority owned trees'.
- With no evidence to contradict or challenge the loss adjuster's professional opinion, I'm satisfied the trees are the likely current cause of subsidence.
- If they were also the cause of subsidence in 2018, that would support Mrs C's position. If leaking drains were the sole cause of subsidence in 2018 and/or the trees weren't a cause at that time, it would support esure's position. So I've looked at the available information from 2018-2022. The following is a summary of what I found:
  - In 2018, esure arranged for soil testing and took advice from an arborist. The investigations showed the porch was built on a medium plasticity clay subsoil that was suffering from moisture depletion.
  - Tree roots were found in the clay subsoil beneath the foundation, which the arborist identified as emanating from trees labelled T2 and T3. The arborist recommended they be removed to restore stability.

- The arborist also recommended H1 be removed, as it was thought to be having a secondary influence.
  - H1 belonged to Mrs C and was removed. T2 and T3 belonged to the local authority and weren't removed.
  - Level monitoring was carried out between January 2019 and March 2021. The way the results have been displayed makes them harder to interpret, but there doesn't seem to have been significant movement.
  - In April 2023, a Certificate of Structural Adequacy (CSA) was issued. It said the damage had been caused by root induced clay shrinkage subsidence, H1 had been removed but 'implicated vegetation belonging to the Local Authority was not removed', and monitoring had confirmed stability.
- All of these points, apart from the level monitoring, point firmly to the cause of subsidence being tree root related. And the monitoring is neutral evidence about the cause, so it supports neither position in my view.
- I haven't seen any loss adjuster reports or similar from 2018-2022 that mention the drainage, let alone suggest it caused the subsidence. Nor have I seen anything from that time which indicates the cause of damage wasn't tree root subsidence.
- During our investigation, esure said communication with the local authority prompted it to reconsider the cause of subsidence. But, despite our investigator asking for such evidence, none has been provided. esure also said it found significant drainage defects. That may have been the case, but that doesn't necessarily mean the defects were the cause (sole or contributory) of the subsidence. And esure said the level monitoring indicated the drainage was the cause of subsidence. But it hasn't explained why that is, so it's unclear how it reached that opinion.
- Overall, I'm not at all persuaded by the position esure has taken. It's simply not supported by the evidence it's shared with us. In summary, the main cause of subsidence was originally identified as two trees. They weren't removed and they remain the main cause of subsidence now. The damage returned within months of carrying out the building repairs. Drain repairs were carried out but the evidence doesn't show their leaking was the sole cause of subsidence. Nor does the evidence explain how the cause was thought to be trees but later changed to leaking drains.
- In the circumstances, I'm not satisfied an effective and lasting repair was carried out for the 2018 claim because the cause remained and the structure wasn't stabilised. As a result, esure should deal with the current damage as part of the 2018 claim. That means the terms and conditions from that claim still apply. Also, a second claim shouldn't be recorded, and a second excess shouldn't be charged.
- The next steps will be for esure to stabilise the structure and then carry out building repairs which are lasting and effective. It's entitled to consider how to do that, so I won't make any findings about that. But it should bear in mind that it must handle claims promptly and fairly.
- L wouldn't renew Mrs C's home insurance policy. And with an ongoing subsidence claim, it's likely to be significantly more difficult for her to find an insurer prepared to offer a policy on normal terms. That's left her effectively unable to insure her home.
- To avoid this kind of situation arising, the Association of British Insurers (ABI) provides guidance to insurers within the home insurance industry about this. In summary, if an insurer deals with a subsidence claim for a policyholder, the guidance

says it's usually good practice for the insurer to offer continuous home insurance, including subsidence cover, on reasonable terms.

- As esure is responsible for the ongoing subsidence claim, I'm satisfied it should offer Mrs C home insurance in line with the ABI guidance.
- esure offered £200 compensation in its complaint response. Our investigator thought it should pay a total of £600 to reflect the distress and inconvenience it had caused Mrs C. As a result of the way esure dealt with things when the damage returned in 2022, Mrs C has faced unnecessary worry about how the problem will be resolved. And she's been left to live with the damage in the meantime, which has clearly been distressing for her. I'm satisfied £600 compensation is reasonable in the circumstances. If esure has already paid £200, it need only pay £400 more.

### **My final decision**

I uphold this complaint.

I require esure Insurance Limited to:

- Deal with the current damage as part of the 2018 claim.
- Provide ongoing subsidence cover, as set out above.
- Pay a total of £600 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 7 May 2024.

James Neville  
**Ombudsman**