

## **The complaint**

Ms D has complained that esure Insurance Limited ('esure') declined a claim for water damage to her property under a home insurance policy.

## **What happened**

Ms D became aware of a leak at her home in August 2023 when water started coming through the hallway lights. She said that this was caused by a leak from the waste pipe in the bathroom. Her plumber fixed the pipe, but the water damage was significant, with staining on the living room wall, the walls and ceiling of the hall, and also damage to bathroom tiles. Ms D reported the matter to esure as it was her home insurer at the time.

esure declined Ms D's claim, as it considered that the leak had been going on for many months and hadn't been addressed by Ms D. It relied upon the terms and conditions of the policy and an exclusion clause relating to gradual damage. Ms D complained to esure, however it maintained its stance.

In the circumstances, Ms D referred her complaint to this service. The relevant investigator upheld Ms D's complaint. She recommended that esure reimburse Ms D for the cost of repairing the property and also that it should pay interest on the relevant amount.

esure didn't agree with the investigator's outcome and the matter has now been referred to me to make a final decision in my role as Ombudsman.

## **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.

The key issue for me to determine is whether esure applied the terms and conditions of the relevant policy in a fair and reasonable manner in declining Ms D's claim. I don't consider that it did, and I'll explain the reasons for my conclusion.

In deciding this matter, I've also considered the submissions of the parties, which are summarised as follows. I turn firstly to Ms D's submissions. In her complaint, she described the background to the discovery of the water leak. She said that it was found that water was leaking from a bathroom pipe, through to the downstairs hallway. She had the pipe repaired and had; *'thought it was only minor damage but a week later I noticed staining on the ceiling area and mould had developed on my living room wall.'*

It was at this point that Ms D contacted esure. She said that two weeks after esure's surveyor had inspected the damage, she hadn't heard from esure and contacted it for an update. She was told she needed to speak to the surveyor. When she spoke to him, he said that she needed to speak to the insurance company. Ms D was then informed that the claim had been declined following the surveyor's report which wasn't shared with her at the time. She was then informed that the damage had been caused by *'a gradual process loss'*.

Ms D was adamant that the mould had only developed a week after the leak appeared. She therefore asked esure to obtain a second opinion from a different surveyor. She was, *'sure the mould would have been evident long before if it was a gradual leak'*. esure didn't offer another surveyor to look at Ms D's claim and insisted that the damage was gradual. Ms D thought that if the leak was longstanding, it would still be leaking, however the walls had dried out with no signs of historic leaks. She had researched the question of appearance of mould and found that it could develop around 24 hours after a leak and become visible within four days.

Ms D described a health condition from which she suffered and said that this meant she had no choice but to get the necessary works done herself. She said: *'I could not possibly live with the sight of mold in my living room and had this been seen, I would have had it looked at to find the source. As it is, I am only aware of a leak recently.'*

I now turn to esure's submissions regarding this complaint. It said that it had carried out a review and considered that it had made the right decision to decline cover. It thought that the issues which Ms D had reported weren't consistent with a one-off event and were more consistent with events occurring gradually. It said that such circumstances were specifically excluded in Ms D's policy.

Esure relied on its surveyor's expert report. It said that it hadn't been provided with evidence to the contrary and it would maintain its decision. It did however offer to review any evidence which Ms D could supply to contradict its surveyor's views. esure accepted that Ms D may not have known the source of the leak, however it said that the damage was extensive and didn't occur overnight. It said: *'This is a case of small volumes of water, over a long period of time – given it is a small volume of water it has taken a significant time to reach the condition in the report. It would have been evident some time before she reported the claim...'*

Finally, esure said that this was probably amongst the worst examples of lack of mitigation it had seen for some time, with damage being visible, and indeed undoubtedly smelling for some time before it was reported.

Turning to the report of esure's surveyor, he suggested that the damage had been like this for many months. He said that the wallpaper and plaster were crusty with salts and that this was *'clearly a long-term issue'*. It also referred to the plaster as being discoloured and blistering. He said that the policyholder must have known about the damage and that she must have entered the lounge and seen it.

I now turn to the reasoning for this final decision. The starting point for complaints of this nature will be the specific terms and conditions of the relevant home insurance policy. In this case, I note that the policy does cover the policyholder for damage caused by an escape of water/burst pipes. However, there are also a number of exclusions in the policy. In this case, esure relied on the specific exclusion in relation to gradual damage. This refers to; *'loss or damage that happens gradually over time.'*

Both esure and Ms D appear to accept that there was an escape of water and that therefore, the damage could in principle amount to damage caused by an insured peril. I note that it's no longer possible for either Ms D or esure to provide any fresh expert evidence regarding the cause of damage, or the length of time for which it was occurring, as the repair work had been carried out.

esure's surveyor was adamant that the leak had been going on for many months and that Ms D would have been aware of it. In addition, esure considered that Ms D had failed to mitigate what it considered to be a long-term problem. Ms D wished esure to instruct a second surveyor, as she didn't agree with the surveyor's opinion.

Where an insurer wishes to rely upon a specific exclusion, it's for the insurer to provide evidence to support its position. In this case, I consider that Ms D had made a reasonable request for a second opinion which esure refused to provide. This is because the photographic evidence attached to the surveyor's report appears to support Ms D's position rather than that of esure. I'll further explain this reasoning.

The standard of decoration of the property appears to be generally good and the appearance of damp in the hall isn't particularly widespread. As for the lounge, it appears that the water damage, whilst extensive, is relatively recent. In the circumstances, I'm persuaded that what Ms D has said is likely to be accurate and that the extent of the mould and damp only appeared recently and after a leak from the wastewater pipe had been discovered and fixed by Ms D's own plumber.

I conclude that even if the leak had been happening for some time, it's likely that it didn't seep through to the hallway immediately. I don't consider that it would have been fair or reasonable for esure to have expected Ms D to have been aware of the leak and this emerging damage. I'm persuaded that she did what she could to mitigate the damage as soon as possible by instructing her own plumber, who then resolved the leak. This is because the leak was occurring from a pipe that was concealed from view behind the bathroom sink. esure's report states the water would have been dripping down, rather than flowing. I consider that this makes it even less likely to have been noticed sooner by Ms D.

I've also looked at the photographs of the bathroom and can understand how Ms D wouldn't have noticed any problems, as it appears to be in a reasonable state of decoration with no obvious water leaks or damage. Any water around the sink may not have been spotted during everyday use. I'm further persuaded by Ms D's evidence that she has researched the presence of mould and accept that this can start to appear fairly rapidly.

Finally, I've considered the fact that esure was aware of Ms D's health condition at the relevant time, and I can understand that due to the nature of this condition, and the way it could be affected by damp conditions, that it would have been unlikely that she would have ignored any visible leak or damp for many months. I'm satisfied that she would have addressed it promptly. I can also understand why she took the decision to progress the work without the assistance of her insurers in the light of this health condition and its stance.

In the circumstances, I consider that it would be a fair and reasonable outcome for esure to now reimburse the cost of the repairs and decoration which Ms D has had to carry out, less the relevant excess amount, following receipt of evidence from Ms D of the amount and date on which she paid the relevant contractor(s). Interest should be added from the date of payment of the contractor(s) to the date of final settlement.

### **My final decision**

For the reasons given above, I uphold Ms D's complaint and I require esure Insurance Limited to: -

- Reimburse Ms D the cost of repairs and decoration carried out in relation to the claim within 28 days of acceptance of this final decision, and subject to production by Ms D of evidence of the amount and date on which she paid for the relevant work.
- To pay interest on the above sum calculated from the date Ms D paid for the relevant work to the date of settlement, at 8% a year simple interest.

\*If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms D how much it's taken off. It should also give Ms D a certificate showing this if asked for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 20 May 2024.

Claire Jones  
**Ombudsman**