

The complaint

Mr and Mrs M complain about esure Insurance Limited's decision to decline a claim under their home insurance policy.

esure has been represented on the complaint by its agents. All references to esure includes its agents.

What happened

Mr and Mrs M had a home insurance policy with esure. In February 2023, they claimed for damage, relating to their rear extension. esure inspected the damage in March 2023 and accepted damage had likely been caused by subsidence. It carried out further investigations and in June 2023, it declined the claim based on an exclusion for faulty design, which it said applied to the extension foundation.

In September 2023, Mr and Mrs M provided esure with an Engineer's comments, which disputed the foundation design was faulty. In November 2023, esure carried out further investigations, involving a trial pit and borehole. And in January 2024, esure maintained its decision to decline the claim. Mr and Mrs M remained unhappy so they complained to esure.

esure issued a complaint response in April 2024. It said the foundations of the extension were inadequate, so it maintained its decision to decline the claim.

Mr and Mrs M referred their complaint to the Financial Ombudsman Service. They wanted esure to progress the claim and they said they'd spent money arranging their own surveys. They also said they had to chase esure on the claim.

The Investigator upheld the complaint. They said esure hadn't demonstrated it was fair to rely on the policy exclusions to decline the claim. They recommended esure reconsider the claim, reimburse the cost of Mr and Mrs M's surveys and pay them £500 compensation. esure didn't agree. It said the foundation depth was not in line with building regulations.

I issued a provisional decision partially upholding the complaint and in it I said the following:

"Mr and Mrs M provided a lot of information in support of their complaint. I assure them I've taken everything they've provided into account. But in this decision I've focused on what I think are the key issues in this complaint. No discourtesy is intended by this, it simply reflects the informal nature of the way the Financial Ombudsman Service reviews complaints.

esure accepts there was damage caused to Mr and Mrs M's property by subsidence. But it declined the claim because it said the foundation of the extension was inadequate.

I've reviewed the terms of Mr and Mrs M's policy, and it includes the following exclusions:

- "...loss or damage...caused by or consisting of...inadequate foundations which did not meet the building regulations which were in force, at the time the foundations were constructed".*

- “loss, damage or any liability resulting from or consisting of...faulty...design..”

So I need to decide if esure acted fairly in declining Mr and Mrs M's claim, with the above in mind.

Mr and Mrs M have said the extension and foundations were designed and constructed between 2008 and 2010. And from esure's site investigations in November 2023, I can see the extension foundations were to a depth of 350mm below ground level, onto made ground.

As part of its decision, esure considered standards applied by a certain builder of new homes, who I'll refer to as N. I agree with the Investigator it wouldn't be fair for esure to judge the design of the foundation against N's standards.

But the terms of the policy do expressly reference building regulations, and I consider it fair in the circumstances, for esure to rely on the building regulations in force around 2008, in order to determine whether the foundations were inadequate.

The requirements which support Building Regulations – the Approved Documents – were updated in 2004. They required a minimum foundation depth of 450mm generally and 750mm in clay soil (as was the case at Mr and Mrs M's property). It also noted the depth may need to be increased in order to transfer the load onto satisfactory ground.

Keeping in mind the above, and that the foundations of the extension were to a depth of 350mm, onto made ground, I'm satisfied it was fair for esure to conclude the foundations were inadequate (and that this amounted to faulty design).

I acknowledge Mr and Mrs M feel the foundations for the extension were adequate at the time it was built. And they've pointed to the structure being signed off by the local authority Building Inspector as proof of this. But I haven't seen sufficient evidence to confirm the Building Inspector checked the depth of the foundations. And in any case, it isn't for me to decide on the actions of the Building Inspector – it's only for me to decide if I think esure has acted fairly in declining the claim based on the information it has.

I've explained why I consider it's fair for esure to say the foundations of the extension were inadequate. In deciding whether it was fair for esure to rely on the exclusions for inadequate foundations and faulty design, I've gone on to consider whether the failure to meet the relevant standards outlined above, can fairly be considered material to the damage.

esure's Building Consultant in a report from June 2023 concluded that had the foundations not been defective, it's very likely the damage would not have occurred. I consider this to be persuasive in the circumstances, but I've gone on to consider the other evidence.

Mr and Mrs M arranged for an inspection by a Chartered Civil and Structural Engineer in February 2024, who I'll refer to as SS. SS noted the cracking in the extension commenced nearly 12 years ago (so around 2012), and has become progressively worse over the years. And I think this is supported by Mr and Mrs M's valuation report from April 2014, which noted evidence of movement observed in the form of cracking internally and to the rear elevation. Although the report suggests the cracks were non-progressive, I'm not persuaded this was the case, having considered all the evidence.

I acknowledge that tree roots were not found within esure's trial pit or borehole excavation. And while this doesn't demonstrate the effect of tree roots immediately underneath the foundation, it also doesn't demonstrate the effect of tree roots below this, or at a depth beyond what would've been considered adequate. And I'm conscious SS, in February 2024,

appeared to suggest tree roots were not linked to the damage.

Overall, I consider the damage first occurred shortly after the construction of the extension was complete, albeit it became progressively worse. Given the depth of the foundations, and the foundations being laid onto made ground, I think it's fair to conclude movement was likely, from the outset. And on balance, I think it's more likely than not that the failure to meet the relevant standards was material to the damage. It follows that I don't consider esure acted unfairly in relying on the policy exclusions to decline Mr and Mrs M's claim. So I won't direct esure to reconsider the claim or pay the cost of Mr and Mrs M's surveys.

I have seen evidence that Mr and Mrs M had to chase esure for progress on the claim. This includes delays between September 2023, when they sent esure their Engineer report, esure's site investigations in November 2023 and esure's subsequent claim decision in January 2024. And I think the poor communication and unreasonable delays would've caused Mr and Mrs M avoidable distress and inconvenience. And in the circumstances, I think esure should pay Mr and Mrs M £150 compensation."

Mr and Mrs M responded to my provisional decision with evidence of the original foundation design by the Engineer, and evidence the local authority building inspector (Building Control) reviewed the foundation against the design, before signing off on the extension.

I then set out that I was minded to uphold the complaint on the basis Building Control reviewed the foundations against the designs and signed off on the structure. So, I said I didn't think it was fair in the circumstances for esure to rely on the policy exclusions for inadequate foundations or faulty design. I explained I was minded to direct esure to reconsider the claim, reimburse the costs of Mr and Mrs M's reports with interest, and pay a total of £500 compensation for the distress and inconvenience caused.

esure replied to say it maintained the foundations were inadequate and that Building Control should not have approved or signed off on the works.

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 with my provisional decisions, while I've noted all the comments from both parties, in this decision, I've focused on what I think are the key issues.

I'm now satisfied from the evidence, that Building Control reviewed the foundation against the designs, approved this, and signed off on the extension. So, I can only reasonably conclude Building Control was satisfied the relevant regulation and guidance at the time was sufficiently considered and applied.

Overall, I'm satisfied Mr and Mrs M took steps to have the foundation designed by an expert, and then inspected, assessed and passed by Building Control (the relevant authority), to say it was compliant with building regulations. I understand esure's concerns about the actual foundation and its depth, but I don't think it's fair and reasonable in the circumstances, for esure to rely on the exclusions for inadequate foundations or faulty design, to decline the claim. I say this because for the reasons outlined above, I'm satisfied Mr and Mrs M took appropriate steps to ensure the extension, including the foundation, was built to the right standard. So, I think esure should reconsider Mr and Mrs M's claim, without relying on the above exclusions.

For the reasons outlined above, I don't think esure acted fairly in declining Mr and Mrs M's

claim. And I think this, along with the other evidence of poor communication and delays would've caused Mr and Mrs M considerable distress, upset and worry. And in the circumstances, I think a total of £500 compensation is fair and reasonable. So, this is what I will direct it to pay.

And because I consider Mr and Mrs M were made to incur costs in arranging their own reports, as a result of esure's decision to decline their claim, I think esure should also reimburse the reasonable costs of these reports, with interest.

My final decision

My final decision is that I uphold this complaint. I require esure Insurance Limited to:

- Reconsider the claim, without relying on the exclusions for inadequate foundations or poor design.
- Reimburse the reasonable costs of the reports Mr and Mrs M paid for, and add interest at 8% simple per year, from the date Mr and Mrs M made the payment, to the date of settlement.*
- Pay Mr and Mrs M £500 compensation in total.

* If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs M how much it's taken off. It should also give Mr and Mrs M a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 8 October 2025.

Monjur Alam
Ombudsman