Financial Ombudsman Service

complaint

Mr E complains that esure Insurance Limited rejected a claim for accidental damage that was made under his Home insurance. But it did so using reasons that were dealt with in a final decision issued by the Financial Ombudsman Service in relation to a previous complaint.

background

Mr E's claims related to damage to a side porch. Its wall and/or another wall retains soil which is part of his property's garden. esure's loss adjusters' engineers considered the damage had been caused by pressure exerted by the retained soil. And that the wall(s) hadn't been built so as to be able to resist that pressure.

I issued the final decision in the previous complaint. My decision then was that esure should deal with Mr E's claim under the policy's cover for accidental loss or damage. It did this, but it rejected the claim again. It said the damage wasn't sudden and unforeseen. Instead, it was inevitable because of how the wall was built. esure also implied that exclusions under the accidental damage cover applied to the claim. The exclusions it mentioned included 1) damage due to poor workmanship or design and 2) damage caused by weather conditions.

Because of this, Mr E made the complaint that I'm addressing here. I issued a provisional decision on it. I said the accidental damage part of the policy was worded so that there was cover for any damage that was unforeseen and unintended, provided it happened as a direct result of a single unexpected event. I said I wasn't aware of any evidence that the damage was intentional. And I didn't think the evidence supported the rejection of the claim on the basis that the damage wasn't sudden and unforeseen. I thought the damage was consistent with having resulted from a single unexpected event.

But I thought the exclusions I've mentioned did apply to the claim. So, I didn't think esure had been unreasonable in rejecting it. esure accepted my provisional decision, but Mr E disagreed with it. He said that, when his home was built, the local authority had declared it was in line with Building Regulations. He said esure couldn't rely on any building standards that were introduced later. So, he said there was nothing wrong with how the property was built. Also, he said esure had previously argued that weather conditions hadn't caused the damage. And he didn't think exclusion 2) above was intended for *"usual weather"*.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Although I've summarised Mr E's response to the provisional decision fairly briefly, I've carefully considered everything he said.

He said that, in its final decision, esure had reiterated that the damage wasn't sudden and unforeseen and that it wasn't due to a single unexpected event. So, he thought I should only consider this point. I shouldn't deal with the exclusions esure had referred to, especially as it hadn't made it clear which were relevant to the claim.

I don't agree with Mr E. I think esure's final decision was such that it effectively relied on the policy exclusions that it mentioned. While I agree some of the exclusions may be irrelevant, I think esure's engineers' opinions mean exclusions 1) and 2) are relevant.

The engineers said the wall(s) hadn't been built so as to be able to resist the pressure exerted by the retained soil. It may be that, some 30 years ago, the local authority thought the property had complied with Building Regulations. But esure's engineers' opinions are contemporaneous with the damage and I think they're persuasive evidence that there was poor workmanship or design. I don't think they were relying on building standards adopted after the property was built.

When it rejected Mr E's previous claim for the damage, esure effectively said it wasn't caused by storm conditions. So, the claim couldn't be made under the policy's cover for damage caused by storm. In my previous final decision, I made the point that, normally, we think rainfall must be of exceptional or unusual intensity to amount to a storm. Although the total rainfall may have been high, I agreed that storm conditions hadn't been shown to have occurred.

The second claim, to which this decision relates, was made under the cover for accidental damage. In my provisional decision, I said it was possible that the absorption of rainwater by the retained soil resulted in it moving because its volume had increased, or in the force it exerted on the wall having increased. I don't think it's inconsistent for esure to have effectively argued that the damage was caused by weather conditions not amounting to storm.

In his response to the provisional decision, Mr E said he agreed the damage arose from the weight of the soil bearing on the retaining wall(s). But he implied that rainfall was unlikely to have contributed to this. But this is inconsistent with his argument in the previous claim that the weight of soil had increased because of record amounts of rainfall.

In all the circumstances, I remain of the view that esure's rejection of the claim wasn't unfair.

my final decision

I don't uphold the complaint and make no award against esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 15 February 2016.

S Lilley
ombudsman