

complaint

Mr S is unhappy that esure Insurance Limited has declined to pay for his failed soakaway (drainage) system under his home insurance policy.

background

Mr S appointed contractors to find out why the drainage had failed. The contractors suspected the damage had been caused by tree roots. Mr S made a claim and esure's own contractors had to abandon a CCTV survey due to an obstruction. This contractor also thought that the cause of damage was most likely *"tree root ingress"* but as the drainage system was ten years old the soakaway might be *"exhausted"*.

esure declined the claim. It said there was no evidence that an insured event had occurred. It said there was no evidence of accidental damage to underground services and that damage had occurred gradually which was excluded.

Our adjudicator upheld the complaint. He said that this service only accepts the exclusion for gradual damage if the policyholder knew about the damage occurring and didn't do anything about it. Where the policyholder wouldn't have known about it until it suddenly happened our adjudicator said this service would expect the insurer to pay for the damage. He said the soakaway wasn't functioning anymore and as this was unexpected and unintentional esure should pay for Mr S's drainage.

esure didn't accept this. It asked for the complaint to be passed to an ombudsman for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

esure said there was no accidental damage to the soakaway. But two sets of contractors (one for each party) said that it could be caused by tree roots. esure insist that there was nothing to show this. In terms of other tests carried out these were also inconclusive due to the ground conditions. The loss adjuster said the drainage system may have been unsuitable and esure's own internal expert said it had failed over time. So esure have provided several possibilities but none of them are conclusive.

esure's own contractor's report said *"the cause of damage is believed to be tree root ingress"*. The same contractor also said *"it may be that the soakaway system has become exhausted."* esure declined the claim and said the soakaway was saturated and that the damage was excluded as it happened gradually. The policy specifically excludes gradual damage.

esure said that the soakaway had become *"charged"* which I think means blocked. This service has a long established approach to blockage. This service has said that blockage equals damage. Even though the blockage may well happen over a long time it sometimes only becomes apparent to the policyholder at the point when it fails or no longer functions properly.

In terms of the gradual exclusion I don't think that esure has applied this reasonably. Despite both sets of contractors referring to tree roots esure has focused on the later comment from

its own contractor about the damage happening gradually. Our adjudicator rightly pointed out that for this service to agree esure would need to show that Mr S was aware of the damage and hadn't taken any action to prevent it. That isn't the case here Mr S reported a claim as soon as he noticed the water pooling and there is no record of Mr S delaying the claim notification.

Within the underground services section of the policy it refers to what esure will pay for. It includes *"pipes, cables and septic tanks...which break accidentally"* *"repairing...blockage of a pipe...because normal methods of releasing the blockage are unsuccessful"* and *"We will pay for the cost of clearing a blocked drain if caused by damage to the fabric of the drain"*. I think that all of these sections of the wording apply to this claim and esure should deal with it.

Based on the information I have seen I think esure should pay Mr S's contribution to the new soakaway system. It's clear that two sets of experts have put forward tree roots as the most likely cause of the damage and this should be considered as accidental damage. Further, Mr S has been waiting to get this matter resolved for some time so esure should add simple interest from the date of loss to the date of settlement.

my final decision

I uphold this complaint.

I require esure Insurance Limited to:

- pay the cost of moving Mr S's soakaway;
- if Mr S has already paid for the work he should be reimbursed. esure must also pay interest on this amount at the simple rate of 8% per year from the date he made his claim to the date it makes the settlement. HM Revenue & Customs requires esure to take off tax from this interest. esure must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 February 2016.

John Quinlan
ombudsman