

## **The complaint**

Mr and Mrs C have complained about their property insurer esure Insurance Limited (Esure) regarding a claim they made when they had excessive ground water at their home and later noticed damage to the living room floor.

## **What happened**

In 2020 Mr and Mrs C were having work done at their home. Holes dug by Mr C's contractor kept filling with water. A leak in the road was identified so Esure declined Mr C's claim because there was no cover on the policy. Mr C noted that his living room floor had bulged. Esure said it would consider that under the cover for heave and subsidence. Esure said the cover for heave excluded damage caused by chemical attack – and it felt the floor had been impacted naturally by sulphates, which is a common reaction regardless of actual moisture levels. So Esure declined the claim. In March 2021 Mr C provided detail to Esure of leaks in the road having been stopped, which had resolved the excessive ground water issue on his property. Esure reviewed matters and agreed to accept the claim. It initially priced repairs at around £5,000.

Mr C had a contractor on site doing work. He said the insured repairs would cost more than that offered by Esure, which he believed to only be related to labour costs. He presented two estimates, one for repair of the lounge and one for the kitchen, totalling £16,016. Esure agreed to review what was required. In September 2021 Esure said it had costed the work at £17,430, plus VAT. So it would pay £17,430 less the policy excess, with VAT to be paid upon receipt of VAT receipts. Within a day or so though, Esure noted Mr C's cost for work was less, it said it had made a mistake and would pay him £16,016 less the policy excess and £15,641 was sent to Mr C. Esure said if there were other costs, it would consider them.

Mr C wasn't happy about the mistake, nor about the course of the claim to date. And in late September 2021 an issue arose with the alternative accommodation the family were staying in. They'd been living away from home since late July 2021. With work still to be finished, Esure had agreed to extend the accommodation, but late on a Friday evening, Mr C was told he and his family would have to be out the next morning. They moved to stay with family and Mr C took time off work, also employing an extra labourer to expedite the outstanding work at the home. He complained to Esure.

Esure said there had been some poor service. It apologised and offered £500 compensation. It welcomed Mr C to come back to it if further expenses arose.

In early 2022 Mr C sent Esure some further detail and documentation regarding additional costs – he felt about £5,000 was outstanding, including the £500 compensation offered in late 2021. Esure agreed to pay some fuel costs for the period the family had been in the alternative accommodation, for some parking and eating out costs too and for some of the extra labourer costs (based on what it would otherwise have paid for additional accommodation costs) – totalling £1,628. This was paid in February 2022. But Esure wasn't persuaded to pay costs for the time Mr C had taken off of work and it was concerned about the estimate presented to support a request for payment of the cost for digging holes in 2020 to trace the leak. It decided to investigate the claim further and wasn't minded to pay any other costs in the meantime, including the compensation previously offered.

Esure interviewed Mr C in May 2022. He confirmed he and Mrs C had typed up all the estimates submitted in support of the claim because his contractors didn't provide that kind of thing. Esure then wrote to Mr C with a view to arranging a further meeting at Mr C's home and to gaining further documentation. The meeting wasn't arranged and Mr C felt Esure's requests for information were unreasonable and made too late. In June 2022 Esure confirmed it would not progress the claim without further detail being provided. On 23 July 2022 Mr C complained to the Financial Ombudsman Service.

Mr C said he remained unhappy about the claim in general. He said he didn't think Esure's enquiries in May 2022 were reasonable, or made in a reasonably timely manner. He said there were claim costs outstanding, plus his time off work and he wanted the Financial Ombudsman Service to decide if Esure also had to pay him for reinstating his driveway and kitchen ceiling. He also thought the kitchen floor wasn't accounted for in the previous claim settlement. Mr C said he wanted a letter of apology from Esure and for us to punish it.

Our Investigator felt Esure had acted fairly and reasonably when it asked Mr and Mrs C for more detail. She noted it was prepared to resume its claim consideration if the detail requested was provided. She didn't uphold the complaint.

Mr and Mrs C were unhappy. Mr C said that most of the detail Esure had asked for had since been provided by him, including bank statements. He said his concerns about the claim handling – including Esure's decision to investigate at such a late date – hadn't been considered. Mr C felt his queries about outstanding repairs/repair costs hadn't been considered either.

Mr and Mrs C's complaint was referred for to me an Ombudsman's decision. I felt Esure should be paying Mr and Mrs C £1,000 compensation. But I wasn't otherwise minded to make it pay or do anything more. I issued a provisional decision to explain my views. My provisional findings were:

#### *"Initial decline in 2020*

*I think Esure acted unfairly and unreasonably when it declined the claim in December 2020. It knew there was excess water in the grounds of the property due to a nearby leak – and in March 2021, with no real additional evidence, it accepted the claim on the basis the increased moisture levels below the property had likely caused damage. This caused an avoidable delay, in my view, of around three months.*

#### *Late March 2021 – Settlement in September 2021*

*Once Esure agreed to accept the claim, it was decided a visit was needed by a surveyor. That took place in late April. It was early June when a schedule for repairs was determined and an initial offer of around £5,000 put to Mr C. Mr C presented two estimates in challenge and the surveyor was reviewing them in July 2021. It was felt another visit was required –*

Mr C's contractor was unavailable until mid-August and the surveyor was then on leave. Following a visit at the end of August, an amended schedule was created and an offer put to Mr C on 9 September 2021.

*I can see that the claim was delayed by a couple of weeks in May 2021 and August 2021 because the surveyor was on leave. I don't think that could have been avoided. I think the matter was generally progressed as soon as reasonably possible by Esure during this period. I appreciate Mr C felt it was an inconvenience to ask him to present estimates – but as he was challenging the costs assessed by the surveyor, it was reasonable for him to be asked to evidence what the work would cost him. And a second visit to fully assess the estimated outlay was also reasonably required and organised. I don't think Esure failed Mr and Mrs C during this period in terms of managing and progressing the claim.*

#### September 2021 offer

*The surveyor costed work at £17,430, plus VAT. So an offer was put to Mr C on that basis. With Esure only noting afterwards that this would mean it was paying more to Mr C than he had shown he'd been charged/would be charged by his contractor. His estimate being less, at £16,016 and not subject to VAT (on labour at least), which was what Esure then based its claim settlement on.*

*I can absolutely understand why Mr C was frustrated by this. Esure should have taken more care when making the initial offer to make sure the correct sum was put forward. But Esure did correct the matter quickly. And even if an insurer thinks it would cost it more to do the work, than what its policyholder will have to pay – it would only reasonably have to cover the cost to its policyholder. So I don't think there are grounds on which I can fairly require it to pay in line with its additional offer. I also bear in mind that Esure did leave the door open for Mr C to go back to it with detail of any additional costs. So I think Esure caused some upset by making a mistake but that its final offer was fairly made.*

#### Alternative accommodation

*Mr and Mrs C had initially accepted Esure's decline of the claim in December 2020. They reverted to it in March 2021 and, by this time, they no longer had use of their kitchen. I think Esure likely became aware of that at the end of April 2021 when the surveyor visited. It was July 2021 when Mr C first asked for the family to be rehomed. They moved into alternative accommodation at the end of July 2021 with Esure having agreed an allowance for extra living costs for the period from March 2021 when they'd been without a kitchen.*

*I think there was certainly a period in March and April 2021 when Mr and Mrs C were living with no kitchen with Esure being unaware of that. I think it would have been aware had it not declined the claim unfairly in December 2020. And even once Esure knew they had no kitchen, it took Mr C raising the issue of living conditions for Esure to act either in respect of paying an allowance for extra living costs or to arrange AA. I think, but for the unfair claim decline, Esure would have arranged AA for the family for the kitchen being removed. I think they stayed in the uninhabitable home for around five months, most of March 2021 and through to the end of July 2021, because of Esure's initial decline and poor claim handling.*

*There was then an issue in late September 2021. The AA was due to end. But Esure had agreed to an extension. This had been agreed and authorised, with Esure's accommodation provider also having checked with the accommodation's owner that the extension was in place. However, I note the accommodation owner, at the last minute, said there'd been a mistake. This caused the family to have to move out at short notice and stay with relatives. I accept this was very distressing and inconvenient for Mr and Mrs C. But I think this really falls under the heading of unavoidable upset. Esure, including its accommodation provider,*

*had done everything to ensure the accommodation was extended. On this occasion, I don't think it's fair to view the mistake of the third-party owner as a failure by Esure to manage the claim which would reasonably require it to pay compensation.*

#### *Further requests for payment*

*Following Esure's settlement in September 2021, Mr C asked it to make further payments. He said there was around £5,000 outstanding and owing.*

*Hotel parking and dinner – £186.41 claimed, £154.90 paid by Esure. I note there's a difference of around £30. But Esure's settlement was based on extra costs it felt it was liable for. I think the sum offered is reasonable.*

*Fuel costs – £317.52 claimed, £141.12 paid by Esure. The difference is due to the pence per mile used to calculate the settlement, Mr C wanted 45p per mile, Esure said it thought 20p was reasonable. I suspect Mr C's value was based on HMRC standard rates for business use of cars. I think Esure fairly considered what extra cost Mr C had for fuel though, looking at his car it determined that fuel costs were likely less than 20p per mile. I think it settled this reasonably.*

*Extra labour – £1,400 claimed, £1,332 paid by Esure. Mr C submitted an invoice for an extra labourer, employed to expedite work. Esure wasn't convinced he was only employed regarding the insured work. But felt if he had not been employed, it would've had extra costs for alternative accommodation for the family. So it said it would pay what it felt it would have cost for housing – £1,332. I note that equated to most of the labour bill. I think that was reasonable in the circumstances.*

*There were then costs for a skip, digging holes and installing drainage, digger hire and unpaid leave for Mr C. Esure wasn't minded to pay these and the estimate sent for digging holes and installing drainage, caused it to undertake further investigations.*

*Esure had offered Mr C £500 compensation in September 2021 for its failings to that point. Mr C hadn't accepted the sum, so it hadn't paid it. And, with it noting concerns about the hole and drainage estimate, it said it wouldn't pay that sum. I'll look at the investigations shortly. But I'm not persuaded it was reasonable for Esure to withhold the compensation amount. It accepted it had failed Mr C, and it had also agreed to make other payments whilst having sight of the hole and drainage estimate. The £500 should have been paid along with those sums.*

#### *Investigations in 2022*

*I know Mr C has been very upset by this. But I think Esure acted reasonably at this time. It had previously accepted Mr C's estimates for work in good faith. It was only when the later estimates were presented that it began to have concerns and Mr C then told Esure he had created all of the estimates submitted on the claim. Admittedly he explained that was only to assist the contractor, because the contractor didn't write up estimates. But I'm sure Mr C can see why this would raise concerns for Esure. It had paid the claim so far, based on costs Mr C had submitted as being the cost to him for agreed insured work – but now Esure had been told those documents did not come from Mr C's contractor. Esure felt, before it would pay anything more, that it wanted to see other evidence of Mr C's outlay. I think that was reasonable. And I note that whilst Esure has said it won't make further payments against the claim unless the detail it has asked for is provided, it hasn't sought to decline the claim as a whole or ask Mr C to repay its previous settlements. I'm satisfied that Mr C's name has not been brought into disrepute as he fears.*

*I understand that Mr C thinks Esure should have made enquiries earlier. But as I said, it had no concerns about his documents in the early stages, around the time it had contact with his contractor. I think that once its concerns were piqued – seemingly because it noted the estimate submitted in 2022 contained detail that made it sound like it had been written by Mr C – it asked to interview Mr C. I think that was reasonable. I've watched a recording of the interview. I think the content and tone of that interview was reasonable too.*

*I know that around the time Mr C complained to the Financial Ombudsman Service, he sent some bank statements to Esure. And confirmed a telephone number for the labourer who had provided assistance to expedite work. But I note that still leaves outstanding some of the detail that Esure asked for. I know Mr C thinks it asking for mortgage and personal loan details (used to pay for work) aren't reasonable requests. But I'm satisfied that Esure, knowing that no detail from Mr C's contractor has been provided to evidence what work was done and paid for at Mr C's home, has fairly requested additional detail to assist it with its deliberations. I'm not persuaded it would be reasonable for me to require Esure to forego that or otherwise further consider the claim without the detail asked for. So I won't be requiring it to pay Mr and Mrs C the other outstanding costs they've asked it for.*

#### Driveway, ceiling and floor

*I'm not commenting on these issues at this time. If Mr C presents further evidence and / or Esure is minded to resume its claim considerations, Mr C can ask it to consider its liability for these items.*

#### Compensation

*It's not our role to punish insurers. Rather I have to think about the failures, the upset they caused and what fair and reasonable compensation for that is.*

*Esure offered £500 compensation in 2021. I don't think it caused any delay of poor service after that time. Before then, as I've set out above there were a few months of delay caused by Esure's unfair claim decline, with that having a knock-on effect, causing the family to stay living in their uninhabitable home for around five months. And there was the upset caused by Esure's erroneous settlement offer. I think that, particularly the family staying in the home March to July caused them sustained, serious disruption to their daily life. I think a total of £1,000 compensation is fairly and reasonably due. The £500 compensation previously offered by Esure hasn't been paid. It withheld it – unfairly in my view, as I said above. I think it should now pay the total sum of £1,000."*

Esure didn't reply to my decision. Mr and Mrs C asked that I review it.

Mr C said he'd agreed to write the estimates following speaking to one of Esure's claim technicians. He explained why the ceiling had to be replaced. He said Esure had invited him to bring further costs after the initial settlement, if it isn't happy with the costs he presented, it could determine a reasonable value. They'd had to dig holes and dig up parts of the driveway in response to the water ingress issue – so there's no reason, Mr C says, why the costs for this can't be considered as part of the claim. Images of the holes and the digger used have been provided. Remaining parts of the driveway have sunk and it likely needs a full rebuild with the water having washed away its foundations. Mr C said he should be paid for the leave he took from work to make their home habitable as the family were then unable to take a break together because all his leave had been used.

Mr C said they'd like me to make a ruling as to whether Esure should accept the supplementary work and costs. He said that was important because so far they'd been ignored. He came to the Financial Ombudsman Service for just such a ruling so as to avoid delays and excuses from Esure.

### **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.

Having done so, along with reviewing Mr and Mrs C's reply to my provisional decision, with regret for any disappointment this causes them, I'm not minded to change my findings or amend my award.

I realise Esure, having made a claim settlement to them, left things open for Mr and Mrs C to come back with further costs. I can understand that they want a ruling requiring Esure to accept and settle outstanding issues. But Esure has reasonable outstanding enquiries which Mr and Mrs C so far haven't fully answered. I accept that Esure's technician asked Mr C to provide estimates for the work. I'm not persuaded she directed him to write those estimates himself – he certainly did not say that to Esure's interviewer when he was asked about the provenance of those documents. I remain of the view that if Mr and Mrs C want Esure to make any further claim payments to them, they will first have to cooperate with its enquiries.

I confirm that my provisional view of the complaint has not changed. As such my provisional findings, along with my comments here, are now the findings of this my final decision.

### **Putting things right**

I require Esure to pay Mr and Mrs C £1,000 compensation.

### **My final decision**

I uphold this complaint. I require esure Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 19 December 2023.

Fiona Robinson  
**Ombudsman**