

## The complaint

Mr and Mrs E complain that esure Insurance Limited (“esure”) has unfairly declined an escape of water claim under their home insurance policy.

Any reference to Mr and Mrs E or esure refers to respective agents or representatives.

## What happened

The background of this complaint is well known between parties, so I’ll summarise events.

- Mr and Mrs E hold their home insurance with esure. They suffered an escape of water in their bathroom and made a claim. They said water had poured through their ceiling and throughout their home.
- Mr and Mrs E say they called a plumber (Person A) to attend who said it was a cold-water pipe that had burst. He had attended, isolated the leak and after a few hours the water had stopped.
- esure considered the claim and declined it, saying the damage was caused as a result of faulty workmanship which is excluded under the policy. esure said Person A had installed their loft en-suite. And within his visit, esure says he *“pulled the sink away from the wall and done something behind there and left”*. It said since this visit, several contractors had visited the property but had been unable to find a leak since. So, esure concluded the leak arose behind the sink due to Person A’s previous workmanship.
- Mr and Mrs E made a complaint and esure considered this. It awarded them £100 compensation for delays but stood by its position on the claim.
- The complaint came to this Service and one of our Investigators looked into what happened. He said it was evident an escape of water had taken place, so an insured peril had been proven. And so, he said it fell to esure to evidence the exclusion had been fairly applied. And while Person A worked on the en-suite, he felt the conclusion was circumstantial and not persuasive – particularly as esure’s own agents were unable to find the source of the leak.
- The Investigator upheld the complaint, directing esure to reimburse Mr and Mrs E for the repairs they’d already paid for, plus 8% simple interest, and an additional £100 compensation.

Mr and Mrs E accepted the view, but esure didn’t. So, the matter was passed to me for an Ombudsman’s decision. I issued a provisional decision on 30 November 2023. I’ve included an extract of this below.

- *“Mr and Mrs E’s policy provides cover for certain insured perils, such as fire, theft, escape of water amongst others. The onus is on them as policyholders to demonstrate an insured peril has taken place. Once this has been proved, the onus will then shift to the insurer if it intends to say the claim is not covered or excluded.”*

- So, I'll look first at whether an insured peril has taken place.
- The policy states it will cover "escape of water/burst pipes". This states:  
*"We will pay for loss of or damage to Your Buildings or Contents as a result of water escaping from water tanks, pipes, fixed equipment, any domestic appliance or fixed heating systems, or as a result of water freezing in water tanks, equipment of pipes."*
- There's no dispute there is water damage within the home. So, I need to consider if this damage has escaped from water tanks, pipes, fixed equipment etc. In doing so I've looked at the expert opinions provided.
  - esure's loss adjuster visited the property shortly after the damage occurred, and from their visit was unable to establish the cause of the leak – saying there were no leaks found on the day of its visit.
  - A plumber (Company P) also attended the property. And they too were unable to establish the source of any leak within the property.
- esure has shared the comments of its loss adjuster and Company P with Mr and Mrs E. For this reason, I haven't repeated them in detail here. So, there's no cause of the leak in this case based on the expert opinions provided.
- Mr and Mrs E say it's unfair for esure to not cover the claim as they were unable to evidence what caused the escape of water.
- I take on board what esure has said about an insured peril having not been proved. It's not in dispute Mr and Mrs E and esure both aren't aware of how the leak was caused. Without being able to establish the exact cause of a loss, an insurer may be unable to establish whether or not an insured peril has occurred at all. However, in this particular case, I'm satisfied the most likely cause of this escape of water was as a result of water escaping from pipes, fixed equipment or one of the listed items given the location and the extent of the damage.
- So, I'll move on to consider the exclusions under the policy. esure seeks to rely on an exclusion which says esure will not pay for loss, damage or any liability resulting from or consisting of faulty workmanship, design or materials.
- From what I've seen of Mrs E's version of events given to esure, Person A was called after the water damage was discovered, and he attended within 5-10 minutes as he lives nearby. I understand he went to the loft, pulled the handbasin from the wall, breaking the sealant, and carried out some activity that stopped the leak. On its face, given the location of the escape of water (a room Person A had only recently finished working in, installing bathroom facilities), I think it follows that this escape of water is likely to be linked to the works carried out.
- Mrs E said Person A did not explain what the problem had been, nor what he had done to fix it. Since then, Mrs E has not been able to reach Person A again.
- esure has said given Person A's avoidance of Mr and Mrs E's calls or contact, it believes the cause of the leak was some form of poor workmanship. And I'm minded to agree. I think this behaviour isn't indicative of a party that is seeking to evidence they aren't liable for the work – particularly as Mr and Mrs E may well have a form of legal recourse to Person A if they were liable for the damage through faulty workmanship. So, I'd expect Person A to be keen to evidence the damage wasn't as a result of their own workmanship if this was the case.
- Mr and Mrs E say neither of the expert comments state the damage was likely caused by poor workmanship. So esure's conclusion was baseless and without evidence. I disagree, the conclusions the two parties reached were that there was

*no leak found. So, I have to look at the available evidence to determine what is most likely to have been the cause.*

- *Person A attended at short notice, and seemingly resolved the issue that caused the leak, and this was in the vicinity of the work recently completed by them. So, it seems the most likely cause of the leak was related to their work. And given their lack of engagement with Mr and Mrs E, as well as esure, I'm satisfied esure's conclusion that this was caused by faulty workmanship is a fair one. As a result, I'm not intending to uphold this complaint, nor award any further compensation."*

For these reasons I explained I wasn't intending on upholding the complaint, giving both parties until 15 December 2023 to reply with anything further. Neither Mr and Mrs E nor esure have come back with anything further.

### **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.

Given neither party has given me anything else to consider I see no reason to depart from my provisional decision. That is to say I'm satisfied that esure has fairly declined this claim, and I'm not directing it to do anything further nor provide any further compensation to Mr and Mrs E for the reasons previously outlined.

### **My final decision**

For all of the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E and Mrs E to accept or reject my decision before 16 January 2024.

Jack Baldry  
**Ombudsman**