

The complaint

Mr and Mrs M complain that their home insurer, esure Insurance Limited, and its contractors caused huge problems with their subsidence claim and failed to take remedial action causing them to live in a state of disrepair for ten years. They also complain that they have incurred professional and repair costs that esure should reimburse.

What happened

I sent the parties a provisional decision in May 2022, in which I set out the following background information to the complaint and my provisional findings.

In 2011, following a structural engineer's report on movement of brickwork at Mr and Mrs M's home, they made a claim to esure for subsidence damage. esure appointed loss adjusters and they accepted the claim and identified nearby vegetation as the cause.

The loss adjusters put monitoring of the property in place and this continued at intervals over the next ten years. They sent drainage specialists to check and they found numerous, minor cracks. They instructed a botanical investigation which found some roots in the drainage and recommended the drainage be replaced following the removal of the vegetation.

The loss adjusters thought that provided there was no further movement after the removal of the vegetation no stabilisation would be needed, only internal and drainage repairs. Mr and Mrs M disagreed and said there was cracking and distortion in their brickwork visible.

esure's loss adjuster reported in May 2021 no evidence of movement. In June the loss adjuster confirmed the findings and said a bulge in the gable wall was due to a lack of tie or restraint and wasn't an insured matter being unrelated to the subsidence. Notwithstanding this, esure offered to fund half the cost of repairs. The loss adjusters put forward an offer of cash settlement in respect of this and other outstanding brick and junction repairs.

Mr and Mrs M said the offer didn't deal with other damage previously agreed to be covered. They had obtained a builder's quote for the work and esure paid this in the sum of £23,088. Mr and Mrs M complained to esure about the decisions and handling of their claim. They had ten elements to the complaint and esure responded and referred to its previous offer of £500 compensation as sufficient. Mr and Mrs M then brought their complaint to our service.

Our investigator didn't recommend the complaint be upheld. She said works to the front wouldn't be covered as they aren't subsidence-related as per the loss adjuster's report. And she didn't think potential costs needed to be covered. She didn't think we could require esure to provide cover to a future purchaser of the property or be accountable for potential injury from the repairs. And she said Mr and Mrs M hadn't complained to esure about inflated premiums and she couldn't consider this. She thought the £500 compensation was fair.

Mr and Mrs M said most of their complaint issues had been resolved, such as the further movement of their home, the cash settlement and further work required. They said they're also satisfied about cover for injury, guarantees to a new buyer and future conditions and payments. But they said the following issues were outstanding.

Mr and Mrs M want comments by the loss adjuster in 2015 accepting front elevation work as part of the subsidence claim to be considered and his qualifications. And esure will review the amount of the builder's quote if it should rise. They said they should be compensated for inflated premiums from 2019 to 2021, but hadn't received any compensation from esure and felt that £500 didn't reflect the lack of care and delays by esure and its agents and the effect on Mrs M's work. They said poor repairs meant their gable wall will need to be re-built.

Mr and Mrs M request £1,000 compensation for each year of the claim for the structural damage inflicted by esure's contractors and the distress and hundreds of hours spent on the claim. Mr and Mrs M said no stabilisation has been done and they've been living in a state of disrepair in the right side of the property as the right flank wall needs to be re-built.

Mr and Mrs M remained dissatisfied with the investigator's response to their complaint and requested it be reviewed by an ombudsman.

My provisional findings

I'm pleased that many of Mr and Mrs M's issues have been resolved, primarily by payment of their builder's quote. I also understand that professional fees Mr and Mrs M incurred have been reimbursed. I have concentrated on those issues they have said are outstanding in a summary which forms part of their letter of 6 December 2021 to our service.

Mr and Mrs M request esure cover increased costs that may apply to a quote they obtained. I think that it would be fair for esure to consider a revised quote from builders carrying out repairs to Mr and Mrs M's home should the original quote be superseded by increased costs.

Increased premiums Mr and Mrs M say they've paid from 2019 and 2021 is a complaint that has to be considered by esure before we can consider it. Mr and Mrs M said they raised this with esure by phone, but without response. I haven't seen anything to show this has been considered by esure, so I suggest Mr and Mrs M bring a new complaint about this and any issues that remain outstanding from the present complaint. They should be aware that it's not unusual for premiums to increase following a significant claim.

I've looked at the timeline and detail of the events helpfully provided by Mr and Mrs M, and esure's business records of the claim in order to decide if the £500 compensation offered by esure is fair. I can see there have been delays on both sides, though more on esure's side and I've seen examples of poor service by esure and its agents. Mr and Mrs M have acknowledged the delays for which they were responsible, some of which were unavoidable.

I've looked at the communications concerning damage to the gable end wall and the differing opinions as to the cause. I don't think there's reason to find that esure committed to covering all the repairs under the claim as past comments and loss adjuster of 2015 and 2016 have been superseded by a subsequent report. This describes the damage as unrelated to subsidence. I realise this runs counter to the findings of Mr and Mrs M's structural engineer, but I haven't seen sufficient evidence to show that delayed drainage and other works caused the distortion evident in the gable wall. Nevertheless, I'm pleased esure has offered half the cost of the repair and given some of the contradictory messages about this in the past, and the likely deterioration of the wall since the problem was first raised, I think this is fair.

I can see that Mr and Mrs M lost confidence in esure's previous loss adjuster and feel that he made decisions to the detriment of their property. In my view, subsequent agreement of the repairs and the cash settlement override these issues and I can see no benefit to an examination of the loss adjuster's qualifications or previous communications.

esure has offered Mr and Mrs M £500 compensation in respect of its failures during the claim. Having considered all that has happened I don't think this reflects the impact of esure and its agents' poor service on Mr and Mrs M. It is inherent within any complex and long-running claim such as with subsidence damage that multiple parties will be involved and the policyholders will need to devote a great deal of time and energy to the pursuit of their claim.

However, there have been delays, such as for the repair of the drains, and successive poor communications where aspects of the claim were ignored as were reasonable questions put by Mr and Mrs M. Some of the work carried out doesn't appear to be of a very high standard and had to be re-done and the proposed repairs were amended by the loss adjusters without much explanation. I can see this added to the stress that Mr and Mrs M were suffering and had an impact on their enjoyment of their home and Mrs M's work. Because some delay and stress caused were avoidable, I currently think that compensation of £1,000 would be a fairer reflection of the stress and inconvenience they have suffered.

My provisional decision and the parties' responses

I provisionally decided to uphold the complaint and require esure to consider any increased costs that may apply to the builder's quote Mr and Mrs M obtained and esure has accepted.

I also intended to require esure to pay Mr and Mrs M £1,000 compensation for the distress and inconvenience they have suffered as a consequence of poor service during the claim.

In response, Mr and Mrs M set out the timeline of their claim and said it took until June 2020 for drainage repairs to be completed. They said their structural engineer had speculated the cause of damage could be due to an escape of water and they asked if a damp and timber survey should be carried out. Mr and Mrs M said the damp brickwork is still apparent and they think drying out may take many years to resolve, which would impact on resale and so they asked about recompense for this. And asked if they should disclose the claim in future.

Mr and Mrs M said they appreciate the bulge in the wall of the right-hand aspect of their home is historic and attributable to lack of lateral restraint and unrelated to their subsidence claim. Despite this esure agreed to meet half the cost of repair work as recompense for its failures on the claim, but the work still hasn't been carried out. Mr and Mrs M set out their engineer's recommendations about work to the gable end wall.

Mr and Mrs M clarified that the lack of repair work afforded a lack of protection to the gable end wall leading to its deterioration. They asked if previously agreed compensation relating to a quote for the removal of vegetation could now be paid. Mr and Mrs M said it may be difficult for them to obtain insurance cover following their claim and esure wouldn't clarify if it would be prepared to transfer cover to a purchaser of their home.

Mr and Mrs M said they called esure in September 2020 about their renewal premium, but this hasn't been resolved. They were pleased that esure will consider a revised builder's quote if that's necessary. Mr and Mrs M acknowledged that the decisions they questioned from the previous loss adjuster involved in their claim, no longer influence their claim. But they still requested an investigation of the qualifications of loss adjusters used by esure.

esure had no further comments to make concerning the provisional decision.

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.

I hope Mr and Mrs M don't consider it a discourtesy if I haven't referred to all of the points in their letter of response to my provisional decision and their background document.

Mr and Mrs M ask me to consider the comments of their structural engineer about the cause of damage to their home. I have considered all the expert evidence and I think esure has correctly categorised the claim as relating to subsidence. I'm not an engineer so I can't say if further surveys should be conducted. Mr and Mrs M should put this proposal to esure if they consider it to be necessary.

There are many different factors which can affect the sale value of a property. I haven't found any mistake by esure to be capable of linking to a forthcoming sale value and I don't think it fair to require it to pay recompense. Mr and Mrs M will need to answer any questions about previous claims accurately to a prospective new insurer.

I've reconsidered Mr and Mrs M's structural engineer's comments about their gable end wall. These run counter to esure's report which states the damage is unrelated to subsidence. In the absence of any new evidence I remain of the view that it wouldn't be fair to require esure to cover all the repairs under the claim. As I said in my provisional decision, I'm pleased esure agreed to meet half the cost of relevant repairs and I trust the repairs can now proceed. I have noted again that esure has paid the full builder's quote obtained by Mr and Mrs M. And their builder should provide any rationale behind further or new costs. This can then be provided to esure.

The compensation to which Mr and Mrs M have referred of £715 + VAT relates to a contractor's estimate to carry out work from 2015 and has been superseded by the development of the claim since then.

Insurers are entitled to make commercial decisions, including who or what they wish to insure and how much to charge for the cover. These aren't matters with which our service would interfere. And so, I can't reassure Mr and Mrs M that esure will continue to offer cover to any prospective purchaser of their home. And I can't tell esure what to charge Mr and Mrs M for future premiums or what conditions to include within their policy. However, if Mr and Mrs M feel they are being unfairly treated they can bring a complaint to their insurer and subsequently to our service. Our service recommends policyholders remain with their home insurers during subsidence claims.

Concerning the increased premiums Mr and Mrs M have paid, they said that they called esure in September 2020 about their renewal premium and esure explained the reasons. I don't doubt this, the point I made in my provisional decision was that there was nothing to show a complaint had been made to esure about this and our service can't consider an issue until it has been considered by the business.

I'm pleased to see Mr and Mrs M state that the decisions made by the loss adjuster previously involved in their claim which they had called into question, no longer influences their claim. I see no benefit in investigating the qualifications of the loss adjusters involved.

Putting things right

Having re-considered the award of compensation I put forward in my provisional decision, I remain of the view that £1,000 is about the right compensation for the distress and inconvenience Mr and Mrs M have suffered during their claim as a consequence of esure and its agents' poor service.

I also remain of the view that esure should consider and where reasonable agree any increased costs for the repair work shortly to commence at Mr and Mrs M's home.

My final decision

For the reasons I have given it is my final decision that the complaint is upheld. I require esure Insurance Limited to pay Mr and Mrs M £1,000 compensation for the distress and inconvenience it has caused them. esure Insurance Limited may deduct from this amount any compensation it has already paid.

I also require esure Insurance Limited to consider any increased costs that may apply to the builder's quote Mr and Mrs M obtained and esure has accepted.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 5 July 2022.

Andrew Fraser
Ombudsman