

The complaint

Mr V complains that esure Insurance Limited mishandled his claim on a motor insurance policy.

What happened

In April 2016, Mr V acquired a new car with a price of nearly £50,000.00. He paid a deposit of £6,500.00. For the balance of the purchase price, he entered into a finance agreement with a finance company. He agreed to pay that balance (with interest) by instalments over about four years.

For the year from 18 December 2017, Mr V had a motor insurance policy under which esure was responsible for dealing with claims. Where I refer to esure or the insurer, I include claims-handlers and others insofar as I hold esure responsible for their actions.

In early December 2018, someone took the car. Mr V didn't get it back.

The market value of the car was more than the balance outstanding to the finance company. The insurer said the market value of the car had been £34,966.00. The balance to settle the finance was £27,714.61 and esure paid that sum to the finance company.

On 21 February 2019, esure sent Mr V a cheque for £2,035.39. It said that was as a part refund of his deposit pro rata for the time left on the finance agreement.

Mr V complained that esure hadn't paid out the market value of the car and should've paid him more. The insurer wrote a final response dated 6 March 2019. Unhappy with that, Mr V brought his complaint to us in June 2019.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. She thought that esure should pay Mr V the difference between the settlement figure (£27,714.61) and the market value of his car (£34,966.00). The investigator recommended that esure should pay Mr V a further £7,251.39. The investigator also said it was fair that esure had paid the £2,035.39.

Later, the investigator agreed that a fair market value of the car was £32,911.50. She recommended that esure should pay Mr V a further £4,846.89 plus interest at a yearly rate of 8%.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr R and to Nelson on 19 November 2020. I summarise my findings:

Having paid the finance company £27,714.61, the insurer was entitled to deduct the policy excess of £350.00. So it should've paid Mr V £4,846.89 by about 21 February 2019.

As he could've accepted the cheque for £2,035.39 on account, I intended to award interest on the balance of £2,811.50 from 21 February 2019 to the date of payment.

Subject to any further information from Mr V or from esure, my provisional decision was that I was minded to uphold this complaint in part. I intended to direct esure Insurance Limited to pay Mr V (instead of its cheque for £2,035.39):

1. £4,846.89; and
2. simple interest on £2,811.50 at the yearly rate of 8% from 21 February 2019 to the date of payment. If esure considers that HM Revenue and Customs requires it to withhold income tax from that interest, it must tell Mr V how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

The insurer esure hasn't responded to the provisional decision.

Mr V disagrees with the provisional decision in part. He says, in summary, that:

- He still doesn't accept esure's valuation of the car.
- Its mileage was less than half the average expected of a car of that age.
- esure offered him the 'trade in' price because he didn't own the car.
- esure has now found another way to under- value the car.
- It is a rare car.
- 2 years after the incident, the majority of such cars are still offered for sale online at about £30k.

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.

Finance Agreement

I've seen the finance agreement. It was labelled as a hire purchase agreement.

As the price of the car was nearly £50,000.00 and Mr V had paid the deposit of £6,500.00, the amount of credit was nearly £43,500.00. That was the sum on which interest was charged.

Mr V agreed to pay an instalment of about £685.00 on 20 May 2016 and a further such instalment on the 20th day of each of the following 46 months.

He also agreed to pay a final payment of about £19,660.00 – but he had the option of returning the car instead of making that final payment. So I can see why esure has referred to the finance agreement as a "PCP".

In any event, the car remained the property of the finance company until payment of all

those instalments (or an early settlement).

Policy Terms

I've seen the policy schedule. It says that – for a theft claim - the excess was £350.00. It also says that – for a contents claim – the policy limit is £150.00.

The policy included the following term:

*“Hire Purchase, leasing and other agreements
We'll make payment under your policy to the legal owner if we know the car or any part of it is owned by someone else and pay you the balance.
If your car is a total loss, we'll make a payment to anyone who has a financial interest in your car and pay you the balance.”*

I will come back to that term.

Car Contents and Cherished Registration Number / Delay / Further Finance Payments

If possible, we like to deal with all aspects of a consumer's complaint against a regulated financial firm as soon as possible.

However, we are bound by the dispute resolution rules of the Financial Conduct Authority. That includes a rule that a consumer must first complain to the firm and it is allowed eight weeks to respond before the consumer may bring the complaint to us.

In Mr V's case, esure says he hadn't complained to it about the car contents or the delay with the number plate. And I find that he didn't complain to us about the number plate until December 2019 and about the contents until mid-February 2020.

We could've dealt with those matters if esure had agreed for us to do so. But it didn't agree, and I can't say any more – other than that Mr V may take those matters up with esure and if necessary, come back to us.

Valuation

We check that an insurer has used a fair process to reach a fair valuation.

We are often sent evidence of prices at which vehicles are advertised for sale. But those are asking prices and are often higher than the negotiated sale price. We place more weight on trade guides.

I've noted the make, model, specification, age, mileage and good condition of Mr V's car. I'm satisfied that the trade guides correctly reflect all those factors. I'm also satisfied that the trade guides reflect all aspects of supply and demand including the rarity and desirability of the car.

On 5 December 2018, Mr V said the mileage had been 17,000.

I accept that esure's final response letter said that Mr V's car had been worth £35,000.00.

In March 2020, esure told us that its engineer had incorrectly used a mileage of 1,700. From what I've seen, I accept that the valuation of £35,000.00 was based on that mistake as to its mileage.

From the trade guides, I find that £32,911.50 was a fair and reasonable valuation of Mr V's car immediately before it was stolen.

The Money

By early December 2018, the car was worth £32,911.50. Mr V had paid his deposit plus about 31 instalments of about £685.00. Mr V didn't own the car.

If he wanted to own it, he would have to make further payments in one of two ways. He could pay about 16 more instalments of about £685.00 (about £10,960.00) and in addition the final payment of about £19,660.00. Alternatively - If he'd wanted to sell the car in December 2018 for £32,911.50 - Mr V would've had to pay the finance company about £30,620.00 less any early payment rebate of interest.

By February 2019, Mr V says he'd paid 2 more instalments. And the finance company accepted £27,714.61. I infer that this figure included an early payment rebate of interest. So I find it likely that in early December 2018, the finance company would've accepted about £29,000.00 from Mr V in settlement of the agreement.

Therefore Mr V could've paid the finance company about £29,000.00 and sold the car for £32,911.50, leaving him with about £3,911.50. I think that shows how – although he didn't own the car – Mr V suffered a loss of about £4,000.00 from its theft.

More importantly, the policy term (which I said I would come back to) said that esure would pay to the finance company, with the balance to Mr V. In the context of a total loss, I consider that this must mean a payment of the market value of the vehicle, less the policy excess.

Furthermore, esure has agreed with the investigator's opinion, save on the issue of interest.

Having paid the finance company £27,714.61, the insurer was entitled to deduct the policy excess of £350.00. So it should've paid Mr V £4,846.89 by about 21 February 2019.

Instead, esure sent Mr V a cheque for £2,035.39. I find that unfair. I can understand his reluctance to accept the cheque. But I find it likely that – if he had asked – esure would've agreed that he could pay it in "on account" while pursuing his complaint with us.

Putting things right

So I find it fair and reasonable to direct esure to pay Mr V £4,846.89. As he could've accepted the cheque for £2,035.39 on account, I intend to award interest on the balance of £2,811.50 from 21 February 2019 to the date of payment.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct esure Insurance Limited to pay Mr V (instead of its cheque for £2,035.39):

1. £4,846.89; and
2. simple interest on £2,811.50 at the yearly rate of 8% from 21 February 2019 to the date of payment. If esure considers that HM Revenue and Customs requires it to withhold income tax from that interest, it must tell Mr V how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 18 January 2021.

Christopher Gilbert
Ombudsman