

The complaint

Miss M has complained about her motor insurer esure Insurance Limited (Esure) because when her car was returned to her after it had completed some accident repairs, there was a fault on its adaptive cruise control (ACC) system.

What happened

Miss M had an accident in January 2020, damage was caused to the front end of Miss M's car and Esure arranged to repair it. Miss M's car was returned to her on 10 February 2020, but Miss M noted a fault with the parking assistance system. Esure wasn't persuaded this was related to the accident or work it had done but took the car back and ultimately completed a repair of a loose wire to the car's computer unit (ECU).

On 2 March 2020 Esure's customer care team was valeting Miss M's car prior to arranging to return it to her. At 21:44 on 4 March 2020, after the car's return, whilst Miss M was driving it, a warning message appeared on the dashboard. Miss M took a photo. The message read: "*ACC and Front Assist: no sensor view*". Miss M contacted Esure. Esure said that whilst it had fixed the parking issue before, it had done so as a goodwill gesture as it believed that fault had pre-dated the accident and its repairs. Esure's diagnostic contractor explained that this was all part of the same issue and Esure's engineer told Miss M that, if she didn't agree, she'd need to provide proof from her dealership.

With the pandemic ensuing around this time it was June 2020 before Miss M had the car further assessed. Miss M's dealership, using global fault finding (GFF) diagnostics determined the warning was being caused by a fault with the radar system that informs the car's ACC and Front Assist functions. The dealership reported that a close inspection of the radar unit (which sits under but proud of the front registration plate in the centre of the front of the car) showed damage from an impact and that one of its brackets was bent and/or damaged. The whole process was captured on video. Replacement was recommended with an estimate produced for work, which included the diagnostics already undertaken and VAT, of £2,004.64.

Miss M returned to Esure and its engineer reviewed the matter, including the new data from the dealership. Esure's engineer was initially minded to think this damage might have been caused during the accident. However, he then noted that various checks using ODIS (Offboard Diagnosis Information System) had been completed on the car since it was initially damaged and this fault hadn't been found. He then compared a still image taken from the dealership's diagnostic video and one of the front of the car when it initially came in for repair following the accident in January 2020. The engineer said he could see no sign of damage to the radar unit in January 2020. He also said the radar unit hadn't been removed during the work to fix the parking system fault. So he thought the damage was most likely unrelated to either the accident or Esure's repairs. When Esure told Miss M that it wasn't prepared to pay for the replacement radar unit, she complained to us.

Our investigator felt it was fair to say that the damage had likely not been caused in the accident. But wasn't persuaded it was most likely it had happened after the car had left Esure's control on or after 2 March 2020 and before 21:44 hours on 4 March 2020, whilst in Miss M's control. So he said Esure should pay for repair of the radar.

Miss M was happy with that outcome. Esure said it disagreed with the findings. It's engineer reiterated his view that the damage to the radar unit was new damage unrelated to the accident and which had not been identified until June 2020. The engineer also acknowledged/explained that this was a different fault to the parking system issue. The complaint was passed to me to decide.

I also felt it should be upheld; that the fault with the radar was unlikely to be a new issue. But my reasoning differed to that of the investigator. I issued some provisional findings:

"I note that Esure's engineer, whilst he later changed his mind, initially conceded that this damage might have been caused during the crash. Having seen the crash damage photos, given the location of the radar unit and the accepted impact damage which occurred to the front end of the car, including the cracking of the number plate immediately above the unit; I think that's a fair assessment. And I don't think those photos rule out the possibility that the radar unit, including one of its brackets, is damaged. I say that as the brackets for the unit aren't visible in the photos. But also because the impact damage to the front of the unit, at the top, simply may not be visible in these photos due to the lighting, distance and angle of the shot (daylight, several feet away, from the side). The still from the dealership video shows that the unit is under artificial light, with the camera or focus of the camera quite close, from a position in front of and slightly above the unit.

I'm also not persuaded that the diagnostic tests Esure's said were completed on the car rule out the possibility that this damage and fault weren't caused by the crash. As I understand it the dealership found the fault using the GFF diagnostic programme and whilst this is part of the ODIS system, it is an optional process that can be switched off. I haven't seen any evidence that makes me think Esure's contractors used the GFF part of the ODIS programme.

Further, Esure's contractor ran an ODIS test on 28 February 2020, around the time it traced and fixed the parking sensor fault. The invoice captures the tests results and shows that "all systems [are] operational". But I note that the dealership, when identifying the radar fault, recorded the following: "Vehicle status shows no fault with system". It was seemingly when further GFF checks were done that the 'in-put' error; ie that the radar wasn't feeding information to the ACC system, was found.

In March 2020 Esure's contractor doesn't seem to have run any further diagnostic checks. At least none are shown on the invoice dated 11 March 2020. Rather the contractor seems to have only provided a report which sought to suggest that this radar fault was part of a historic parking system fault it had identified with the car earlier on in the repair process. But I'm not persuaded, given that the parking and ACC systems (the ACC being the system the radar feeds information too) are two entirely different processes, performing two entirely different functions, that that is likely correct. And I note that Esure's engineer has confirmed the two issues are separate and unrelated.

I know that Esure's engineer has concerns that the dealership only saw and assessed the car several months after it was returned to Miss M. However, I note Miss M took a photo of the fault warning on 4 March 2020 – the dashboard shows the time was 21:44 and the properties of the photo confirm the date. So I don't think it matters that the diagnosis for the fault only occurred sometime later.

I'm also not persuaded that, assuming for a moment the radar wasn't damaged during the crash, that it's most likely it wasn't damaged during Esure's care. It seems that the external parts of the car's front end were removed by Esure's contractors during late February in order to repair the loose ECU wire. It isn't clear whether the radar unit was entirely

disconnected, certainly Esure's engineer says it remained in place. But I think it's fair to say, given the photos I've seen of the car, both intact and whilst under repair, that it was certainly moved and/or partially disconnected. Further the car around the unit was clearly undergoing significant work. As I said above, the last diagnostic Esure's contractor, based about 50 miles from Miss M's home, ran was 28 February 2020, and on 2 March 2020 the car was being prepared by Esure's customer care team for return to Miss M. How the car was transferred between the contractor and customer care, and then to Miss M hasn't been disclosed. So the radar unit was at least moved and/or partially disconnected whilst work around it went on and the car was in Esure's care for at least three days after the contractor last ran a diagnostic on it. Further the car was transported by Esure after that diagnostic.

When the car was prepared and returned to Miss M in early March 2020, I think she had it for only around two days before the warning appeared. I say that as she was told on 2 March that it was being prepared for return to her. So it could only have been later that day, at the earliest, that it was returned to her. And the warning appeared on the night of 4 March 2020. So the car was in her possession for less time than it remained with Esure after its last diagnostic was completed. And, from what I've seen, the warning message in question is not of the type that – if the damage/fault was already present – would show on the dashboard as soon as the car was started. So the fact Miss M didn't see it, or it didn't appear until 21:44 on 4 March 2020 doesn't mean the damage/fault wasn't present before that time.

Having seen everything I think it's more likely, on balance, that the radar unit was either damaged in the accident or whilst in Esure's care, than whilst being in Miss M's care after 2 March 2020. As such I think it's reasonable to say that Esure should pay for the work to be done to fix the unit. The dealership, as of last year, said that will cost £2,004.64. So I think Esure should pay this sum, plus interest.*

I think this situation has been frustrating for Miss M and she clearly feels let down by Esure. Further whilst she seems to have been able to drive the car in the interim it's clear this important safety function hasn't been working. So I'm minded to award £100 compensation for this. Whilst I note Esure has paid Miss M compensation previously for other issues experienced with the repair process, it has never accepted liability for this problem. So I think a further £100 for the distress and inconvenience caused by this issue is fairly and reasonably due.”

In reply Miss M provided further evidence about what she'd paid already to diagnose the fault and what it was now going to cost her to repair the car. So I issued some further findings to both parties which, in short, said that Esure should pay the £60 diagnostic fee Miss M had already incurred, plus interest and the price of the new estimate for repair less VAT; £1,819.76 (with the VAT of £363.95 being payable by it once work was done).

Esure said it was generally unhappy with my findings. It said it would like me to explain what evidence I had considered in order to conclude the car had likely been damaged in the accident or in its care, rather than once returned to Miss M. Esure said as we are an evidence based service I should accept the evidence it had presented and not make decisions based on “likelihoods”. It said it would be prepared to pay half of Miss M's repair costs and the £100 compensation.

Miss M said she'd spent a lot of time on this matter. She asked that I award the cost of the new estimate, plus £1,000 compensation (increased from £100). Miss M concluded that there needed to be an incentive for Esure to not do this again.

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.

Evidence provided to this service is always subject to scrutiny and assessment. Having considered the evidence, it is then my job to decide what is *most likely* to have happened.

I appreciate Esure doesn't agree with my assessment of the evidence provided. But I set out my reasoning in full in my provisional decision which explained the evidence I had seen. My findings also explained what weight I had given to the evidence provided, *by both parties*, and which evidence, and why, I found most persuasive. I've nothing to add to that. So whilst I note Esure's offer to pay half of Miss M's repair cost, I'm not persuaded that would be a fair and reasonable outcome.

Whilst my view on Esure's liability for the damage hasn't changed since I issued my provisional decision, I have been given cause to amend my suggested redress. Miss M should be able to have her car fixed and she's now shown what the current cost will be for all necessary work. And Esure hasn't raised any concerns about the new estimate. So it seems fair to me to base my redress on that figure, and make Esure pay Miss M £1,819.76. And in line with our usual process, VAT on the repair costs, £363.95, should be paid by Esure once Miss M submits an invoice to it showing the work has been done and VAT has become due. And, in line with my previous findings, Miss M paid a £60 diagnostic fee previously too, so it's only fair she's reimbursed for that as well.

I appreciate that Miss M has been caused distress and inconvenience because of Esure's actions. I understand that Miss M has felt she's had to take some time off work to visit garages. But I'm not persuaded that was entirely necessary, and I've not seen that she lost income as a result either. I also don't award compensation in a punitive manner – to prevent a business from making failures or causing upset in the future. Instead awards of compensation are made to address the distress and inconvenience in the specific circumstances of the case. I remain of the view that, for the distress and inconvenience caused to Miss M by this failure of Esure's, £100 compensation is fairly and reasonably due.

Putting things right

I require Esure to pay Miss M:

- £60 to reimburse the initial diagnostic cost, plus interest from 12 June 2020 (the receipt date) until settlement is made.
- £1,819.76 being the price of the new estimate, less VAT.
- Once a VAT invoice is received, £363.95 to cover Miss M's VAT outlay.
- £100 compensation for the distress and inconvenience caused.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Esure considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Miss M, it should tell her how much it's taken off. It should also give Miss M a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

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 Miss M to accept or reject my decision before 30 September 2021.

Fiona Robinson
Ombudsman