

## **The complaint**

Mr F complains that esure Insurance Limited held him at fault after another driver made a claim against his motor insurance policy.

## **What happened**

Another driver claimed that Mr F had scraped her car and then fled the scene. Mr F denied this. esure had an independent engineer assess Mr F's car. He said there was no evidence of recent repairs, though he noted areas of damage. The other insurer sent photographs of Mr F's car to a forensic engineer. He said there was damage to Mr F's car consistent with damage to the other car. esure then accepted liability.

But Mr F said the marks on his car were just dust or old damage. He provided evidence from his employer that he had been at work at the time of the incident. But esure said this made no difference to its decision. Mr F said his No Claims Discount (NCD) had been affected, his premiums had increased, and he was suffering from stress due to the claim.

Our investigator recommended that the complaint should be upheld. She thought esure hadn't satisfactorily investigated the claim and considered the evidence available before accepting liability. She thought esure should remove records of the claim from any databases where it had been recorded, restore Mr F's NCD, reimburse him for any increase in premiums, with interest, and pay him £200 compensation for the trouble and upset caused.

esure replied that the independent engineer had noted two points of damage on Mr F's car and these were consistent with the damage on the other driver's car. esure asked for an ombudsman's review, so the complaint has come to me for a final 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.

The other driver said Mr F had scraped her car whilst they were negotiating to pass on a narrow street. She said she had stopped, and Mr F hit her car as he was unable to stop in time.

The investigator has already explained that it isn't our role to decide who was responsible for causing an accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr F the same as someone else in his position.

I can see that esure is entitled under the terms and conditions of its policy with Mr F to take over, defend, or settle a claim as it sees fit. Mr F has to follow its advice in connection with the settlement of a claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I don't find it unusual. Insurers are entitled to take a commercial decision about whether it's reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence before making its decision on liability. So I've looked at how esure investigated the claim and considered the evidence available in making its decision to accept liability.

There was no CCTV evidence available and no independent witnesses at the time of the accident. In her version of events, the other driver identified the colour and make of a car like Mr F's. But she didn't record Mr F's car registration at the time. Nor did she describe him even though she said he'd wound down his window to speak to her. She said her husband had later found a car of the same make and colour as she recalled and with recent damage in a nearby car park. This was Mr F's car and so she alleged he had collided with her.

Mr F denied involvement in the incident. He said he was at work at the time and his car was parked. esure initially thought there was no evidence that Mr F had been involved. It thought the other driver had seized on Mr F's car because it was similar and parked nearby.

So I think esure reasonably instructed an independent engineer to assess Mr F's car for damage. He examined the car physically and identified eight areas of damage on Mr F's older car, and no signs of recent repairs. He noted that Mr F would say that all the damage to his car was old, but the assessor made no comment on the age of the damage. And he recommended that the other car be examined to check for damage consistency. I think that is standard industry practice. But esure said the other driver's representatives wouldn't allow him to inspect her car.

But the other insurer sent images of the cars to a forensic assessor who said that there were two areas of damage on the cars that were consistent with the alleged incident. One of these was a scrape down the driver's side of Mr F's car that matched one on the other driver's car. The other was a thin white line on the car's wing mirror that it said matched a scratch on the other car's door handle. It concluded that it was confident that Mr F's car had caused the damage to the other car.

Mr F said the mark on his wing mirror was dust or chalk, not a scratch. esure then told Mr F that a judge would rely on the consistency report if the matter went to court. So it said it had no option but to accept liability and record a fault claim against him. Mr F later provided evidence from his employer that he had been at work on the day of the accident which occurred after he'd started work. But esure said this wasn't enough to change its decision.

I think there are some concerns with esure's investigation:

1. The two drivers spoke, but the other driver didn't provide any description of Mr F even though this was requested on the accident report form. Given the detail given in the description of the event, I think this is concerning and should have been questioned.
2. Mr F's car was identified by the other driver's husband as similar to the one involved when he looked around locally later in the day. He hadn't witnessed the accident and no registration number was recorded at the time. So it could be, as esure thought at the time, that he accused Mr F just because he'd been in the area and had damage to his car.
3. Mr F has since provided evidence in the form of timesheets and a statement from his employer that he was at work and parked at the time of the accident. But esure has dismissed this without consideration.
4. The independent engineer inspected the car physically and provided a detailed report. But he didn't identify any lines on Mr F's wing mirror, and none are evident in his photographs. So they have been dirt or chalk as Mr F thought. The engineer identified eight areas of damage to Mr F's car but didn't comment on their age, though he did note that the car had no recent repairs. The engineer noted that Mr F would maintain that all the damage to his car was old standing. But I can't see that esure asked the engineer if any of the damage was recent.

5. esure said it had to favour the forensic report as it was expert evidence and a judge would rely on it. But it didn't take legal advice to support this view. The forensic report was completed based on photographs, rather than a physical inspection. It states that no measurements were taken, but the areas of damage appear similar. Mr F's car had a lot of damage, so I think it would be easy to find some that matched the damage claimed by the other driver. The report is unsigned and the qualifications of the person completing it aren't provided. So I'm not persuaded that a court would prefer this evidence over the independent engineer's.
6. esure paid for repairs other than those allegedly caused by the incident, which I think implies that the claim was exaggerated, albeit of low value. esure agrees this was an oversight.

So I'm not satisfied that esure sufficiently investigated the claim or considered the available evidence before accepting liability. And so I think it hasn't treated Mr F fairly or reasonably.

And I think it should put things right by removing records of the claim, restoring his NCD, compensating him for his financial losses, and paying him compensation for the avoidable stress and anxiety caused.

Our investigator recommended that esure should pay Mr F £200 compensation. I think that fairly reflects the impact its decision had on Mr F and it's in keeping with our published guidance.

### **Putting things right**

I require esure Insurance Limited to do the following:

1. Remove the claim from Mr F's record on any internal and external databases where it's been recorded and restore Mr F's NCD.
2. Reimburse Mr F for any increases in his premium due to the fault claim, adding interest to this amount at the rate of 8% simple per annum from the date liability was accepted to the date of settlement†.
3. Pay Mr F £200 compensation for the distress and inconvenience caused by its unfair decision.

† HM Revenue & Customs requires esure to take off tax from this interest. esure must give Mr F a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint. I require esure Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 13 December 2021.

Phillip Berechree  
**Ombudsman**