

## The complaint

Mr B has complained about his motor insurer esure Insurance Limited (Esure) regarding the settlement it gave to him when his car was stolen (and not recovered).

## What happened

Mr B's car, which he uses for his business as well as for his personal use, was stolen around 3 May 2021 and he made a claim to Esure. He was given to understand that matters would likely be settled in about 10 working days. And in that time Esure did indicate to Mr B it would likely offer him £18,646 as a settlement for his claim, which Mr B thought was low. So he enquired about the value with a view to negotiating a better settlement. Esure understood that to be an expression of dissatisfaction from Mr B, so it dealt with the matter as a complaint. It was 28 June 2021 when Esure, having investigated the complaint, told Mr B it wouldn't increase its offer – that it was sending him a cheque for this sum, less his policy excess. Esure said it felt £18,646 was fair as it was an average of the values returned by the trade guides routinely used by insurers to determine the market values of cars. Mr B complained to us as he could only find cars like his for sale at around £30,000.

Our Investigator checked the trade guides and felt Esure had valued the car fairly. And she explained that because Mr B had indicated he wasn't happy with the value when Esure had first put it to him, it had to treat that as a complaint. She did not think it had done anything wrong. So she did not uphold the complaint.

Mr B felt that was unfair. He said he understood trade guides are often used (although he worries that they might factor in the possibility of a part exchange having occurred), and that sale prices are not always indicative of what cars sell for. But he felt it was unlikely that cars advertised at around £30,000 could be brought for as little as £18,000. He checked weekly and could not find a similar car for sale at Esure's value. He said he had lost business in the interim as the car had been an integral part of his work. His complaint was passed to me for consideration.

I felt Esure hadn't offered a fair settlement for Mr B's claim, but that it should have paid the sum offered without delay as an interim payment. I explained why I felt the amount Esure had set as market value wasn't fair, and what I thought it should have paid. Detailing an increased sum it should now pay. I felt Mr B should be compensated for the loss of use he'd had – but not so far as to make up for any lost earnings. And that £250 compensation for distress and inconvenience should be paid.

Esure didn't reply to my provisional decision. Mr B said he felt my value was "*more realistic*" than Esure's, and closer to, but still slightly lower than, what he sees as the true value of his car. On this point though he said he was pleased that I had understood his concerns about the market value Esure had set for the car and that Esure would have to make an increased payment in this respect. So he didn't seek to challenge the value or payment I'd said was now due any further.

But Mr B also said he was unhappy about my loss of use award and it not being extended to cover his lost earnings. He said he couldn't have done anything for ten weeks anyway until

Esure made its unreasonably low settlement payment to him. And then it was still around £12,000 short of similar like models. He said he didn't feel it was reasonable for him to have had to try and find loans, or to otherwise similarly put himself out to replace the car, when Esure was at fault. Mr B said he thought my award of £10 per day might have been a typing error as £10 a day wasn't a realistic daily rate for earnings. He said if he had hired a car then he could have shown a direct loss – and he presented some examples of what the cost to him might have been (£68 - £125 a day). Or he'd have had to pay around £1,000 a month if he'd taken out a loan for £12,000. He said my findings in this respect had really upset him.

### **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 said provisionally:

*"It is fair to say that this service often finds the use of trade guides to be the most fair way of determining the market value for a car. And I can reassure Mr B that the guides do not factor in any potential or hypothetical possibility of a part exchange occurring. But, in this instance, I do not think that the trade guides are indicative of a reasonable market value for Mr B's car.*

*Mr B's car was a five-door rugged terrain vehicle with a large space in the rear. And this model of car is not made any more by the manufacturer. Searching the trade guides for values for a car like Mr B's, with five doors, does return some with a sales figure in the region offered by Esure. But my online research shows that cars available for purchase around that price, no longer retain the five doors and related layout they were designed with. Rather, they've been converted; to remove their rear doors and take out the rear seats, increasing the large space in the rear, but are none the less all still registered as five door vehicles. Those five door conversions are being advertised for around and mostly just under the £20,000 mark, which would be in line with the value returned by the guides and offered by Esure for Mr B's car. Whilst in comparison their five door, non-converted counterparts are averaging much higher advertised sales prices, many over £30,000. But those with a mileage similar to Mr B's car, are all averaging about £27,000. A value much more in line with what Mr B told Esure he would have to pay to replace his five door, non-converted car.*

*I'd explain, the trade guides take their data from advertised and likely achieved sales prices. And in doing that the basic detail about the car is used – so the guides would return prices associated with five door versions of Mr B's car without differentiating between those which have and have not been converted. In fact I was only able to spot this by close examination of the sale details – notably the photographs – because the descriptions still record the converted cars as five door models. Comparing those examples on sale against Mr B's car satisfy me that he won't be able to buy a car like he had for the sum of £18,646, as offered by Esure. In this case the trade guides do not present a fair and reasonable market value for the settlement of Mr B's claim to be based on.*

*Mr B's car had 118,000 miles on it. I found three examples that match the details of Mr B's car with similar mileage – two at 119,000 and one at 120,000, with respective values of £24,000, £26,995 and £29,500. Which gives a very rough average of about £27,000. The only other car I found which I felt was comparable to Mr B's, with anything like the mileage of Mr B's car, had only 101,000 miles on it. Unsurprisingly the asking price for that car was much higher than the other three, £35,000. In my experience, mileage plays a key factor in the price of second hand cars – and a difference of over 15,000 miles would likely have a big impact. I do not think it is fair then to take that example into account. And of the sale data Mr B shared with us – none showed a similar mileage to his car. So, I think I can reasonably take the average figure I've found of £27,000 into account as a base line indicator of the*

level of value around which Mr B will likely have to look at paying to replace his car. Of course, cars for sale do fluctuate in price – and the sale price achieved is not always reflective of the price that was asked. So it wouldn't be reasonable for me to take an exact average of the examples I found and say that is the figure Mr B will most likely have to pay to replace his car. But I think it is fair to say that, in the circumstances here, the internet sales data found indicates that he will likely have to pay around 40% more when he replaces his car, than the value Esure offered in settlement of his claim. That works out to be about £7,500. I think Esure should pay this sum to Mr B

I'm going to award interest to Mr B too. I'm going to say Esure should actually pay Mr B interest on the whole settlement value of £26,146 (less the policy excess) from 17 May 2021. In respect of the sum of £18,646, less the policy excess, the interest will only need to be applied until the date of the cheque Esure sent at the end of June 2021. For the amount of £7,500 I'm awarding here, interest will have to be applied until that sum is now settled with Mr B. I am awarding this because whilst Esure did need to treat Mr B's expression of dissatisfaction over the settlement it had offered as a complaint, it did not need to hold payment until it had reviewed matters. Esure was satisfied that it owed Mr B £18,646 so there was no good reason that couldn't be paid – with Esure explaining to Mr B this was an interim settlement, the extent of which it would be reviewing given his concerns and it would respond to him further in due course. If Esure had done that I think it would likely have paid the interim £18,646 (less the policy excess) to Mr B on 17 May 2021. And if it had assessed the market value fairly and reasonably, it would have been paying more than that. As such I'm going to award interest from that date on the whole settlement sum.

I know it has been difficult for Mr B being without a car and feeling like he couldn't afford a replacement with the settlement Esure gave him. But as this was Mr B's livelihood, I would have expected him to use the funds Esure gave and, if necessary, find a way to fund the amount outstanding so the car could be replaced. I appreciate that doing so might have been difficult for Mr B but he should reasonably, I think, have been looking to mitigate the loss Esure's unfair and unreasonable settlement offer caused him. So I'm not going to ask Mr B for details of his lost earnings so Esure can be made to reimburse him.

However, that said, Esure did leave Mr B in a difficult position. And whilst as I said above, this service often supports the use of trade guides to find the market value for a car, we'd also expect an insurer to listen to their customer – perhaps think about whether this is one of those rare situations where the trade guides aren't a reliable tool. I don't think Esure did that here. And even if Mr B had acted to mitigate the result of the unreasonable position Esure's failure left him in – he would always have suffered some financial loss as a result because he simply could not replace his car for the value given. Whether that loss manifested as lost income or, for example, paying interest or similar on a finance agreement, Mr B would always, I think, most likely have had some out of pocket costs. So I don't think it would be fair to Mr B in this situation to leave him without any compensation at all for financial loss. But I don't know what Mr B's reasonable financial loss would likely have been. So I've thought about a fair way of resolving things. In this instance I'm going to say Esure should compensate Mr B by paying him a nominal amount of £10 a day from 17 May 2021 until the £7,500 I'm intending to award him is paid. This as recognition that he had, and always would likely have had, some financial loss on account of Esure's unfair and unreasonable settlement.

I appreciate that Esure's insistence that its offer was fair and reasonable has been frustrating for Mr B too, and that he's suffered some inconvenience. I think a sum of £250 compensation for this upset is fairly and reasonably due."

I note Mr B has accepted the additional value I've said Esure should pay him in settlement of his car. And Esure hasn't objected to this. So I've no need to review or revise what I said in this respect.

Regarding Mr B's reported loss of earnings, I'm sorry my findings upset him. That wasn't my intent. But it is my job to look at everything which happened, think about what should have happened, where things went wrong and, whilst being fair to both parties, come to a decision which is fair and reasonable in all of the circumstances. I know Mr B feels he was stuck in a position that was not of his own making. But I think he could have looked to do something differently so as to limit the loss he was forced to suffer because of Esure's unfair and unreasonable claim handling and settlement. But he didn't do so. Not when Esure initially didn't pay him the settlement in the time in which it had said his claim would be settled, or later when it sent him the settlement cheque having issued its final answer on his complaint.

As Mr B has shown he could have looked to hire a car – that would have been an outlay his business wouldn't usually have, but it would have meant he could still have honoured existing arrangements or made new bookings. If he had done that then I might have felt it appropriate to make Esure reimburse that extra outlay. Or perhaps refunded interest payments if a loan had been put in place. But Mr B didn't hire a car or take out a loan. And I can't make awards based on what might have been lost/incurred but wasn't.

So what I had sought to do with my provisionally recommended redress, whilst knowing that Mr B had reported a loss of earnings, was to acknowledge that Mr B quite likely, no matter what he did, would always have had some loss on account of Esure's failings. In other words, even if he'd mitigated the situation in respect of earnings, as I think he should have, he wouldn't have come away clean, with no loss suffered at all. And Esure shouldn't have placed him in that position. So it wouldn't be fair in my view, to leave Mr B entirely without compensation. I felt provisionally that it was fair and reasonable to resolve that by applying an award this service often makes when a policyholder suffers the unreasonable loss of use of their car due to the failings of the insurer. I did not make a typing error in this respect. My award is £10 (ten pound) a day. I remain of the view that an award in this respect, with Esure paying that until the outstanding part of the increased settlement payment is paid, is fair and reasonable in the circumstances here.

### **Putting things right**

I require Esure to pay Mr B:

- £7,500 in full and final settlement for the theft of his car.
- An amount equivalent to interest\* on the sums of £18,646, less the policy excess and £7,500 from 17 May 2021 until each sum was/is paid.
- A compensation sum to acknowledge financial loss paid at £10 a day from 17 May 2021 until the sum of £7,500 is paid.
- £250 compensation for upset 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 Mr B, it should tell them how much it's taken off. It should also give Mr B a certificate showing this if they ask for one, so they 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 Mr B to accept or reject my decision before 18 April 2022.

Fiona Robinson

**Ombudsman**