

The complaint

Ms T has complained about her motor insurer esure Insurance Limited (Esure) in respect of it accepting a claim against her policy from another driver after she had bumped into the rear of their car. She feels Esure's engineer lied to her about the damage to her car and that its claim decision affected her premium.

What happened

Another driver contacted Esure and said Ms T had gone into the back of them at a drive-thru. Ms T said the cars had lightly touched but there hadn't been any impact or any damage done to either car. The other insurer sent Esure an invoice dated 1 June 2019 for a bumper repair to its driver's car – and photos showing the left-hand end of Ms T's bumper did come into contact with the rear bumper of the other car. Esure felt it wouldn't be able to defend any claim against Ms T if it progressed to court. But it explained to her in an email dated 27 June 2019 that it had only accepted that the cars had touched and that any allegation of damage having been caused would be challenged. However, Esure settled with the other insurer for damage to the other car and for personal injuries reportedly sustained by the other car's driver and passenger.

Ms T was unhappy about Esure agreeing the cars had collided and complained. She was also unhappy that Esure's engineer, during a visit to assess whether there was any damage to her car, had told her there wasn't any. However, the report the engineer provided to Esure suggested there was damage, with photos to support that. Ms T asked to see the evidence but Esure didn't provide it. Ms T then became aware that her premium had increased and she told Esure she was unhappy about that. Esure said it would look into the matter. But ultimately Esure said its decision to settle the other driver's claim was fair and it wouldn't be changing its position.

When our investigator considered Ms T's complaint he felt Esure had come to a reasonable decision based on the evidence available to it. When Ms T said she was unhappy with his findings the complaint was passed to me for consideration.

I felt esure had misled Ms T about its intentions to settle the claim. And for that I felt it should pay £200 compensation. But I didn't think it had otherwise failed Ms T. My finding were:

"the engineer"

I understand that Ms T is most upset about the conversation she recalls having with the engineer. She says he confirmed he could find no damage to the bumper of her car. But his report made to Esure recorded completely different findings. She feels he falsified his report and that Esure's decision to settle the claim against her due to that report is totally unfair.

I can understand, from Ms T's point of view, why she is upset. But I wasn't present during the conversation with the engineer, and so I can't reasonably conclude he lied to her. I know she believes he said there was no damage, but I can see no good reason why he would do that and then record damage in his report. And the photos he took do seem to show some minor damage/displacement of the front bumper of Ms T's car. It is possible for two people to

have a conversation and come away from it with very different views about what was discussed and concluded. I'm not persuaded the engineer did anything wrong here.

Esure's decision to settle

Esure retains the right within the policy to settle claims as it sees fit. But it must do that fairly. In short that means that if the prospects for successfully defending a claim are good, Esure shouldn't just settle because that is easier. Or if it does the policyholder shouldn't be penalised as a result of that decision. But if the prospects for success aren't good then we'd usually find it fair for an insurer to settle a claim on the best terms in order to reduce the risk of additional costs being incurred. And "good prospects for success" means just that – so the possibility of maybe being able to defend it, or maybe being able to find some weaknesses in the case presented by the other party, would likely not be enough.

So an insurer will take many things into account when deciding how to progress a claim by either settling or defending it. Photographic and expert evidence will likely be important. But also how good a witness the parties are likely to be might also be a factor. Essentially there is a lot of detail that an insurer will factor in when deciding how to progress things. And having done so, on some occasions they might decide to settle even though this will be disappointing for their policyholder. That's unfortunate, but it isn't unfair.

In this case I see that Esure did take a lot of factors into account when deciding how to progress this claim. I think a high-level summary of what it found was that there was a photo showing the cars touching, and how and why that had come about would come down to the word of Ms T against the other driver. I can see why Esure wasn't confident it had good prospects for success in that respect. I can also see though that the cars touching was important. I understand that the courts accept that minor injuries to car passengers can be caused by impacts even at low speed. So I can see that when medical evidence was received supporting the claim that injuries had occurred, and because the cars had touched, the prospects for Esure successfully defending Ms T reduced further. I don't think its decision to settle the claim was unfair.

However, I do think Esure misled Ms T, as well as failing to keep her properly updated on the claim. I think this caused Ms T frustration and concern later on around the time her policy renewed.

Esure did tell Ms T that it may have to settle for any injury claim. But then, a couple of weeks later, it told her in writing that all it had accepted was that the cars touched. It said it would still be looking to defend any damage or injury claim that was presented. However, shortly after that Esure, without putting up any further defence, accepted liability for the damage to the car and injuries caused and began negotiating settlement for the same. When Ms T's policy renewed, her premium had increased and it was only when she called to investigate did she find out about the settlement. I can understand why Ms T was confused and upset by this. Whilst she would never have been able to steer or change Esure's decision to settle the claim, if it had handled things better she wouldn't have been misled and her upset would have been avoided. I think Esure should pay Ms T £200 compensation to make up for this.

premium

I know Ms T is frustrated about her premium increasing. I asked Esure for more detail about why this had occurred. Ms T had protected her no claims discount (NCD) so I think she may have thought she wouldn't see an increase in her costs. But a protected NCD doesn't mean that a claim made against the policy won't affect the premium when it renews. It just means that the level of the discount applied because of the NCD won't reduce, which is what would usually otherwise happen when the NCD is not protected.

And it isn't unusual for the fact of a claim to increase a policy premium. The details Esure sent me satisfy me that it did calculate her premium for 2019 fairly. I can see, for example, that whilst her total premium went up, a non-reduced discount, because she had protected her NCD, was applied. If the non-reduced discount had not been applied then the premium overall would have been even higher. But it wasn't only the previous claim that was important to Esure, it takes into account a number of factors when deciding what to charge for cover. Which is no different to what any other insurer would do.

All insurers, whilst viewing risk differently, will take into account a number of different factors when deciding what premium to charge. What factors each takes into account, and what weighting they give to each of the factors they use will vary between them. That means that prices for cover from different insurers may also vary. But as long as each of those prices are reached because each insurer has applied that same criteria to all their customers that present with those relevant risks, that is seen to be fair. Essentially, how much to charge and why, are commercial decisions for an insurer to make. Meaning this service won't, for example, say it is unfair for an insurer to add to a renewal premium because a claim was made the year before. Whether all insurers would charge because of that is another question. But here, Esure's premium was affected by the previous claim but that was a decision for it to make. I think it did that fairly – in that it will charge all of its customers with previous claims, in the same way. So it didn't in my view treat Ms T unfairly."

Ms T maintained that there was no damage to her car and said that this is supported by the fact that she didn't claim for damage. And, she said, if Esure could see damage, then surely it should have offered to pay for fixing it under the policy. Ms T then reviewed the photos taken by Esure's engineer, which pointed to damage on her car. She said that wasn't in the area where the cars had touched. And there was no damage caused to the other car – she certainly hadn't seen photos showing damage to that car. She had taken photos of the other car after the incident and they showed no damage – which witnesses at the scene agreed with. Ms T said the receipt for work done to the other car must surely be fraudulent, as is the injury claim. She had only rolled forwards so there was no way injury could have occurred.

Esure said it disagreed. It denied having misled Ms T.

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.

It is always for the policyholder to decide whether or not they wish to make a claim, it's not for an insurer to assume the policyholder wants to claim. I can't reasonably dispute the expert engineer's findings of damage, which are supported with photos. And I'm satisfied that those photos, when compared with the photos showing the cars in contact with each other, evidences damage in the area of that contact.

I know Ms T feels there was no damage caused to the other car. And I've considered the photos she took of the other car in front of her. But those photos were taken whilst she was inside her car and the windscreen had moisture droplets on it. I note Esure felt the photos weren't clear enough to dispute the receipt for work that had been presented by the other party. I think that was a reasonable conclusion for it to come to.

I say that especially in light of the fact there were no other grounds that I have seen for Esure to have thought the receipt was anything other than genuine. I know Ms T doubts its authenticity but for Esure to challenge it, it would have had to have had good reason for doing so. And Ms T's word that witnesses at the scene didn't identify any damage, wouldn't have been enough to do that. In light of the evidence of the cars touching and that the

engineer found minor damage to Ms T's car, I'm not persuaded Esure could successfully have challenged the other party on damage repairs for their car.

I understand why Ms T thinks that just rolling forward until the cars touched, couldn't have caused any injury to the occupants of the other car. But she is not an expert on personal injury claims. And Esure is aware, as it explained to Ms T previously, that the courts generally accept that some injury can be caused even by a small collision.

Esure says it did not mislead Ms T. But I think it gave her to think that it would, at least, challenge any injury claim. But it didn't challenge it. It accepted the evidence presented to it and settled the matter. I remain of the view it misled her in this respect. It follows that I still think it should pay her £200 compensation for upset caused.

Putting things right

I require Esure to pay Ms T £200 compensation.

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 Ms T to accept or reject my decision before 10 June 2022.

Fiona Robinson
Ombudsman