

The complaint

Ms S complains about how esure Insurance Limited (esure) has handled a claim she made against her car insurance policy following an incident.

What happened

I previously issued my provisional decision on this case – I intended to come to the same outcome as the Investigator, but for different reasons. I wanted to give both parties the chance to respond to my provisional decision with anything else they wanted me to consider before I issued my final decision.

I have copied my provisional decision below, which also forms part of this final decision.

"In June 2021, Ms S was involved in an incident she says she wasn't liable for. She says that a third party (TP) vehicle drove into the back of her car while she was stationary. This pushed her car into the car in front which also caused damage.

Ms S says the TP admitted they were at fault for the incident on video – the TP also had an unrestrained puppy in the footwell of the car which Ms S has suggested was the likely cause of the incident. Ms S says esure didn't ask her for a copy of the video and so she feels esure assumed she was liable for the incident.

Ms S says she got in touch with the other party involved in the incident, who was also insured with esure. This person told Ms S that esure had waived their excess and so Ms S says she felt she'd been treated unfairly by esure because it didn't agree to do the same for her.

Later, esure wrote to Ms S to say it wouldn't renew her policy – again, Ms S felt this decision was unfair. esure confirmed its decision not to renew the policy was due to the number of claims Ms S had on her policy. However, Ms S doesn't feel that some of these claims have been fairly recorded – and one claim in particular she was forced to accept on a 50/50 split liability basis.

Ms S wasn't happy with how esure had progressed her claim. She says she was given misleading information about the status of her claim and it wasn't until she contacted the TPI direct that she found out that esure hadn't notified it of the claim. Or that the TP hadn't notified their insurer of the incident. Ms S says that once the third party insurer (TPI) had spoken to the TP, they again admitted fault. So Ms S can't understand why there was a fault claim against her.

Ms S complained to esure about these things, but esure didn't uphold her complaint. It explained its claims process and that it had followed this when investigating Ms S's claim. As a gesture of goodwill, esure agreed to reimburse Ms S for the excess. And it explained the reason why it made the decision not to renew her policy.

Our Investigator looked into Ms S's complaint too and upheld it in part. The Investigator thought that esure should have notified the TPI sooner of the incident, and so it could have

started to investigate liability of the claim – and not doing so essentially delayed the claims process. They also thought that Ms S had been given misleading information about the claims process. Because of this, the Investigator thought esure should compensate Ms S by paying her £100. The Investigator didn't though uphold other elements of Ms S's complaint – the policy excess not initially being waived, esure's decision not to renew her policy and the allegations of discrimination that Ms S made about esure.

esure responded to the Investigators assessment to say it didn't agree. It said that its normal process would be to send information about the claim to the TPI once it has received the costs. It said the TPI would have been unlikely to accept liability without receiving the costs and in any event, the claim would only have been closed once the full claims costs had been received.

Ms S also responded to say she didn't agree and requested that an Ombudsman look into her complaint again.

Because neither party agreed, the complaint has been passed to me to make a decision on the matter.

What I've provisionally 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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. If I've not reflected something that's been said in this decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

I've noted that some of Ms S's complaint relates to things that have happened since she first came to this service with her complaint – for example, esure not being able to find recordings or details about some of the calls she had with them. That esure won't tell her how much the repairs cost. And that she has struggled to get insurance elsewhere. I won't be covering these points in this provisional decision, because I don't think this is something that esure has investigated – so if Ms S does want to take this further then she'll need to complain to them about this point.

Broadly, the issues Ms S has complained about and that I'll be looking into as part of this decision relate to the following points:

- esure recording a fault claim on the internal and external databases – for an incident she says she wasn't liable for.*
- esure not asking her for evidence which supports her view that she wasn't liable for the incident.*
- esure not reimbursing her the excess she paid – especially given that she says that one of the other parties involved in the incident was reimbursed their excess. Ms S says she believes she has been discriminated against as a result.*
- esure continually gave Ms S misleading information about the status of her claim and caused delays during the claims process.*
- esure's decision not to renew her insurance.*
- esure recording a fault claim on the internal and external databases – for an incident*

she says she wasn't liable for.

It's worth noting here that where an insurer is unable to recover everything it's paid out for a claim, the claim is recorded as 'fault' on internal and external databases. A 'fault' claim doesn't relate to whether a party is liable or not, or the cause of the incident – it simply relates to whether or not an insurer was able to recover the full costs of the claim made against the policy.

This is important in this case, as it seems Ms S feels she has been treated unfairly because of how esure initially recorded the claim against her. Generally, any open claim is recorded as a 'fault' up until the point that it is either paid by the TP or the TPI. Once an insurer, like esure, has recovered the full cost of the claim, they'll then record the claim as a 'non fault'. But if they don't recover the full costs of the claim, it will remain a 'fault' claim.

In this case, esure recorded the open claim as a 'fault' claim while it was being investigated. I think this is fair because esure hadn't received a payment from the TPI at this point. esure says the TPI paid the full cost of the claim in October 2021 – and, it was at this point esure recorded the claim as 'non-fault'. I don't think Ms S has been treated unfairly here – this is normal practice across insurers.

esure not asking her for evidence which supports her view that she wasn't liable for the incident.

I can see Ms S is unhappy that esure hasn't requested evidence from her when it reviewed her claim – she says she has a video where the TP has admitted liability and esure didn't ask for this. Based on what I've seen, it was esure's intention to hold the TP liable to pay the costs of the claim. I would only consider upholding this complaint on this point where esure held Ms S liable for the incident and it didn't request evidence from Ms S that might change the outcome of the claim. But esure didn't hold Ms S liable for the claim, so even if it had requested the video Ms S says she had, the outcome on liability wouldn't change, and so I don't find that esure has done anything wrong here.

I can understand Ms S's frustration with the uncertainty regarding the liability aspect of the claim – especially given that she had evidence where the TP admitted causing the incident. However, esure needed to get the TPI to accept liability before it could proceed with the claim. So it couldn't have given Ms S a definite outcome as to the liability of the claim until this had been agreed by esure and the TPI. This again is normal procedure.

esure not reimbursing her the excess she paid – especially given that she says that one of the other parties involved in the incident was reimbursed their excess. Ms S says she believes she has been discriminated against as a result.

I can see Ms S has also raised concerns about not being treated the same as the other individual involved in the incident – also insured by esure. I can't comment on this fully – because I don't have much information about the other claim – and I can't consider another parties claim as part of this decision. However, based on what I've seen and esure's rationale for reimbursing the other parties excess, this doesn't seem unreasonable. esure are within its rights to assess a claim on its individual merits and take certain actions it feels are fair in the circumstances of that claim. While I appreciate that to Ms S it might seem that esure has treated her differently to the other party, from what I understand about the circumstances surrounding the other claim, they are different, even though on the face of things they might look the same.

I can understand Ms S's strength of feeling on this point though. And I can understand that from her point of view, esure's decision to reimburse the excess for one party involved in the

incident and not the other might seem incredibly unfair. But for the reasons I've already explained above, I don't think esure's decision here was unfair – or as a result of esure discriminating against her.

Ms S has also suggested that she was given incorrect information about how she should go about claiming back her excess. I should say here that looking at Ms S's policy documents, it does state that the excess is payable per claim – whether Ms S was liable or not. So esure were right to ask Ms S to pay this. I don't think it was wrong of esure to let Ms S know that this should be claimed through the TPI direct. Excess isn't something that is covered under the policy, and because Ms S didn't have additional cover for Motor Legal Protection, the correct process was for Ms S to attempt to recover the excess herself.

In any event, I can see that esure has reimbursed Ms S for the excess as a gesture of goodwill, so Ms S hasn't lost out here, and she hasn't had to go into the additional effort of claiming this back herself. Because of this, I won't be asking esure to do anything more for Ms S in relation to the excess.

esure continually gave Ms S misleading information about the status of her claim and caused delays during the claims process.

Our Investigator upheld part of Ms S's complaint because they felt there had been delays in the claims process. esure hasn't really provided this service with much information to show what it did and when. I can see that it was notified of the claim in June 2021, Ms S's car went in for repairs in August 2021, and repair work was completed mid-August 2021. esure then sent information to the TPI about the claim on 1 September 2021. I agree with our Investigator that esure could have notified the TPI about the claim sooner than it did – by the time the TPI had been made aware of the claim a number of months had passed. In some cases, a timely notification of the incident could be very important, given that an individual's recollections of what happened at the time of the incident are likely to be less clear – and vital evidence to determine liability could be unobtainable if left too late. But in this case, a more timely notification of the incident to the TPI wouldn't have made a difference to Ms S given that the TPI has accepted liability.

esure says it didn't send the TPI information about the claim until it had received the repair costs – and this is its normal process. I can see that this happened a couple of weeks after the repairs had been completed – which I don't find to be an unreasonable amount of time. The claim couldn't have been settled until the full claims costs had been received so I don't think an earlier notification of the claim would have reduced the time it took to settle the claim. Given that an earlier notification of the claim to the TPI hasn't affected the outcome of the claim and esure sent the TPI information about the claim within a reasonable time period from when it received evidence of the repair costs, I don't think esure needs to do anything more to put things right for Ms S here.

Based on the information I have received from esure, it appears Ms S was given unclear and misleading information about the status of the claim. It eventually took for Ms S to contact the TPI herself to find out that esure hadn't in fact been in touch with it about the claim. I think this unclear and misleading information has only led Ms S to further worry and frustration. And so I intend to uphold this part of Ms S's.

esure's decision not to renew her insurance.

Finally, I can see that esure has declined to renew Ms S's policy, which Ms S finds to be unfair. Ultimately, it's up to each insurer to decide what risks it is prepared to insure – and at what cost. Generally, this service won't interfere in an insurer's commercial appetite for risk. But we will look to see if an insurer has treated a customer fairly, compared to its other

customers in similar circumstances.

esure has sent this service its underwriting guidance that it has relied on to show that it has treated Ms S in the same way as it would its other customers in similar circumstances. I can't share this underwriting guidance with Ms S, because its contents are commercially sensitive. However, I have found that esure has fairly applied this guidance when it made the decision not to renew Ms S's policy. And so, I don't think it acted unfairly in declining to renew Ms S's insurance.

I appreciate that Ms S doesn't feel as though previous claims were settled fairly, in particular she says she was made to accept a settlement on a 50/50 liability basis. This isn't a complaint Ms S raised with esure initially, and so it hasn't had the opportunity to investigate this. For this reason, I haven't considered this as part of this provisional decision. If Ms S remains unhappy with this particular point, she'll need to raise this with esure first.

I can see that Ms S has made comment that she's had to pay significantly more for her car insurance since the incident. It's possible that any claim – whether fault or not – could impact the cost of an insurance policy. Given that Ms S's new insurance premiums were likely calculated at the point an open fault claim was showing on the database for her, she might want to let her new insurer know that this has now been settled as non-fault to see if that insurer is happy to reduce the cost of the premiums on that basis.

For the reasons set out above, I intend to uphold Ms S's complaint in part. Esure should pay Ms S £100 to compensate her for the distress and inconvenience unclear information caused her."

Ms S didn't respond to my provisional decision – and so I've assumed that she has nothing further to add.

esure responded to the provisional decision to say it agreed with what I'd said in the most part, however, it doesn't think that it should pay Ms S £100 as it says that it told her in the first instance how the claims process would work – and provided email evidence of this. It said that it did give her incorrect information during one phone call on 9 August 2021 about the status of the claim. However, it feels an apology is sufficient for this, and that it hasn't seen anything to suggest that it eventually took for Ms S to contact the TPI direct to find out that esure hadn't notified it of the claim.

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.

Having considered everything on file again, it is still my decision to uphold this complaint.

Firstly, it's disappointing that after asking esure for *all* correspondence it had with Ms S prior to me issuing my provisional decision, that it didn't send everything it had. Since I issued my provisional decision it has sent me an email, which it hadn't previously sent, which shows that once Ms S notified it of the claim, it let her know that it would contact the TPI once it had received a notification of the cost of the claim – it did this by email. So, based on this, Ms S ought to have been aware of esure's process from the start of the claim.

esure has accepted that it gave Ms S incorrect information during a phone call on 9 August 2021 – when it told her that it had notified the TPI about the claim. I'm minded to agree with esure here that generally a mistake like this might only warrant an apology. But in this case, I think Ms S has been caused more upset than necessary by the information she was given.

I say this because after this point on 9 August 2021, Ms S believed that esure had been in touch with the TPI about the claim – I see no reason why Ms S wouldn't have taken what she was told on face value. After this, Ms S called esure again on 19 August 2021, and there was no mention during this call that esure hadn't contacted the TPI. So again, I think it was reasonable of Ms S to believe that esure had been in touch with the TPI at this point.

Ms S then contacted esure again on 31 August 2021 asking for an update on her claim. The advisor told her that there hadn't been an admission of liability from the TPI yet, which was correct at this point in time, but this comment suggests that esure had been in contact with the TPI about the claim. The call continued on the basis that the TPI had 90 days to investigate the claim, but at no point was Ms S made aware that esure hadn't yet contacted the TPI. During this call, Ms S was told that she could call the TPI to find out what was happening with the claim and to get her excess back. Ms S clearly became very upset and distressed during this call.

In a second call Ms S makes to esure on 31 August 2021, Ms S confirms that she had contacted the TPI, as suggested during the previous call on the same day, and she says that upon doing so, she finds out that esure hasn't in fact contacted it about the claim, and it hadn't been made aware of the claim at all. During this call, esure told Ms S again that it had contacted the TPI on 15 June 2021 – which esure has already confirmed wasn't correct.

Based on everything I've said above, while I agree with esure that Ms S was made aware of the process at the start of the claim, I think the conversations she had at a later date misled Ms S into thinking that esure had been in touch with the TPI. Having listened to the calls, this was clearly important to Ms S as she was concerned about the liability aspect of her claim and being able to claim back her excess. Ms S is clearly shocked and upset during the second call on 31 August 2021 once she had been in contact with the TPI and found out that it wasn't aware of the claim at all.

With the above in mind, I still think that £100 is a fair way to compensate Ms S for the unclear information she received about the claims process.

Putting things right

esure must pay Ms S £100 to compensate her for the distress and inconvenience caused to her when she was given unclear information about the progress of her claim.

My final decision

For the reasons set out above, I uphold Ms S's complaint. I order esure Insurance Limited to put things right for Ms S by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 13 July 2022.

Sophie Wilkinson
Ombudsman