

## The complaint

Mr A complains about how esure Insurance Limited trading as Sheilas' Wheels ("esure") handled a claim under his motor insurance policy.

## What happened

Mr A has a motor insurance policy with esure covering his car. Mr A says that he was driving through a petrol station forecourt when a third party opened their car door into his car causing damage to it.

The police were called because the third party didn't want to give Mr A their details. Mr A was told that CCTV images of the collision were captured.

Mr A contacted esure and made a claim. esure said it deemed Mr A to be at fault for the collision because it said the location of the damage on the front bumper of his car meant that Mr A had effectively driven into an open door. Mr A says that the police viewed the CCTV footage and said he couldn't have prevented the collision because he was alongside the third party car when the door was opened.

Mr A paid for the repairs to his car himself at a cost of £500. He says he did this because he felt "bullied" by esure into doing so. He says esure said if he claimed for the damage, then his premium would be affected. If he didn't claim then it wouldn't.

Mr A was unhappy that esure decided to accept he was at fault without investigating the collision further, given the presence of CCTV footage and the police's opinion. He asked for copies of the calls he made to esure, but he didn't receive them.

He asks that esure carry out a full and fair review of its decision after getting the CCTV footage and discussing it with the police. He wants esure to do this and change its decision from fault to non-fault. He also asks for the copies of the calls he made to esure, and for compensation for his stress and inconvenience.

esure say its policy wording gives it:

*"full discretion in the settlement of your claim or any legal proceedings which may arise, and we may take over, defend or settle the claim in your name for our own benefit"*

It says it:

*"simply cannot place any liability on the part of the other driver."*

Mr A remained unhappy and brought his complaint to this service. An investigator looked into it and said he didn't think esure had done enough to investigate the claim. He said esure should look at all the available information and re-examine liability for the collision. He also said it should pay Mr A £150 compensation.

esure didn't agree with the view. It said it held Mr A responsible for the collision because he

needed to make sure it was safe to pass a stationary vehicle, and the terms of its policy allowed it to make this decision. It said the collision was recorded on esure's system as a fault claim, but because no costs had been paid to either Mr A or the third party, Mr A had kept his No Claims Bonus.

Because esure didn't agree with the view, the complaint has been passed to me to make 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.

When investigating a complaint such as this one, this service considers whether the insurer has exercised its discretion to deal with the third party claim reasonably. We do not decide who was responsible for causing a road traffic incident, as this is what the courts do.

esure, like other insurers, will apply the terms and conditions of its policy when dealing with claims and it's my role to decide if esure have treated Mr A fairly and reasonably.

The relevant part of esure's policy wording is shown above. This type of policy term is commonly found in car insurance policies and it lets esure handle claims at its discretion. This is most often done with a view to stopping a claim being made in court to save time and money and sometimes it means that esure makes a decision its customer doesn't agree with.

In assessing this complaint, I need to determine whether esure used its discretion to settle the claim fairly, based on the evidence that it had or could have reasonably obtained.

It seems to me that esure's decision was based solely on Mr A's description of the collision and the damage caused to his car. Mr A told esure in his initial call that he had photos of the damage and that he had been told CCTV footage was available. He repeated this in subsequent calls. But esure didn't act on this and maintained that he must have been at fault for the collision.

I don't think esure acted fairly here. It seems to me that further evidence was readily available and esure could have made further enquiries about it. The collision was also in the process of being investigated by the police and Mr A told esure this because the police already had the CCTV footage.

I think it's fair and reasonable to expect esure to gather more evidence about the claim and ask it to consider its position on liability.

I've also listened to Mr A's call with esure and I can hear esure's claims handler explaining how his premium might be affected by asking esure to repair his car rather than paying for the repairs himself. esure's claims handler explains things carefully and sensitively and says if Mr A pays for the repairs then his premium might be affected, but not by as much as if he claimed through esure.

I can understand why Mr A found esure's position on the claim frustrating, because it's clear in the call that he felt like he had very little option other than to pay for the repairs himself.

I agree with our investigator that esure should pay Mr A £150 compensation for his distress and inconvenience caused by esure not investigating the collision fully and the consequential frustration with esure's claims process.

In later correspondence, esure said it would refund the amount Mr A had paid for his own repairs. Our investigator has already explained to Mr A the possible impact on future premiums of him doing this, in the event that esure re-assess the collision and confirm it as Mr A's fault.

### **My final decision**

For the reasons set out above, my final decision is that I uphold this complaint.

I direct esure Insurance Limited to:

- Fully investigate the collision and review all the available information, before deciding liability.
- Pay Mr A £150 compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 October 2022.

Richard Sowden  
**Ombudsman**