

## **The complaint**

Mr O complains that when his stationary car was hit by another driver esure Insurance Limited recorded this as a fault claim, he lost years of his no claims discount (NCD), and his insurance premiums increased. He wants esure to remove the reference to a fault claim and reinstate his NCD.

## **What happened**

Mr O had insurance for his car with esure. He'd been insured with esure since 2014. In March 2021 Mr O's wife, who was a named driver on his policy, had just parked the car when it was hit by another vehicle. Mr O's car was written off as a result of the damage it sustained. esure dealt with the total loss claim and paid Mr O the value of his car.

Mr O's accepted esure's offer for his car, but he wasn't happy that his £250 policy excess was deducted from the settlement he received. He also wasn't happy that his NCD was reduced after the accident, and further reduced when his policy was due for renewal in March 2022.

The driver who hit Mr O's car didn't stop. But Mr O told esure the driver was caught by the police who intended to prosecute him. From the registration number of the other vehicle esure were able to identify two possible insurers. esure contacted both insurers seeking recovery of their outlay and Mr O's policy excess. But one said their insured claimed he'd sold the vehicle and the other said the vehicle wasn't insured with them at the time of the accident.

Mr O told esure that as he wasn't to blame for the accident they shouldn't have recorded it as a fault claim, they shouldn't have deducted his excess from the total loss payment he received, and his NCD shouldn't have been affected.

esure explained that as Mr O had made a claim on his policy and they hadn't been able to recover their outlay, the accident had been correctly recorded as a fault claim. If they were able to recover their outlay, then the status of the claim would be changed to non-fault. And his excess had been deducted from the total loss payment in line with the policy terms and conditions.

esure also told Mr O that as he hadn't protected his NCD it had been reduced when his policy renewed. And because there was an outstanding claim on his policy at renewal his premium had increased, but this would be reviewed, and any additional premiums refunded if they were able to recover their outlay.

Mr O didn't accept what esure had said. And as the matter was still outstanding following renewal of his policy in March 2022, he raised a complaint. He said he wanted them to restore his NCD to 13 years as he believed he'd paid back any payments esure had made through his increased premium. He'd didn't agree there was an ongoing claim, as it was the other driver who was responsible, not him, and he felt there was no ongoing liability against esure. And he wanted them to recalculate his premium based on his restored NCD.

esure didn't uphold Mr O's complaint, although they did apologise that when he initially contacted them in 2022 to cancel his policy, he was told he couldn't do this. They told him that a fault claim was one where they hadn't been able to recover their costs, regardless of blame. And they said his policy explained this and the impact this would have on his NCD.

They also said that they hadn't been able to establish that the other driver was responsible for the accident. Two different insurers were listed on the insurers database, but neither had accepted liability. Mr O hadn't been able to identify the driver of the other vehicle although he'd told them the police had caught him and were bringing charges against him. So they needed to contact the police to try and get further information, but they said this could take time especially if there were court proceedings.

But if the claim was settled as non-fault, Mr O's NCD would be reinstated, and he'd be able to claim his uninsured losses from the other driver.

esure provided details of his premium and said his NCD wasn't affected until his renewal in 2022, when his 13 years NCD was correctly reduced to 3 years.

Mr O wasn't happy with esure's response and complained to our service. Our investigator considered the case and initially didn't uphold the complaint. She said she was satisfied esure had complied with Mr O's policy terms and conditions relating to a fault claim and his NCD. And they'd confirmed they'd reinstate Mr O's NCD once they were able to identify the other driver and recover their costs.

Mr O didn't accept our investigator's opinion. So she reviewed the case and issued a further outcome in which she partially upheld the complaint. She didn't change her mind about esure complying with the terms and conditions of Mr O's policy in relation to a fault claim and his NCD. But she said that they'd delayed the claim since March 2021 which had resulted in Mr O paying increased premiums.

She said esure had contacted their solicitors about the recovery of their outlay twice in 2022, but they hadn't been able to show that they'd chased the police report since 2021. Our investigator felt esure could have done more to chase the police for the details of the other driver. And she recommended esure pay Mr O £150 compensation for the delays.

esure accepted our investigator's further opinion, but Mr O didn't.

The case has now come to me for a 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.

Mr O's policy provides a definition of what esure class as a fault claim. And it's '*A claim made under your policy which we have paid for on your behalf and have been unable to recover all or part of these payment from a third Party*'. Unfortunately, this is just what's happened in this case.

esure have never said Mr O was responsible for the accident. They've never disputed that his car was hit by another vehicle. But Mr O hasn't been able to provide them with the other driver's details. And while there are two insurers listed on the insurance database, in relation to the registration number Mr O has been able to provide, one has said their cover ended before the date of the accident, and the other has said their insured sold the car before the date of the accident.

So neither has accepted liability for the accident. And esure can't pursue a claim against either insurer without evidence that they insured the third party vehicle and their insured was responsible for the accident.

Mr O had told esure that the police caught the driver of the other vehicle and were pursuing proceedings against him, but they've yet to receive details of the driver from the police. But he's now told us the police aren't pursuing the matter as they haven't been able to identify the other driver.

Mr O has made a claim for his car on his policy which esure have paid. So until they're able to recover what they've paid I agree that they've correctly recorded a fault claim against Mr O's policy. And when they paid his total loss claim they deducted his £250 excess which he agreed when taking out the policy.

esure instructed solicitors to recover their outlay but until the other driver is identified the solicitors can't pursue a claim against the driver.

Mr O had 13 years NCD which esure reduced to three years at this renewal in March 2022. His policy schedule sets out clearly what will happen to an unprotected NCD in the event of a claim being made. With a NCD of five years or over, with one claim, the NCD will be reduced to three years. And when Mr O's policy was up for renewal in March 2022 his NCD was reduced to three years in line with this.

esure have said that if they're able to recover their outlay they'll reinstate Mr O's NCD to 13 years. He's now changed insurer, but esure will be able to provide proof of his NCD, if it's restored, which he can send to his new insurer.

Mr O's premium increased in March 2022 as his NCD was reduced to three years. But as esure acted in line with the terms and conditions of Mr O's policy I can't say they did anything wrong.

I appreciate Mr O's frustration that another driver collided with his car causing sufficient damage for it to be written off, and that because that driver didn't stop, a fault claim has been recorded against his policy. But that's not esure's fault, the person responsible is the driver who didn't stop and provide his details.

I'm satisfied that esure have acted in line with Mr O's policy terms and conditions in recording this accident as a fault claim and in respect of the reduction made to his NCD. They've said they'll review both if they're able to recover their outlay. Although if the police haven't been able to identify the other driver, as Mr O has now told us, it seems unlikely that this will happen. But if the driver isn't identified, it's doesn't mean esure have acted incorrectly.

But I do think that esure could have done more to pursue the police for details of the other driver. And even if police told them that he couldn't be identified, at least Mr O would have known where he stood, and he could have put the unfortunate accident and its consequences behind him. Our investigator suggested compensation of £150 for the delays which esure have indicated they're willing to pay. And I think this is reasonable, but I'm not asking esure to do anything else.

### **My final decision**

For the reason's set out above my final decision is that I uphold Mr O's complaint about esure Insurance Limited.

And to put things right I require them to pay Mr O £150 for the distress and inconvenience he's experienced as a result of the delays in their handling of his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 24 March 2023.

Patricia O'Leary  
**Ombudsman**