

The complaint

Mrs H has complained about the way her motor insurer, esure Insurance Limited ("esure") dealt with a claim she made on her policy and the settlement it offered her after her car was declared a total loss.

What happened

In May 2021 Mrs H entered into a personal contract purchase (PCP)/ hire purchase (HP) agreement (HP) for her new car for a period of 37 months. She paid an initial deposit of £7,000 and was thereafter making monthly payments of £296.75 to a finance company. At the end of the 37-month period she had the option to make a final ("balloon") payment and keep the car.

In September 2022 Mrs H made a claim on her insurance policy after her car was stolen. esure settled Mrs H's claim for the total loss of her car but it said, under the terms of its policy, it was only responsible for paying off the outstanding finance (£16,439.46) rather than the full market value - which was higher. esure also paid Mrs H a pro-rated amount of the initial deposit (£3,722.51 as there were 21 months left on the agreement less the £250 excess) which meant it paid a total of £20,161.97.

esure said its settlement put Mrs H back in the position she was in at the time she bought the car as she had no finance outstanding plus a proportion of her original deposit.

Mrs H wasn't happy about this and complained but esure didn't uphold the complaint. It said it treated the PCP/HP as it would a lease agreement as it is effectively a rental agreement with an option to purchase. It added that it's seen research which says that most consumers do not buy the car at the end of the contract.

Mrs H then complained to us. Our Investigator thought the complaint should be upheld and that esure should pay Mrs H the difference between the market value and the amount it had already paid to the finance provider and to Mrs H. Our Investigator thought a reasonable market value offer would have been £25,153 based on the motor trade guides businesses use to arrive at a valuation. So she thought esure should pay Mrs H a further £4,991.03 plus 8% interest per year from the date of settlement to the date it pays her.

esure didn't agree and asked for an Ombudsman's decision. It said that under Mrs H's agreement she did not get the option to buy the car until the 37 months were up and was therefore not its owner until then. It added that there is no way of knowing what Mrs H would have done at the end of the agreement or what the market would have looked like and that she may have ended up with a shortfall even after making the balloon payment. It repeated that it did more than was required under the policy terms by paying Mrs H a pro rata refund of her deposit and that paying the market value would amount to betterment as Mrs H would be getting paid for something she didn't own.

Before I issued my decision, I asked our Investigator to let esure know that I would be making the same award as our Investigator and that I would also be awarding £100 for the distress and inconvenience it caused Mrs H. I also thought our Investigator's award of

£4,991.03 did not seem to include a deduction of the £250 excess which is payable under the policy but I thought it was still fair and reasonable for esure to pay Mrs H £4,991.03 based on the valuations provided by the trade guides.

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 done so, I have decided to uphold it for the same reasons as our Investigator.

The policy

The policy states that, if the car is stolen esure won't pay more than the market value of the car at the time of loss less any applicable excess. The policy defines the "market value" as the amount the consumer could reasonably have expected to sell their car for on the open market immediately before their loss. esure will use motor trade guides in order to assess this value and the valuation will be based on cars of the same model and of a similar age, condition and mileage at the time of loss.

The policy also contains a condition which says that if the car was bought through a lease or contract hire esure will pay the lease or contract hire company either the market value of the car, or the amount required to settle the agreement, whichever is less.

The settlement paid to Mrs H

esure said the above condition applies to lease, contract hire and other agreements. Nevertheless, as drafted, the above condition is limited to lease and contract hire agreements and doesn't seem to apply to agreements where the consumer has the option to buy the car, like Mrs H in this instance. Nevertheless, I do accept that this condition is found under a heading which says "Hire purchase, lease and other agreements" alongside other conditions. It is arguable that esure is not able to rely on this condition as it is unclear as to whether it applies to PCP/HP agreements and therefore ambiguous and should be interpreted in Mrs H's favour. Which in this case would mean that esure wouldn't be able to limit its outlay to the outstanding finance if it is less than the market value. But even if esure's intention was for this condition to apply to PCP/HP agreements I still think it's fair and reasonable, in these circumstances, that esure isn't able to rely on it for the reasons below.

Our general approach in situations similar to Mrs H's where a consumer has a PCP/HP agreement and not a lease is to say that we do not think it is fair for the insurer to limit the claim to an amount which is less than the market value. Unlike a lease agreement, under the PCP/HP agreement the insured has the option of purchasing the car which they can sell or part exchange for another one. And in situations where there is an equity excess at the end of a PCP agreement this can be used as a deposit against a new vehicle. It follows that this would mean that if the car is written off there is a potential financial loss to the insured.

Mrs H took out a market value motor insurance policy and although esure can limit its outlay here I think this could lead to an unfair outcome in this case. I say this as when Mrs H took out the PCP/HP agreement she paid a large sum upfront (£7,000) and so there is the potential for her to lose out when the car was written off early in circumstances like this.

Furthermore, Mrs H had to pay a fixed amount for the PCP/HP over the hire purchase period. So the size of the deposit has a direct impact on the amount Mrs H had to pay in monthly payments during the PCP/HP term. Had Mrs H paid a smaller upfront payment she would've had to pay more in monthly repayments over the term of the agreement. In effect, this means esure has had to pay less to the finance provider because Mrs H paid a larger

upfront payment. As such, I think a strict application of the term would be unfair in the particular circumstances of this complaint.

Ultimately, this is quite a significant exclusion of cover and is slightly unusual as a lot of policies would pay the market value in a scenario like this when a consumer has a PCP/HP agreement as opposed to a lease. As the consumer is paying towards ownership or part ownership of the car. And to do otherwise would produce a particularly harsh outcome in Mrs H's case given the large amount of money she had put down for the car.

esure said that under this agreement Mrs H didn't own the car and wouldn't have owned it unless she decided to purchase it at the end - which, it says, most people decide against. And it added that the car could have been worth less than the balloon payment and so there may not have been an excess to be used as equity to purchase another vehicle but only a shortfall to be made up. As esure says it is difficult to know what the market would have been like at the end of the agreement. But it is still the case that, under the agreement, Mrs H could have made the balloon payment and then sold or part exchanged the car. So she had the option of using the car as an asset towards the purchase of her next car. This isn't something she would have had the option to do under a lease agreement. And even if Mrs H was in "negative equity" I don't think this means that, under her agreement, she would have owed more money. It means she may have paid more than what her car was worth when the agreement ended. Nevertheless, the car would have still had some value which she could have put towards her new car by selling or part-exchanging her old one. Under a lease agreement she would have simply handed the car back to the finance provider.

So, taking everything into consideration, I don't think it's fair and reasonable for esure to limit the settlement to just the outstanding balance of the finance and it should pay the car's market value.

Car valuation

It's not our service's role to decide what the value of the car is but to decide whether the insurer made an offer which was fair and reasonable based on the evidence available to it. In this case, as I said above, esure didn't assess the claim based on the car's market value and therefore didn't provide a valuation. Assessing the value of a used vehicle isn't an exact science. We generally find the valuations given in motor-trade guides most persuasive as they are based on extensive nationwide research of likely selling prices.

I have considered valuations from four guides. Those ranged between £24,367 and £26,581. I wouldn't consider any of the valuations to be an outlier. In her view our Investigator said she considered a fair market value to have been £25,153 and neither party raised any objections. This is within the range provided by the trade guides but at the lower end. As I mentioned to esure, our Investigator didn't appear to deduct the excess when she calculated the difference between the market value and the amount paid to Mrs H and the finance company. So, given the £25,153 is at the lower end of the valuations I still think esure should pay what our Investigator has awarded even after deducting the excess.

For the reasons above, I think a fair and reasonable outcome in this case is for esure to pay Mrs H the difference between what it paid to the finance provider and to her (£20,161.97) and the market value of the car less the applicable excess of £250- which comes to £25,153. And it should pay 8% simple interest for the time Mrs H has been without this money and £100 in compensation for the stress and inconvenience all this has caused her.

My final decision

For the reasons above, I have decided to uphold this complaint. esure Insurance Limited must:

- Pay Mrs H £4,991.03 it being the balance between the market value after the deduction of the applicable excess (£25,153) and the amount it paid to the finance company and to Mrs H (£20,161.97).
- Add 8% interest per year simple on the £4,991.03 from the date the claim was originally settled to the date it makes payment. If esure Insurance Limited considers that it's required by HM Revenue & Customs to take off tax from this interest, it should tell Mrs H how much it's taken off. If asked, it must give Mrs H a certificate showing how much tax it's taken off so she can reclaim the tax from HM Revenue & Customs if appropriate.
- Pay Mrs H £100 for the distress and inconvenience it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 31 March 2023.

Anastasia Serdari
Ombudsman