

## The complaint

Mr F has complained about the way esure Insurance Limited dealt with a claim he made under his car insurance policy.

## What happened

Mr F was involved in an incident and he made a claim to his insurer, esure. esure settled Mr F's claim by paying the market value for his car as it declared it a total loss.

Mr F complained to esure. He said he repeatedly asked about keeping his car but esure didn't reply. He didn't cash its cheque payments for the market value for this reason. He said the delays esure caused in its handling of his claim and failure to prevent his car salvage from being sold had a significant impact on his health and daily living.

esure upheld Mr F's complaint. It accepted that despite requests from Mr F, it failed to respond in time to his request to have his car returned to him. It said it couldn't change things as his car had been sold. So to compensate Mr F for the distress and inconvenience caused, it paid him £250.

Mr F didn't think this was enough, so he asked us to look at his complaint. He said that the salvage agent had caused additional damage to his car and this damage was the difference between his car being repairable and a total loss.

Our Investigator thought the valuation esure had reached wasn't enough and recommended it be increased. He asked esure to pay the difference with interest.

He thought the compensation esure had paid was reasonable for the delay and poor service it had provided. The Investigator found that the costs to repair Mr F's car excluding any damage caused by the salvage agent meant it was a total loss in any event.

The Investigator thought Mr F could have tried to mitigate his losses by cashing his cheques from 27 May 2022 to enable him to buy a replacement car as this was when his car was declared a total loss - and esure had explained that Mr F wouldn't be prevented from taking his complaint further by cashing in the cheques.

But Mr F explained that up until 22 June 2022 he had repeatedly asked to have his car returned to him, but esure didn't follow this up. esure did however tell him that if he cashed the cheques he couldn't request the return of his car, as it would no longer be his property. For this reason he was unable to cash the cheques as he wanted his car to be returned to him.

The Investigator found Mr F's response persuasive. He thought that from 22 June 2022 when Mr F was told his car had been sold, this was the point when Mr F could have used the cheques to buy a replacement car to mitigate his losses - as esure said nothing more could be done. But he thought esure should pay Mr F for loss of use at £10 a day from 27 May 2022 to 22 June 2022 as it failed to respond to his request to have his car returned to him during this time.

esure didn't agree. It said it doesn't provide a courtesy car when a car has been declared a total loss - and so the same should apply in relation to loss of use.

Mr F said he agreed with the increase in the valuation. But he didn't agree the compensation for loss of use was enough. He said he would provide us with evidence of his losses during the time he was without a car.

I issued a provisional decision on 1 March 2023. I didn't think the total loss settlement should be increased, but agreed with the remaining recommendations by the Investigator.

Mr F didn't respond to my provisional decision.

esure didn't agree. It reiterated that it shouldn't pay any award for loss of use.

So the case has been passed back to me to decide.

### **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.

As I set out under my provisional decision, I was sorry to read of the impact the handling of his claim has had on Mr F. My role is to take an even handed approach to the information provided by both parties and decide if esure has acted reasonably.

Having to make a claim will inevitably involve some disruption and inconvenience. In Mr F's case, his car was declared a total loss and so he was invariably going to have a period where he was without a car and make interim arrangements until he was in a position to buy a replacement. Mr F's policy with esure has a common term which says it will provide a courtesy car where a car is repairable, but not if it is declared a total loss.

The incident happened on 14 April 2022. While there is no set time for an insurer to pay a market valuation, I think a reasonable expectation is for this to take around two weeks: to give an insurer time to arrange for a car to be moved to an approved repairer and for an engineer to make an assessment on whether a car can be repaired or not.

I think the valuation the Investigator used in his view was the first lower valuation by esure of £1,778. However, I understand esure made two cheque payments as it increased the market valuation to £1,928. According to its complaints notes on 31 May 2022, it arranged for a second payment to be sent, bringing the final settlement sum to £1,928. After deducting the excess due of £300, this left a total loss payment of £1,628.

Our Investigator looked at the main motor trade guides and found they provided valuations of £2,569, £1,890, £1,829. So he recommended esure pay the difference in the average of these valuations which came to £2,096, adding interest at our recommended rate of 8% simple interest a year.

Both parties accepted the Investigator's recommendation here. However, where one valuation is out of kilter with the others, irrespective of whether it is lower or higher, our approach is to discount it. In this case, the valuation of £2,569 is out of kilter with the other two. So having considered all of the available information, I think esure's total loss settlement of £1,928 is reasonable as it is higher than the remaining guides. This means I'm not asking esure to increase the total loss settlement it paid to Mr F.

The engineer provided an estimate of repairs to Mr F's car - excluding any damage caused by the salvage agent - and this came to over 80% of the market value of the car. I understand Mr F is upset that the salvage agent caused additional damage - but because Mr F's car wasn't returned to him - the outcome in respect of what esure should pay is the same. The most esure will pay in the event of a claim is the market value for a car at the time of loss.

esure accepts that it failed to deal with Mr F's requests to have his car returned to him. And because of his request, I can understand why Mr F didn't cash the cheques he received from esure up until 22 June 2022. He was waiting for a response to his request to have his car

returned to him - and cashing of the cheques would have constituted an acceptance of esure as the owner of the salvage.

So I think esure's poor service here prevented Mr F from mitigating his losses from 27 May 2022 - up until he discovered on 22 June 2022 that his car had been sold. From this point Mr F's car was not recoverable and I think Mr F was in a position to mitigate his losses.

I think the compensation esure has paid goes some way to putting things right. There's no dispute that esure provide a poor service to Mr F in its handling of his claim. The decision to sell Mr F's car as salvage caused distress and upset over and above what would be reasonable when dealing with a claim.

I think esure's failure to respond to Mr F's requests to retain his car from 27 May 2022 to 22 June 2022 was unreasonable. Had he accepted the total loss payment(s) I agree with his view that he would have lost his right to retain the car. So I think esure is responsible for Mr F's loss of use during this period.

esure says it doesn't provide a courtesy car in the event of a total loss claim. I agree. But the loss of use award is for the failure by esure to respond to Mr F's request to have his car returned to him at the point it made a total loss settlement. This is what Mr F wanted, was reasonably entitled to do, and had esure provided a prompt response, he would have been able to collect his car. Because esure didn't respond, and Mr F would have prejudiced his right to ownership of the car if he'd accepted the payment, I think this is a fair way to put things right.

Mr F told us that he relied heavily on the use of his car for work and to socialise and being without it for longer than reasonable had a significant effect. He said he struggled to be on time for work when relying on public transport, he missed planned social events and wasn't able to enjoy the freedom of having use of a car. He said the stress of dealing with esure, where he says it never offered updates on his claim, where he had to repeatedly contact it for information and chase, had a negative effect on his mental and physical health.

I think the compensation esure paid of £250 is within the range we would award for similar cases. I will reconsider this issue if Mr F provides persuasive evidence to show why the loss of use award of £10 a day with £250 compensation esure paid isn't enough. I've also considered that - had Mr F retained his car - he would have to make alternative arrangements while it was repaired and made roadworthy again in any event.

I therefore think a fair outcome is for esure to pay Mr F £10 a day for loss of use from 27 May 2022 to 22 June 2022. I think this - along with the compensation its paid of £250 - is enough to put things right.

### **My final decision**

My final decision is that I uphold this complaint. I require esure Insurance Limited to do the following:

- Pay Mr F £10 a day for loss of use from 27 May 2022 to 22 June 2022.

esure Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr F accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If esure Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 April 2023.

Geraldine Newbold

**Ombudsman**