

The complaint

Mr A has complained about his car insurer esure Insurance Limited (Esure) because whilst it agreed to return his car to him following a total loss claim, it disposed of it instead.

What happened

Mr A's car was parked when it was hit by another car. Mr A made a claim to Esure. He was advised to take his personal belongings out of the car, the car was taken to Esure's approved garage and Mr A was provided with a hire car. Esure decided the car was a total loss. Upon Mr A's request it agreed he could keep the car and a settlement payment for the claim was made towards the end of October 2022.

Mr A began trying to arrange for his car to be returned to him. But no-one knew where it was. When he spoke to Esure on 21 November 2022, it made enquiries and discovered that an error by it had caused its salvage agent to dispose of Mr A's car. It agreed to extend the period of hire for the car Mr A was driving and issued a further settlement cheque. The further payment equating to the total initial market value determined by its engineer for Mr A's car.

In mid-January 2023 Mr A told Esure he had not received the November cheque. And, in February 2023, that an increase of £200 on the initial market value sum had been agreed by the engineer. Esure re-issued the November cheque and paid the further £200. Mr A did not receive the re-issued November cheque and, in early March 2023, Esure agreed for the money to be paid by bank transfer instead.

Esure accepted it had made a mistake by disposing of Mr A's car. It paid £150 compensation for the upset this had caused. It felt it had acted fairly by keeping Mr A in a hire car until 4 December 2022, being more than seven-days after it had issued the further settlement payment in November 2022. Regarding personal effects Mr A said had been in the car, Esure said it would consider this aspect if details were provided. It said it would cancel the policy if Mr A required, backdating it to the claim date and issuing a pro-rata refund, even though the refund wouldn't usually be paid until its costs had been recovered from the at-fault driver. Mr A remained unhappy, complaining to the Financial Ombudsman Service.

Our Investigator felt the £150 compensation for upset was fair and reasonable. But she felt the second part of the claim settlement had been delayed, which had likely caused Mr A some loss. So she felt interest should be paid on both of the further sums paid by Esure, and that it should pay £300 compensation for loss of use.

Mr A told us he had nothing further to add. Esure said it objected to the loss of use award. It said the delay in Mr A receiving its settlement payment was not of its making. It said it had paid the sum by cheque which is its chosen business practice. And, further, compensation like this is only paid where a policyholder should have had the benefit of a courtesy or hire car under the policy, but they hadn't had this for some reason. Here, Esure said, that was not the case. The complaint was passed for review by an Ombudsman.

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.

I think Esure failed Mr A on this occasion. It was aware he wanted to keep the car and had paid its initial settlement to him with that in mind. But because it didn't manage things properly at its end, the fact that Mr A was keeping the car was not passed on to its agents who were handling Mr A's car. This resulted in the car being disposed of. I can see that would be frustrating and upsetting for Mr A. Unfortunately for Mr A, Esure's files show that once this problem was recognised, it was too late for this to be completely undone – the car could not be retrieved. So Esure had to provide a reasonable remedy. In this case it changed its settlement to full total loss without a deduction for salvage. And it actioned this quickly, issuing a further settlement cheque the following day. Also agreeing to keep Mr A in hire for a time too. I understand that this was done on an ad-hoc basis and ended a short while after the further settlement cheque was initially raised. Esure then paid £150 for the upset caused. Overall, I think that was a generally fair and reasonable response to the situation that had arisen (caused by Esure's error).

But, from Mr A's point of view, I can understand why this didn't resolve his situation. Not least because he did not receive the November cheque. But I note that once he made Esure aware of this, it acted to send the cheque again. I think, in many cases, responding like that would be reasonable, and I can certainly understand that payment by cheque is how Esure has chosen to normally operate its business. It's not for me to interfere in that. But I think, on this occasion, when Esure knew its own error had placed Mr A in a position he had not chosen to be in, and that the full payment due to mitigate that error was overdue, Esure should have looked at other options available for paying Mr A. As it eventually did in March 2023. I think, if it had done so in late January 2023, he would have received the outstanding amount from November about a month earlier than he eventually did. I bear in mind that the sum in question was about half of the total loss payment. So I accept that Mr A would have found it difficult to try and replace his car without that sum. And he no longer had the benefit of a hire car. As such I think it's fair and reasonable to require Esure to make a loss of use compensation payment to him of £300.

I also think that Esure should, fairly and reasonably, have been looking to make the further payments it did to Mr A inclusive of interest. In effect they were delayed settlement payments. Esure had initially sought to settle Mr A's claim in October 2022. But its error over the car, its further settlement payment not reaching Mr A and Esure having overlooked (until February 2022) an agreed increase to the initial settlement of £200, meant Mr A did not have full settlement until March 2023. I'm going to require Esure to make a payment to Mr A, equivalent to interest* applied on the two further payment sums of £1,886 and £200 from the date the initial settlement was paid in October 2022 until each further sum was paid.

I note Mr A's concern highlighted with Esure during his complaint that it had agreed to waive his excess payment. But then deducted this anyway, so he'd like the original waiver to be honoured. I note though that Esure's total payments do equate to the market value figure agreed for the car, without any deduction applied for the excess. So I don't think Esure reasonably owes Mr A anything in this respect.

Esure did tell Mr A, even before it deemed the car a total loss to remove his personal possessions from the car. However, Esure has agreed to consider Mr A's claim for lost items upon receipt of detail from him about those items. I think that's fair.

Esure has also offered to cancel the cover, arranging a premium refund to the date of claim. I think that's fair.

Putting things right

I require Esure to pay Mr A:

- £300 compensation for loss of use of his car.
- An amount equivalent to interest* on the sums of £200 and £1,886, applied from the initial settlement date in October 2022 until each sum was paid to Mr A in February and March 2023 respectively.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Esure to take off tax from this interest. If asked, it must give Mr A a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require esure Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 June 2023.

Fiona Robinson
Ombudsman