

The complaint

Mr A is complaining about the way esure Insurance Limited has settled a claim he made on his car insurance policy.

What happened

In October 2022 Mr A contacted esure to claim on his car insurance policy for a stolen vehicle. esure had concerns about the claim, but ultimately settled the claim by paying around £12,000 to clear the amount he owed on a finance agreement. Mr A didn't think this was fair as he said the car's market value was around £18,000.

esure said it wasn't required to pay more as it said the terms of the insurance policy only required it to clear the finance. Mr A didn't agree and referred his complaint to this Service.

Our investigator upheld this complaint because it said the terms of the insurance policy only limited settlement to the balance outstanding on the finance agreement where the car was acquired through lease or contract hire. But he said Mr A had acquired it through a hire purchase agreement, so he didn't think the term applied. So he thought the policy set out that esure was required to pay Mr A the market value, less what it paid to the finance company. He also thought esure should pay £150 in compensation.

Neither party accepted the investigator's opinion. Mr A said he'd had to pay for taxis because esure hadn't paid him any money and he wanted esure to refund this. esure didn't think it was right to pay Mr A because it said he'd be profiting from the claim. And it highlighted that Mr A hadn't paid anything towards the finance for around six months before the car was stolen.

As a result, the complaint's been passed 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.

I've decided to uphold this complaint and I'll now explain why.

esure says the terms of the finance agreement say it's only required to pay the balance on the finance agreement. But I don't agree. The term esure is relying upon says:

"If you have acquired your car through lease or contract hire, we 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".

However, critically this term says it only applies to where a consumer acquires a car through a lease or contract hire agreement. But Mr A acquired the car on a hire purchase agreement.. I'm also conscious that in a separate part of the contract esure says:

"The cover does not apply if:

- *the car is owned by you, or hired or leased to you under a hire purchase or leasing agreement.”*

This means that elsewhere in the contract, esure has distinguished between lease hire and hire purchase. Taking everything into consideration – including about the contract as a whole, I think a reasonable interpretation of the clause esure is looking to rely upon is that it doesn't apply to terms where the finance agreement contains a right to buy if all payments were made. So I don't believe the term esure is seeking to rely upon applies to hire purchase agreements. I also think this is the fair and reasonable situation too. It follows, therefore, that I don't think it was within the terms of the contract or fair for esure to limit the settlement to the amount owed on the finance agreement.

The terms of the policy set out that esure will pay anyone who has a financial interest in the car first and pay the balance to Mr A. esure acted fairly and in line with the terms of the finance agreement in paying the finance company first. But it should have then paid Mr A the difference between the market value and what it paid the finance agreement. This is what it now needs to do to put things right. It should also pay 8% simple interest on this amount from the date it settled the finance agreement until Mr A gets it back.

I note esure thinks this is unfair and believes Mr A is profiting from the claim, but I don't agree. Under a hire purchase agreement, Mr A is entitled to the equity in the car and the payments he makes towards the car increase the equity in the car. So he's only receiving what he's contractually entitled to if he makes all the payments. esure has highlighted that Mr A didn't make payments towards the finance for six months before the incident and it believes he's benefitted from not doing so. But, had he made these payments, there would have been more equity in the car and he would have been entitled to a higher payment from esure. So I don't agree he's benefitting from not making payments to the car.

Finally, I acknowledge esure has concerns about the veracity of this claim. But, by its own admission, Mr A has shown he doesn't have possession of the car, the police have treated the matter as theft and esure hasn't given me anything to support its concern that a theft hasn't occurred. So my decision still stands that esure should pay Mr A the difference between the market value and what it paid the finance agreement.

I've taken into consideration Mr A's comment that he thinks esure should pay his hire charges. But I don't agree. Mr A had a duty to mitigate his own losses. I'm conscious esure cleared his finance agreement, so Mr A could have taken out another finance to acquire another car. So I think he could have taken steps to reduce this impact. However I think the £150 in compensation the investigator recommended for the distress and inconvenience Mr A suffered is fair. I don't think esure needs to pay anything further.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require esure Insurance Limited to do the following to put things right:

1. Pay Mr A the difference between the market value and what it paid the finance agreement. It should also pay 8% simple interest on this amount from the date it settled the finance agreement until Mr A gets it back. If esure thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.
2. Pay Mr A £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 June 2023.

Guy Mitchell
Ombudsman