

The complaint

Mr W and Miss R complain that esure Insurance Limited caused damage to their car following a claim made on the key cover component of their motor insurance policy. Miss R is a named driver on Mr W's policy. They want their car repaired.

What happened

The key for Mr W's car was faulty, but working, and so Miss R made a claim on their policy. esure's agent attended and Miss R said he used a jump pack to try and reprogramme the key. But Miss R said this affected the car's computers and the key and the car were no longer working.

esure said the fault was unrelated to the actions of the technician. But, as it hadn't responded to Miss R's requests for help with its agent, it refunded £300 for the costs of a dealer's diagnostic and Miss W's £378 storage charges, and it paid £150 towards her additional travel costs. But Miss R remained unhappy that her car wasn't repaired.

Our Investigator recommended that the complaint should be upheld. She thought esure, as the policy's underwriter, was responsible for its agents' actions. In the absence of sufficient evidence from esure, she thought it was more likely than not that the technician's actions had caused damage and made the car unusable. So she thought esure should pay to have the car repaired and also pay Mr W £500 compensation for the trouble and upset caused.

esure replied that there was no evidence that the technician's actions had damaged the car. It thought this may be coincidental. esure asked for an Ombudsman's review, so the complaint has come to me for a final 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.

I note that esure accepts responsibility for the complaint as the agents were acting on its delegated authority, and the key cover was purchased through its motor insurance policy. I can see that Miss R was caused considerable frustration when esure directed her to its agents when she tried to make her complaint.

Miss R said the car and the only key were working fine before the claim, except that the key's battery needed to be replaced often after it had become damaged. And now, over seven months later, they are without a usable car. I can understand that this must be frustrating for them.

We're not engineers. We don't assess whether or how damage to a vehicle would be caused as this is a matter for the experts in these situations, the insurance companies and engineers. Our role in these complaints is to determine whether an insurance company has considered all the available evidence and whether it can justify its decision to not pay for additional repairs.

So I've looked to see how esure has justified its decision that it's not responsible for the damage to Mr W's car. Our Investigator asked esure for copies of its complaint notes so we

could see how the complaint had been assessed. She also asked for a report from the technician to explain what actions he took when attending Mr W's car, as well as any notes recorded about the job and subsequent problem. But these weren't provided.

So the available evidence is that provided by Mr W and Miss R. This consists of their testimonies of what happened, the opinion of a dealer's garage, and a response from the agent locksmith.

Miss R said the car and key worked before the technician started his work. She said she had taken her children to school that morning and then used the key to unlock the car for the technician. She said the technician worked on the car for three hours but then he said the key no longer worked.

After Miss R complained, the locksmith agent paid the cost of a new key replacement. But it said the agent couldn't have caused the further damage as the pin code provided wasn't correct and didn't allow him access to the car's computer.

Miss R arranged for the car to be taken to a main dealer's garage for a diagnostic and she provided us with its report. This said, in part, that the key wasn't communicating with the car's computers:

"We have tested the original key and there is no signal to the vehicle, we have changed the battery in the key and still no signal to the vehicle.

When the vehicle was possibly jump started (prior to the vehicle being recovered into us) it may well have put a power surge through the vehicle that would have knocked these controls out. We would not know until we know exactly what the recovery team plugged onto your vehicle. You mentioned a large orange box with wires coming out of it.. could this have been a heavy duty jump pack?

Was the vehicle running and the key working prior to the breakdown company attending the vehicle is the question that needs to be asked.

If the vehicle had come in running and simply needed another key to be programmed and was running at the time, we would have been able to simply programme the key to the vehicle."

The dealer's estimate for repairs was £2,697.57, plus a call-out charge.

esure said there isn't expert evidence to back up that the technician definitely caused the problem and that this could simply have been a coincidence, It said it would consider further evidence that showed that the technician caused the problem by using the jump pack.

But I'm satisfied that the locksmith agents' explanation that the pin code was incorrect wasn't supported by the dealer's garage. And Mr W maintained that the technician used a jump pack on the car and esure has accepted this. I accept that the garage's report states the likely scenario. But this can't be confirmed as esure hasn't provided evidence of what the technician did.

Where there is an absence of evidence or where the evidence we do have is incomplete or contradictory, we look at what we believe is most likely to have happened on the balance of probability.

The garage has provided a likely explanation for the damage that accords with Mr W's testimony. So I'm not satisfied that esure has justified its decision that the technician couldn't have caused the damage. And I think it has unfairly declined to accept responsibility for the car's repair.

The locksmith has already paid for the cost of a replacement key. I assume that this was done under the policy's terms and conditions. And esure has paid for the cost of the diagnostic, the storage and some of Miss R's out of pocket expenses as an acknowledgement of its poor customer service.

And so I think esure should now liaise with Mr W and Miss R to have their car repaired as soon as possible. Miss R said they hadn't had the car repaired themselves as they were waiting for the outcome of their complaint. I can understand their decision as the cost of the repairs is considerable. But we expect a consumer to take reasonable steps to mitigate their losses. And so I can't hold esure fully responsible for their further out of pocket expenses.

But I do think that they have been caused considerable trouble and upset for a long period. I've seen that they have had to push esure to take responsibility for their complaint. And then they have had the stress and trouble of having to press esure for a reasonable outcome. In keeping with our published guidance, I think esure should pay Mr W £500 compensation for this level of impact.

Putting things right

I require esure Insurance Limited to liaise with Mr W and Miss R to have their car repaired as soon as possible and to pay Mr W £500 compensation for the distress and inconvenience caused by its level of service in handling their claim.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require esure Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R and Mr W to accept or reject my decision before 30 May 2023.

Phillip Berechree
Ombudsman