

## The complaint

Mrs N complains about how esure Insurance Limited handled her claim on her motor insurance policy and the incorrect information she was given. She wants it to pay her the difference between her car's market value and the outstanding finance payment.

## What happened

Mrs N had a lease car insured with esure. The car was declared to be a total loss following an accident and so esure paid the lease company the outstanding balance to settle the lease. Mrs N said esure's agent told her she would be paid the difference between the car's market value and the outstanding finance. But esure said Mrs N had been misinformed and it paid her £200 compensation for this loss of expectation.

Our Investigator recommended that the complaint should be upheld in part. He thought esure was required by the policy terms and conditions to pay the lease company the outstanding balance for the lease. But he thought Mrs N's equity in the car was just the deposit she had paid. And so he thought she shouldn't benefit from being paid the difference between this lease balance and the car's market value.

However, he thought esure should pay Mrs N for the unused part of her deposit, in keeping with our approach. He thought this amounted to £658.44 and that esure should add interest to this. He also thought esure should increase its payment of compensation to £300 because of its delays in paying the lease company.

Mrs N replied that she agreed. esure replied that it wasn't required by the policy to refund a proportion of the deposit. It said it was for the lease company to pay this. It said it wasn't responsible for the delay in payment as the lease company didn't accept a cheque. 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 can understand that Mrs N felt disappointed that she didn't receive the payment she expected. She said she had replaced her car on the strength of this. Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably. Mrs N's policy booklet states on page 12,

*"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"*

Mrs N thought this term was hidden away and so not brought to her attention when she bought her policy. But I'm satisfied the policy terms explaining how esure will settle the claim aren't significant or unusual. So I'm satisfied that esure doesn't have to highlight this in the key facts or summary document.

esure's agent told Mrs N that she would receive the difference between the car's pre-loss market value and the outstanding finance. But I agree with esure that this was incorrect. This

is because paying this to Mrs N could put her in a better position financially where the policy is meant to indemnify her for her loss. And the only equity Mrs N had in the car was the unused proportion of the deposit she paid.

Our approach where the policy's terms and conditions state that the most the insurer will pay in the case of total loss is the car's market value, as here, is that we expect the insurer to pay:

- the amount required by the lease company, plus,
- an amount to cover a proportion of the deposit,
- up to a combined maximum of the market value.

esure hasn't paid Mrs N a pro-rata refund of her deposit and I can't see that this is provided by Mrs N's lease company, as esure thought it was. So I think esure should now pay this. This is calculated by deducting the first month's payment from the deposit Mrs N paid, then dividing this by the length of the lease (36 months). Mrs N used the car for 18 months, so she is entitled to a refund of the remaining 18 months of her deposit. This amounts to £658.44. As Mrs N has been without her money for some time, I think esure should reasonably add interest to the payment.

esure paid Mrs N £200 compensation for the loss of expectation caused by its agent and for the long call waits she experienced. But Mrs N has also been chased by the lease company for payment of the settlement. This was delayed when esure sent the company a cheque which it didn't accept.

esure then paid it by other means, but I think esure could have checked what payment method was required and so Mrs N would have avoided this additional trouble and upset. I agree that it should pay her a further £100 compensation for this as that's in keeping with our published guidance.

### **Putting things right**

I require esure Insurance Limited to do the following:

1. Pay Mrs N £658.44 for the unused portion of her deposit, adding interest to this amount at the rate of 8% simple per annum from the date of settlement to the date of payment†.
2. Pay Mrs N £100 further compensation (£300) in total for the distress and inconvenience caused by its handling of her claim.

†If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs N how much it's taken off. It should also give Mrs N a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **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 Mrs N to accept or reject my decision before 5 October 2023.

Phillip Berechree  
**Ombudsman**