

The complaint

Mr G and Miss K complain that esure Insurance Limited (esure) unfairly settled a claim on a joint liability basis, under their motor insurance policy.

I'll refer to Miss K in my decision for ease as she's the policyholder.

What happened

In May 2021 Miss K was involved in a collision when driving her car. She says esure's agent told her not to worry as it wasn't her fault. She says she declined the provision of a courtesy car and didn't have to pay her policy excess fee. Around ten months later she was asked by esure if she was prepared to attend court. This was because the third party was contesting liability.

Miss K says she supplied photos of the accident, and a description of how it occurred. She was then informed the claim would be settled on a 50/50 split liability basis. She disputed this over many phone calls and emails. But esure maintained its decision. Miss K says esure indicated it may reassess the claim if she submitted a personal injury claim. As this would increase the cost.

Miss K says esure has since agreed that she wasn't at fault for the collision. But it has taken 16 months of stress and anxiety to reach this point. She says solicitors were reluctant to start a personal injury claim whilst liability was in dispute. And that communication with esure has been difficult, including the provision of an incorrect contact number. Miss K wants confirmation in writing that the accident wasn't her fault. In addition, she wants compensation to reflect the impact esure's mistake and poor claim handling has had on her.

esure provided a final complaint response to Miss K in September 2022. It says it made the wrong decision when settling Miss K's claim. It acknowledged she'd spent a lot of time on the phone trying to resolve this matter and struggled to get through on many occasions. It says feedback has been provided internally in relation to this point.

In its complaint response esure says no admissions of liability were made despite the joint liability settlement. This means the outcome won't impact on Miss K's personal injury claim.

esure says when the claim is closed it will be recorded as 'non-fault'. This means Miss K's no-claims discount will be unaffected.

Miss K wasn't satisfied with esure's response and referred the matter to our service. Our investigator upheld her complaint. He says delays, caused by esure, impacted on the overall time to handle Miss K's claim. And he says more could've been done to ensure the correct liability decision.

Our investigator says esure should pay £300 compensation in total to acknowledge the distress and inconvenience it caused Miss K.

Miss K didn't think the compensation offered was sufficient and asked for an ombudsman to

consider her complaint.

It has 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.

Having done so I've decided to uphold Miss K's complaint. I won't be adding to the compensation award our investigator set out. I'm sorry to disappoint Miss K, but I will explain why I think my decision is fair.

I've read the claim records esure provided. This includes the first contact Miss K made following the collision on 6 May 2021. The records say the third-party vehicle had reversed into her car. Damage to Miss K's car was reported to the near side door and rear quarter, including trim on the wheel arch.

I can see esure emailed Miss K on the same day she reported the claim. It advised it had instructed a repair garage. Also, that she would hear from the company that was to provide a hire car.

On 7 May 2021 esure emailed Miss K to explain it will be contacting the third-party's insurer. It says the insurer has 90 days to investigate the claim. esure says it will await repair information from the garage. The claim costs, along with its allegations, will then be sent to the third-party's insurer holding it at fault.

I can see esure contacted the third-party insurer in June 2021. It confirmed that it held it responsible for the accident. A note shows Mr G called esure in early September. He explained the circumstance of the accident. The note says Mr G confirmed "*they would attend if required*". My understanding is this relates to possible court action, and his agreement to attend.

Esure emailed Mr G on 6 September 2021 and asked for photos taken at the scene of the accident. Notes in October and November refer to the photos not having been received. Mr G called on 10 December asking for an update. The note says he had sent the photos twice. esure's agent said this information hadn't been received. A link was then provided for the photos to be attached to.

A record dated 18 January 2022 says the photos had been received. The note says, "*the images show us the damage to the vehicles but this isn't evidence*". Around a week later Mr G calls esure. Its agent says that based on the evidence it thinks it would be a matter of one side's word against the other. Mr G disagreed given the location of the accident damage. esure's agent says the claim will be settled on a 50/50 without prejudice basis. The note then refers to a discussion around Miss K making an injury claim. esure's agent asks for details so it can see if this would influence the outcome.

At the beginning of February 2022, the third-party insurer asked for a copy of Miss K's statement and her diagram of the accident. esure contacted Miss K on 15 March to ask for this information.

A record dated 11 April says, "*Greater duty of care lies with the reversing party. Would look to hold the TP fully responsible*". It doesn't appear that this made a difference here. esure subsequently wrote to Miss K on 13 May confirming the split liability outcome. She called back on 23 May. She says letter was only received on 20 May and she was told to respond

by 23 May. Miss K says she had sent emails without response and had no success getting in contact with the claim team.

In mid-June 2022 Miss K contacted esure saying she doesn't accept the liability decision. The note says she'd been calling for four weeks and hadn't been able to get through. A complaint was logged at this time.

The next record is dated 12 September 2022. Miss K contacted esure by phone. She asked for an update having heard nothing since her complaint was logged. Two days later she called again. She says she was expecting a call from a manager. An apology was provided by esure's agent. I can see esure called Miss K on 21 September. The call note from this discussion says:

"there may be more to the PH's concerns in that the damage was on the side of our car so it would make the PH's claim more viable". esure's agent agreed to review the claim file.

esure's agent called Mr G on 22 September 2022. He agreed that this should have been a non-fault claim due to where the impact was on Miss K's car from the third-party's car. The note says there was some pre-existing damage on this part of Miss K's car, which complicated matters. However, there was no reason to believe that esure couldn't have won this case. esure's agent confirmed the claim will be closed as non-fault with Miss K retaining her no-claims bonus. The complaint response letter that followed, says £150 compensation would be paid.

It's not my role to determine who is at fault for an accident or how a claim should be settled. But I can consider whether esure treated Miss K fairly. We expect esure to handle all claims effectively and fairly. I don't think it did so in Miss K's case.

esure initially settled Miss K's claim on a 50/50 split liability basis. However, in September 2022 after the complaint was logged, it determined there was no reason that it couldn't have won this case in court. When the claim was first made Miss K explained how the collision occurred and where the damage was located. There was a delay in photos of the damage being provided, due to a technical issue. But I don't think esure had anything fundamentally new to consider when deciding the claim should've been closed as non-fault.

I think esure should reasonably have always pursued a non-fault outcome for Miss K here. I've not seen anything that persuades me there was a good reason for it not to do this. This has resulted in a protracted claim. Miss K and Mr G have clearly had to make many calls and send numerous emails to esure. This shouldn't have been necessary if it had handled their claim fairly and continued to pursue the third party as the at-fault driver.

I think it's fair that esure has now agreed the claim should be recorded as non-fault against Miss K. It should confirm this to her in writing if it hasn't done so already.

I've thought about the impact all of this had on Miss K and Mr G. It's clearly been a very frustrating claim experience for them both. It's taken a great deal of time and effort on their part to reach this point. Because of this I think it's reasonable that esure pays compensation for the distress, frustration, and inconvenience it caused. In these circumstances I think a total compensation payment for £300 is fair. If esure has already paid £150, it's only required to pay the remaining £150.

My final decision

My final decision is that I uphold this complaint. esure Insurance Limited should:

- pay Miss K and Mr G £300 compensation (in total) for the frustration, distress, and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Miss K to accept or reject my decision before 16 October 2023.

Mike Waldron
Ombudsman