

## **The complaint**

Mr H has complained about esure Insurance Limited's decision to accept a third party claim under his car insurance policy and record him as being at fault for the incident.

## **What happened**

In September 2021 Mr H said he was involved in a collision with another vehicle. He said there was no damage to either vehicle. Later in September 2021 the third party made a claim for damage against Mr H's insurance policy with esure.

Mr H provided photos of his car showing no damage in the area of impact. esure initially disputed liability based on Mr H's photos and said the damage being claimed for by the third party was inconsistent.

However, the third party later provided photos they said they had taken at the scene of Mr H's car showing damage to the left rear. This was inconsistent with the photos provided by Mr H which showed no damage to this area.

esure's engineer recommended an independent assessor (IA) inspect Mr H's car. This took place and the IA reported no evidence of previous repair to Mr H's car in the area of damage showing on the third party's photos of Mr H's car. The IA recommended esure arrange for an inspection of the third party's vehicle for a consistency check of the damage being claimed for.

esure's engineer said that on further review of the photos provided by the third party and Mr H, he thought Mr H's photos showed a colour mismatch for the rear panel in question and so thought it likely Mr H had arranged for this part of his car to be repaired in between the date of the incident and the date he provided photos of his car.

On that basis, esure relied on the engineer's opinion - and the photos provided by the third party - and decided to accept liability for the damage the third party claimed for.

Mr H complained to esure about its decision. He said his photos clearly show no damage to his car. But esure didn't uphold his complaint. So he asked us to look at his complaint.

Our Investigator recommended the complaint should be upheld. She didn't find that esure had reached its decision reasonably. She thought the IA's opinion - having physically inspected Mr H's car and focused on the area of damage in dispute - that there was no evidence of recent repair - should carry more weight over the engineer's view based on the photographs. She found that the photos provided by the third party appeared to have been provided from an editable screen - and esure had provided no evidence it had followed the IA's recommendation to arrange an inspection of the third party car's damage for consistency.

The Investigator recommended esure change the recording of the claim to allow Mr H's No Claims Bonus (NCB) for this claim and pay him £150 compensation for the distress and inconvenience caused.

esure didn't agree. It said its engineer carefully studied all of the available evidence and reached his decision fairly and esure had acted in line with the policy. esure said if the case

had gone to court, it couldn't defend the photos provided by the third party showing damage to Mr H's car which were consistent with damage to the third party vehicle.

Mr H accepted the Investigator's view.

As esure didn't agree, the case 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.

We don't decide liability as this is a role for the courts. But we can look at whether an insurer properly investigated the claim, reached its decision about liability reasonably and in line with the policy.

esure has a very common term which I've seen in most - if not all motor insurance policies. esure says:

*"We have full discretion in the settlement of your claim or any legal proceedings which may arise and we may take over, defend or settle the claim in your name for our own benefit."*

This means that esure may make a decision a policyholder disagrees with, but esure can do this. We don't disagree with this term in principle, provided esure can show it reached its decision in a reasonable way and treated Mr H fairly.

esure's engineer examined the photos - provided by both the third party and Mr H - of Mr H's car. Based on the photos provided by Mr H, the engineer was initially satisfied that the damage being claimed for by the third party was inconsistent with the damage (not) showing to Mr H's car.

When the third party provided photos of Mr H's car showing damage in the area - and inconsistent with Mr H's photos - the engineer recommended an independent assessor inspect Mr H's car.

The IA reported four areas of impact damage to Mr H's car. None of these are to the area showing in the third party's photos of Mr H's car. Key comments from the IA report read;

*"The purpose of my inspection was to examine the vehicle for alleged damage consistent with the vehicle having been involved in a road traffic accident.*

*I confirm prior to my inspection I have been advised by the insured that the area in question related to the rear of the vehicle.*

*Special attention was therefore paid to the rear bumper and adjacent panels."*

So from this, I'm satisfied that the IA was clear about the focus of his inspection, being in the area of damage in dispute. Having closely inspected this area of Mr H's car, the IA reported;

*"This model of vehicle is fitted with impact style bumpers which have the tendency to deform and retract on impact.*

*Bumper alignment was found to be to manufacturer's specification, with no evidence of kinetic force having been transferred through to the inner structure of the vehicle.*

*I found no evidence of recent repairs having been undertaken to the vehicle....*

*I would suggest an inspection of the third party vehicle may assist with confirming damage consistency."*

On receipt of the IA's report, esure's engineer said that 'unfortunately' the IA "says no damage and no signs of previous repairs". The engineer went on to say;

*"I have attached the image the PH (policyholder) sent in to show no damage to the NSR (near side rear) bumper corner, but I have now highlighted the fact the bumper corner appears to be a slightly different colour to the panels adjoining it, it may be that the PH has not had the bumper corner repaired and painted which is the reason (IA's name inserted here) have said no signs of recent repairs, but exchanged the bumper corner that is seen to be damaged in the TPs (third party's) image with a second hand pre painted bumper corner, which is why the colour now appears to be a slightly different shade than the image taken at the scene which show no difference in shade.*

*Based on the review, I would advise the PHV (policyholder's vehicle) has made contact with the TPV (third party vehicle) OSF (off side front) wing as per the TP (third party) VOE's (version of events)."*

Before the IA's report, the engineer made no comment on a colour mismatch, despite having previously reviewed all of the available photos. The IA recommended a physical inspection of the third party's car to check for consistency in the damage being claimed for in light of his physical inspection of Mr H's car- but there is no evidence esure arranged this.

Given the IA physically inspected Mr H's car, I find it more reasonable to rely on his assessment as to whether there was any sign of previous repair, over the engineer's assessment based on photos, which can be more difficult to decide on colour mismatch depending on the angle, time of day and shadowing.

esure asked the Investigator to comment on the likelihood of success should this claim have gone to court - in light of the third party's photos of damage to Mr H's car. Our Investigator asked esure if it could provide evidence it had sought a legal opinion - which esure confirmed it hadn't.

I appreciate that esure says it would be difficult to defend liability based on the photos provided by the third party showing damage to Mr H's car. But I don't think esure properly investigated the claim. I think it should have considered a physical inspection of the third party's vehicle in light of the IA's report before reaching a decision. After all, the engineer recommended an IA report after reviewing the photos provided by both parties. And I think the engineer's opinion that Mr H may have exchanged the bumper corner with a second hand pre painted bumper corner - an opinion given after the IA's report - carries less weight than the IA's finding of no evidence of recent repair from a physical inspection.

So I'm upholding Mr H's complaint. I think esure hasn't reached its decision on this claim in a reasonable way.

## **Putting things right**

I think a fair outcome is for esure to update the recording of the incident (there is no dispute an incident took place) to allow Mr H's NCB. I think esure should pay Mr H £150 compensation for the distress and inconvenience caused by its decision.

## **My final decision**

My final decision is that I uphold this complaint. I require esure Insurance Limited to do the following:

- allow Mr H's NCB under this claim.
- Pay Mr H £150 compensation for the distress and inconvenience caused.

esure Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 December 2023.

Geraldine Newbold  
**Ombudsman**