

The complaint

Mrs N is unhappy with how esure Insurance Limited (Esure) settled a third-party claim under her car insurance policy.

What happened

Mrs N has a car insurance policy with Esure.

In January 2022, Mrs N's neighbour accused her of damaging their vehicle whilst she was parking outside her house.

A claim was made to Esure by the neighbour who also provided CCTV footage of the alleged incident. After consideration of the information provided, Esure accepted the claim made by the third-party, settled it as a fault claim and paid for repairs to the third-party vehicle.

Mrs N is unhappy Esure settled the claim as fault and paid for the repairs claimed for by the neighbour, so she approached this service.

One of our investigators considered the complaint but he didn't uphold it. He said it wasn't his role to decide who was responsible for the claim, but he said Esure had considered matters several times and reached a reasonable conclusion to settle the third-party claim.

However, he also explained that Esure had offered £100 for the poor communication during the claim, and he thought that was fair.

Mrs N didn't agree and asked for a final decision from an ombudsman.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings, before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I've reached a different outcome to our investigator, I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

As explained to Mrs N by our investigator, the role of this service isn't to decide who is responsible or liable for a claim. That is the role of the courts. Instead, we consider whether an insurer has conducted a reasonable investigation and reached a reasonable conclusion based on the information they had.

Mrs N's policy terms explain:

"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."

So, the policy terms allow Esure to decide whether to settle a claim or not, and an insurer having discretion to make the decision is common across motor insurance policies.

Esure considered the CCTV footage provided by the third party (who didn't give permission for it to be shared). This showed Mrs N reversing and hitting the parked vehicle, which was said to be left moving afterwards, showing an impact occurred. Esure said that if the claim was taken to court, based on their experience of claims such as this, the court would most likely say Mrs N was responsible for the incident. So, they accepted Mrs N was liable for the incident that occurred.

Based on this, I don't think Esure reached an unreasonable conclusion that as Mrs N hit the third-party vehicle, they would be responsible as her insurer for damage which was caused by this.

However, whilst I don't think Esure reached an unreasonable conclusion on holding Mrs N responsible for the incident itself, I don't think Esure reasonably settled all the damage claimed for by the neighbour. I'll explain why.

I've not seen the CCTV footage of the incident itself as Esure hasn't been able to provide another copy as the link from the third party has expired. But what I have seen is both video and photographic evidence provided by Mrs N of both vehicles immediately after the incident occurred.

I'm not entirely sure whether Esure has actually reviewed the video they were sent by Mrs N of both her car and the third-party vehicle, as it is only showing it's been played back five times. Three of these were me when considering things, and I assume at least one was our investigator.

Both the video and photos don't show any damage to Mrs N's car consistent with the alleged incident. The damage being claimed for by the third party is to the grill, and the front bumper of their car.

The grill is set some way back from the front of the car, behind the number plate, front camera, manufacturer badge and surround - I estimate around 10cm's inset from the most forward point of the vehicle. So, to be able to impact that area and cause damage to the grill, I think there would be visible signs both on Mrs N's car, and to the number plate, bumper, camera and badge on the third-party vehicle. But instead, there isn't any other damage, besides the set-back grill in isolation.

I think it should have been evident to Esure that, on balance, to cause this damage to the grill but no other damage in the surrounding area would have been incredibly difficult given the incident that occurred.

The bumper on the third-party vehicle also has a deep gouge that has been claimed for. The bumper is angled from the front and most forward point of the third-party vehicle. Mrs N's car has a smooth rear bumper. I also fail to see how that gouge

damage could be caused in the incident either, given the angles, and no evidence of corresponding damage to Mrs N's car either.

So, whilst Esure acted reasonably in accepting Mrs N's car hit the third-party, and therefore they'd be responsible for damage actually caused during this impact, I don't think they acted fairly by simply accepting these repairs being claimed for without question, as I fail to see how they correspond with the incident that occurred.

It does seem from the internal notes I have seen that Esure held a similar view in the early stages of the claim too, before then simply accepting the repair costs on the basis there was an impact, without actually considering the likelihood of the claimed for damage occurring.

However, Esure has accepted the claim and associated repairs, so it is too late now for this to be challenged. So, I need to consider what else Esure can do instead to put things right.

Mrs N's claim has been recorded as fault, with her no claims discount being reduced. Whilst I accept Mrs N would be responsible for hitting the third party, on balance, I don't think the damage being claimed for corresponds with this. And if there was no specific damage as a result of the impact itself, then there wouldn't have been anything for Esure to pay to settle the claim. This would mean there was no outlay, and the claim wouldn't have been recorded as fault if there was no damage, or associated repair costs.

Therefore, unless anything changes as a result of the responses to my provisional decision, I'm minded to direct Esure to amend its internal and external records to reflect the claim as non-fault and reinstate Mrs N's no claims discount.

I can't ask Esure to amend the amount of the claim costs recorded externally as this needs to be accurate for the costs Esure actually incurred – whether they incurred it incorrectly or not. However, what this does mean is that Mrs N will have around £2,700 of claims costs recorded against her name and driving history, even after it is amended to non-fault. I'm minded to conclude Mrs N should also be paid a further £300 compensation by Esure for the distress and inconvenience caused by accepting and settling the claim without question, and the impact of this on her driving records.

This would be in addition to the £100 compensation Esure has offered for poor communication during the claim, which I don't think is unreasonable for the communication issues alone."

So, I was minded to uphold the complaint and to direct Esure to pay a total of £400 compensation, amend the claim internally and externally to non-fault and reinstate Mrs N's no claims bonus.

The responses to my provisional decision

Mrs N responded and agreed with the provisional decision.

Esure also responded and confirmed they agreed with the provisional 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.

And I've thought carefully about the provisional conclusions I reached. As both parties accepted my provisional decision, and neither party has provided anything which would lead me to depart from this, my final decision remains the same as my provisional decision, and for the same reasons.

My final decision

It's my final decision that I uphold this complaint and direct esure Insurance Limited to:

- Pay Mrs N a total of £400 compensation
- Amend the claim internally and externally to non-fault
- Reinstate Mrs N's no claims bonus

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 19 October 2023.

Callum Milne
Ombudsman