

The complaint

Mr M complains that esure Insurance Limited held him liable for a claim made on his motor insurance policy following an incident. He's unhappy with its communication throughout the claim, that his premiums have increased, and that he couldn't use his passenger as a witness. He wants it to reimburse his policy excess and reconsider its liability decision.

What happened

Mr M was involved in an incident in a car park where he said another driver collided with his car. The other driver denied involvement and provided an image of damage to their car which they said was pre-existing.

esure wouldn't accept Mr M's passenger's witness testimony. esure appointed an independent arbitrator who said that because of the image of pre-existing damage the other driver couldn't be said to be at fault. So esure recorded a fault claim against Mr M, he had to pay his policy excess, and his premiums increased at renewal. esure paid Mr M £100 compensation for its poor communication. But Mr M remained unhappy.

our investigator's view

Our Investigator recommended that the complaint should be upheld. He thought esure had reasonably declined to accept the passenger's testimony as they couldn't be shown to be independent. He thought the evidence that esure had to consider was Mr M's version of events and the images of damage to the two cars. He thought the images supported Mr M's version of events, despite the arbitrator's opinion. So he thought esure hadn't acted reasonably in settling the claim as fault.

He thought the liability decision meant that Mr M couldn't recover his excess and his No Claims Bonus (NCB) had been affected leading to an increase in premiums. So he thought esure should change the claim to non-fault, provide Mr M with a letter of indemnity that he could show his new insurer, refund his policy excess, reinstate Mr M's NCB, and pay him £100 further compensation.

esure replied that it was entitled to decide a claim outcome as it saw fit, that it had relied on expert evidence that it wouldn't be able to defend the claim in court. It thought the Investigator's proposed redress was unrealistic. esure asked for an Ombudsman's review, so the complaint has come to me for a final decision.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to esure on 7 September 2023. I summarise my findings:

Mr M said the other driver collided with his parked car, causing damage to it. He said his passenger was a witness whilst Mr M had been placing items in the boot at the time of the impact. Mr M took images of the damage to the cars. But the other driver denied involvement and said the damage to his car was pre-existing.

The Investigator had already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it

act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr M the same as someone else in his position.

esure is entitled under the terms and conditions of its policy with Mr M to take over, defend, or settle a claim as it sees fit. Mr M has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I didn't find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence available before making its decision on liability.

The evidence that esure had to consider was Mr M's version of events and images provided by both parties. I thought esure reasonably discounted Mr M's passenger's testimony as this wouldn't be viewed as independent by a court.

Mr M said he'd reviewed the other driver's image of historic damage at the scene, and he thought new damage had been caused that was consistent with damage to his car. He said the historic photograph showed damage that was different in shape and there was an additional scratch that lined up with his door handle. Our Investigator listed the apparent new damage on the left hand front of the other driver's car that didn't show on the historic photograph:

- A deep scratch to the side of the headlight.
- A scratch from below the headlight.
- The washer cap and the panel sitting out of place.

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.

Where there has been a dispute about damage caused, I'd often seen that an insurer will ask for a consistency report to establish whether or not the claimed damage was likely to have been caused in the alleged incident. But esure didn't do this in Mr M's case. And I couldn't see that it asked for any engineering evidence to defend Mr M.

An engineer's consistency report may or may not have supported Mr M's account. And it wasn't for me to decide who caused the damage to Mr M's car. So I couldn't say whether or not such a report would have made a difference.

esure pressed the other insurer to accept liability, but it denied involvement. It said there were no independent witnesses or other evidence to show that the other driver had collided with Mr M's car. And it questioned the validity of some of the photographs as they didn't include the car's registration number. So esure appointed an independent arbitrator to make a legally binding decision on liability. And he held Mr M 100% at fault as he thought there was no evidence to show that the other driver had caused the damage to his car.

I saw this report and noted that it didn't include the professional details of the arbitrator. But esure said it was a solicitor's decision. And esure relied on this to decide that a court wouldn't find in Mr M's favour and so it accepted liability on his behalf.

I thought it was for esure to ensure that the arbitrator had all the evidence required to reach a valid decision. esure told us that the arbitrator had access to all the photographs of the damage to the cars. And I could see from its evidence that these were provided.

The arbitrator's decision referred just to the other driver's one photograph of damage to his car taken three years earlier to say that there was no evidence to show that the other driver had damaged Mr M's car. His report didn't provide any commentary on the further damage,

as noted by the Investigator, or Mr M's allegations. This was unfortunate. But as I could see that the photographs were provided and the decision was legally binding, then I thought it was fair and reasonable for esure to rely on it.

So I was satisfied that the arbitrator was provided with the correct information to consider. And so I was currently satisfied it was reasonable for esure to rely on this report to hold Mr M at fault, as it was entitled to do by the policy's terms and conditions. It followed that I currently didn't require esure to reconsider its decision or to refund Mr M's policy excess.

esure paid Mr M £100 compensation for its poor communication during the claim. I could see that esure didn't provide Mr M with promised updates, and then it didn't tell him about its decision on liability until six months after it had received the arbitrator's report. Mr M contacted esure for updates during this time, but the delay and lack of communication didn't seem to have unduly troubled him.

Our Investigator thought esure should increase its compensation to £200 (a further £100) for this lack of communication and for not reasonably managing Mr M's expectations. I thought that was in keeping with our published guidance for where there has been inconvenience lasting a number of months. So I was satisfied that was fair and reasonable.

Subject to any further representations from Mr M and esure, my provisional decision was that I intended to uphold this complaint in part. I intended to require esure Insurance Limited to pay Mr M £100 further (£200 in total) compensation for the distress and inconvenience caused by its handling of his claim.

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.

Mr M didn't reply to my provisional decision. esure replied that it accepted it. So, as I have no further representations to consider, I can see no reason to change my provisional decision.

Putting things right

I require esure Insurance Limited to pay Mr M £100 further (£200 in total) compensation for the distress and inconvenience caused by its handling of his claim.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. 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 Mr M to accept or reject my decision before 30 October 2023.

Phillip Berechree
Ombudsman