

The complaint

Mr H complains about delays in esure Insurance Limited's handling of his claim, and the settlement payment it provided, following the theft of his car, under his motor insurance policy.

What happened

Mr H's car was stolen in July 2022. It was recovered, but due to the damage that had been caused, it was considered a total loss. Mr H says esure promised he would receive a settlement payment within ten days. This didn't happen and he says there was no communication.

Mr H says esure should pay the market value of his car. But it told him his policy only covered the cost of the outstanding finance. Mr H didn't think this was fair. He says the value of the car was far higher than the finance settlement. He complained to esure about this.

In its final complaint response in October 2022, esure says that where a vehicle is acquired through lease or contract hire, it pays the lease or contract hire company the market value or the amount needed to settle the agreement – whichever is less. This is what it did here. It offered Mr H £150 compensation for the time taken to progress his claim and for the communication issues. But maintained its settlement payment was paid in line with its policy terms.

Mr H thought this was unfair and referred the matter to our service. Our investigator upheld his complaint. He says Mr H had a Personal Contract Purchase (PCP) arrangement. He says this means he will lose out financially if esure only settles the outstanding finance where the car is worth more than this. In these circumstances he says esure should pay the market value. This means Mr H will receive any surplus once the finance is settled.

Our investigator thought esure should pay Mr H £200 compensation to acknowledge the additional time he spent contacting esure due to its error with his settlement payment. He says it should also reimburse the interest Mr H paid on his PCP payments due to its delayed settlement. Finally, it should pay 8% simple interest on any surplus he received after the finance was settled.

Mr H didn't think he'd been fairly compensated for the additional PCP payments he'd made. Or for the time he'd spent dealing with this matter due to delays and errors on esure's part.

As an agreement wasn't reached the complaint has been passed to me to decide.

I issued a provisional decision in September 2023 explaining that I was intending to uphold Mr H's complaint. Here's what I said:

provisional findings

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

I've read Mr H's policy terms and conditions in detail. The terms say:

"Section 3 - What is covered

All loss or damage to your car caused by fire, lightning, explosion, theft or attempted theft. We will:

...pay to settle your claim

We won't pay more than the market value of your car at the time of loss, less the total excess payable."

The conditions applicable to section three of the policy terms say:

"Hire Purchase, leasing and other agreements

We will make payment under your policy to the legal owner if we know the car or any part of it is owned by someone else and pay you the balance.

If your car is a total loss, we'll make a payment to anyone who has a financial interest in your car and pay you the balance.

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."

Mr H's loss, due to theft, is covered by his policy. This isn't in dispute. I've thought about esure's argument that its policy terms limit any settlement payment to the finance that is owed.

I don't think this approach is fair. Mr H has a PCP arrangement. This differs to the lease or contract hire finance arrangements described in his policy terms. What the PCP arrangement means is that he pays an amount each month to his finance provider. At the end of the agreement period, he can choose to pay a 'balloon' payment and keep the car. Alternatively, he can decide not to pay the balloon payment and return the car. The balloon payment is calculated at the start of the agreement and is guaranteed. However, it's possible for the market value of the vehicle to be higher at the end of the PCP agreement than initially estimated. This essentially means Mr H would have equity in the car. He could use this as a deposit against a new vehicle.

In these circumstances, where the vehicle is financed under a PCP arrangement, Mr H would suffer a loss under esure's approach. This is because the market value of his vehicle was higher than the remaining finance. I agree with our investigator that esure should've settled Mr H's claim by paying the market value of the vehicle. Any surplus after the finance was settled should've been paid to Mr H. I also agree that 8% simple interest should've been added to any surplus amount paid to Mr H, for the delay in providing this payment.

esure has since confirmed that it settled the finance and paid Mr H the surplus. It did so after our investigator issued his findings. I've looked to see if the approach used to obtain the market value and calculate the surplus owed was fair.

I can see that our investigator obtained market valuations using the industry trade guides. We use these guides to establish whether an insurer has treated its customer fairly. We find these guides to be persuasive because their valuations are based on nationwide research

and likely sales figures. The guides also consider regional variations. We also take all other available evidence into account, for example, engineer's reports.

I disregarded one of the valuations we obtained as it only provides values from the last three months. The loss date was in July 2022 so this wouldn't be accurate. The remaining guides gave an average valuation of £46,847.75 for Mr H's car. esure calculated the market value at £47,110, which it later increased to £49,071. The settlement payment esure calculated is higher than the market value we found. So, based on the trade guide valuations, I don't think it treated Mr H unfairly when settling his claim.

I note that in April 2023, esure emailed our service to say it increased its valuation of Mr H's car up to the finance settlement figure. I wasn't clear what this meant. The market value of Mr H's car was indicated to be higher than the finance owed. So, I asked esure to clarify the amount it paid to settle the finance, and the surplus it paid to Mr H.

esure responded to say it had paid £36,392.05 to Mr H's finance provider. On the same date it paid him £10,547.27 representing the surplus amount. It paid him a further £1,682.52 ten days later to reflect the higher market value it had calculated. I've seen screenshots from esure's claim system that show these amounts were paid. I think this shows it treated Mr H fairly. However, esure should also demonstrate that it paid 8% interest on the surplus amount. If it didn't it should ensure this payment is provided to Mr H.

I've also thought about Mr H's comments that he had to continue paying PCP instalments until his claim was settled. Our investigator said esure should pay the interest Mr H paid on these additional instalments. But I don't think this goes far enough.

In its submissions to our service esure says it hopes to settle a vehicle valuation within one week of a claim being logged. In Mr H's case his claim was logged on 26 July 2022. esure says this should've been settled by 2 August 2022. From the records provided it paid Mr H's finance company in March 2023. This meant he paid a number of PCP payments solely due to esure's delays.

I can't see that Mr H benefitted from making these payments. His car was a total loss, so it couldn't be used. Yet he paid a number of additional payments at a significant cost to him. This shouldn't have happened if esure had settled the claim effectively. To put this right esure should refund the PCP instalments Mr H made after 2 August 2022. It should add 8% simple interest from the date payments were made until this refund is provided. Mr H can provide esure with proof of the payments he made to allow it to validate the refund owed.

I've thought about the impact all of this had on Mr H. esure didn't initially settle the claim fairly. This had a significant impact on Mr H. He had to remain in regular contact with esure over an extended period. This took a lot of effort on his part. He was worried that he would be paid far less than the car was worth. He also continued paying significant monthly payments for a car he wasn't able to use.

esure should acknowledge its failings and the impact this had on Mr H by paying him £400 compensation.

Finally, I acknowledge Mr H's comments that he entered into another finance arrangement. He had little deposit to put down and a worse credit rating because of esure's unfair handling of his claim. He says this has meant paying more for his current car finance. I've thought carefully about this point. But esure isn't responsible for Mr H's decision to enter into a new finance arrangement.

I think it's fair that Mr H is compensated for the worry and inconvenience he was caused by

esure when settling his claim. But I'm not persuaded that he's shown its responsible for him agreeing to a finance agreement on worse terms than he did with his previous car. So, I won't ask it to do anymore in relation to this point.

I said I was intending to uphold Mr H's complaint and that esure should:

- pay Mr H 8% simple interest on the part of the settlement he received, or demonstrate it's already done this;
- reimburse Mr H with the PCP instalments he made from 2 August 2022 until the finance agreement was settled, plus 8% simple interest on these amounts*; and
- pay Mr H £400 for the worry and inconvenience it caused him.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mr H responded to say he accepted my provisional findings.

esure didn't respond with any further comments or information within the timeframe specified.

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.

As neither party has made any further submissions or provided further evidence for me to consider, I see no reason to change my provisional findings.

So, my final decision is the same as my provisional decision and for the same reasons.

My final decision

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

- pay Mr H 8% simple interest on the part of the settlement he received, or demonstrate it's already done this;
- reimburse Mr H with the PCP instalments he made from 2 August 2022 until the finance agreement was settled, plus 8% simple interest on these amounts*; and
- pay Mr H £400 for the worry and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 December 2023.

Mike Waldron
Ombudsman