

The complaint

Mr and Mrs P complain esure Insurance Limited (esure) unfairly settled a third-party claim against Mrs P's motor insurance policy with her permission.

References to Mrs P or Mr P, will include the other.

What happened

A third-party made a claim on Mrs P's motor insurance policy after their car was hit by a hit and run driver. The third-party alleged it to be Mr and Mrs P's car.

The third-party provided CCTV of a car similar to Mrs P's hitting their parked car and then driving away.

Mr and Mrs P said it was not their car and they had been elsewhere at the time of the incident.

Mrs P's car was inspected by an independent engineer and light damage was recorded around the car.

esure said as there was CCTV evidence, engineering evidence, as Mr and Mrs P were local to the area at the time of the incident, and as the third-party had all their details it could not dispute liability. It settled the claim made by the third-party.

Mr and Mrs P maintained it was not their car and they were elsewhere at the time of the incident. They provided evidence of them leaving their home in a different car prior to the time of the incident and the same evidence shows their car, that was alleged to have been in the hit and run incident, parked up outside their address at the time it happened.

As Mrs P and Mr P were not happy with esure, they brought the complaint to our service.

Our investigator did not uphold the complaint. They looked into the case and said the CCTV provided footage of a car similar to Mr and Mrs P's and the engineer report shows consistent damage and although there was evidence to suggest they were not involved in the incident, esure had the right to settle the claim in the way it had, given the allegation and costs it incurred.

As Mr P and Mrs P are unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

What I provisionally said

It's important that I make it clear that it's not my role to decide who's at fault for an accident, as ultimately that's a matter for the courts. Like all motor policies, Mrs P's policy allows esure to settle claims as it sees fit. That means it doesn't require Mrs P's consent to decide how to settle a claim and it may make a decision that Mrs P doesn't agree with. However I'll look to see that it's done so reasonably.

I considered the evidence provided.

- *CCTV footage from the third-party*

This shows on 17th September 2021 at 10.49am a car that looks similar to Mrs P's crashing into the parked third-party car. The driver gets out of the car, looks at both cars, and then gets back in the car and drives away. There is no evidence in this footage that shows the registration number of the car that crashed into the third-party car.

- *Engineers report on Mrs P's car*

This report was completed without the engineer having any knowledge of the reported incident. The report lists impact damage all around the car and the images provided show scratches, scrapes and light damage around the car which appear to be general wear and tear. The engineers report found no evidence of recent repairs having been undertaken to the car and suggests an inspection of the third-party vehicle to confirm damage consistency. I saw no evidence of an inspection for consistency of the third-party vehicle.

- *Doorbell camera footage*

This shows Mr and Mrs P leaving their home address in a different car at 10.04am on the day of the incident. It shows Mr P returning to his home at 10.21am and a visitor arriving at 11.06am. A neighbour's CCTV footage shows Mrs P's car parked outside their home throughout this time. It does not show the registration number of their parked car.

- *Police incident report – no further action*

This says as there is insufficient evidence to provide a realistic prospect of conviction it has been decided to take no further action in respect of this matter

Mr and Mrs P said on Monday 20 September 2021 a man and woman were looking at their car parked outside their house and when Mr P approached them they accused him of the hit and run incident. Mr and Mrs P showed them their doorbell footage of them leaving their house prior to the incident. The man and woman said they were going to report the incident to the police as they had CCTV footage of the hit and run. The woman said to Mrs P that it did not look like her driving the car.

When esure were asked why it had discounted the doorbell camera footage and accepted the CCTV evidence it said it could see my point, but it had not based its decision solely on that. It said the engineers report showed damage consistent with the accident. And the CCTV footage showed the customer getting out to inspect the damage. It said it had no evidence to defend this claim and the evidence supported the third-party.

I asked esure how the third-party linked the incident to Mr and Mrs P without the evidence of the number plate. It said despite chasing for this information with the third-party insurers it had no success.

There is no evidence on the CCTV provided by the third-party of the number plate of the car causing the hit and run incident. And as there will be a number of these cars on the road, I am not persuaded there is conclusive evidence it was Mr and Mrs P's car that was involved in the incident.

I don't accept that there was no evidence to defend the claim. There is evidence from the doorbell and CCTV footage provided by Mr and Mrs P that conflicts the CCTV footage provided by the third-party.

Therefore I do not think esure was fair to settle the claim for the reason that there was no evidence available to be used as a defence and therefore claim was not challenged.

Therefore, I intend to uphold Mr and Mrs P's complaint and intend to require esure Insurance Limited to remove any record of this claim on all internal and external records, including no claims records. It should also refund any financial losses with Mrs P's motor insurance premiums to date. esure should also pay £300 compensation for the stress and inconvenience caused.

Responses to my provisional decision

Mr and Mrs P did not respond.

esure responded and said;

- It will adhere to the findings of my review into this case and will issue payment to the customer for £300 compensation and change the status of the claim to non-fault and allow the no claims bonus. It said it cannot wipe this from the claims history as its system will not allow it to do this as the fact remains that a claim has been paid.
- It will organise with its pricing department for any possible refund to Mrs P and this will take 8 weeks to process.

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.

In response to esure's comments

- It is unfair that any record of this claim at all is recorded against Mr and Mrs P. It should be recorded accurately to ensure there is no impact on them. esure must remove any record of this claim on all external records, including no claims records. It must remove this claim from its internal records as far as it is able and provide Mr and Mrs P with a full and detailed letter of explanation so that they can provide this to any other insurer to show this claim shouldn't affect them in any way.

Based on the evidence I've reviewed I maintain my provisional decision and I uphold Mr P and Mrs P's complaint.

My final decision

For the reasons I have given I uphold this complaint. I require esure Insurance Limited to:

- Remove any record of this claim on all external records, including no claims records. It must also remove this claim from its internal records as far as it is able and provide Mr and Mrs P with a full and detailed letter of explanation so that they can provide this to any other insurer to show this claim shouldn't affect them in any way.
- Refund any financial losses with motor insurance premiums to date.
- Pay £300 compensation for the stress and inconvenience caused.

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

Sally-Ann Harding

Ombudsman