

## **The complaint**

Mr K complains esure Insurance Limited (Esure) handled his motor insurance claim unfairly.

## **What happened**

In January 2023 Mr K was involved in a collision with another car whilst driving. He claimed against his Esure motor insurance policy. He was unhappy with its decision to consider his car to be a total loss, the market valued it based its settlement on, the deduction charged for him retaining its salvage and the claim being settled with the third-party on split liability basis.

Esure issued a complaint response. It didn't accept it had done anything wrong or unfair by deeming his car a total loss – or in how it had reached that decision. Neither did it accept the 50/50 split liability outcome was unreasonable or incorrect. It apologised for providing some poor communication during the claim – offering £150 compensation.

In a different complaint response Esure said its valuation of Mr K's car was fair – based on the average of four trade guides. It explained the £395 it deducted for him retaining its salvage reflected what it would have received from its agents.

Mr K wasn't satisfied so came to this service. Our Investigator felt Esure had arrived at fair market value for Mr K's vehicle. But he didn't think it had provided enough evidence to show it was fair to apply a Category N total loss marker. So he recommended it be removed.

The Investigator said Esure hadn't provided a reasonable explanation for a salvage deduction of £395. He recommended it instead deduct what it would, under its commercial arrangements, receive from a salvage agent. The Investigator felt Esure had come to a reasonable decision on liability. Finally he felt the poor service Mr K had experienced justified an additional £150 compensation.

Esure accepted the findings. Mr K didn't accept the Investigator's position on his valuation and liability complaint points. So the complaint was 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence Mr K and Esure have provided. Instead I've focused on those I consider to be key or central. But I would like to assure them I have considered everything provided.

This service doesn't decide who's at fault for an incident. That's the role of the courts. Instead, we look at whether the insurer acted in line with the policy terms and made a fair and reasonable decision. Mr K's policy terms allow Esure to defend or settle any claim on his behalf. That means it might make a decision he disagrees with, but the policy allows it to do so. I can consider if its decision to do so was reasonable.

Having considered everything, I'm satisfied Esure acted in line with the policy terms. And I can't say its decision to settle on a split liability basis was unfair or unreasonable.

Esure's based its split liability decision on dashcam footage of the collision. It said the third-party was obliged to give way to Mr K at the point where two lanes narrowed to one – a chicane. But it felt it was clear from the footage that before Mr K reached it the third-party had already started to move through it. So it felt Mr K was obliged to stop and give way – but didn't. So it was of the opinion a 50/50 split liability, with the third-party, was the best outcome that could be achieved.

I've considered all of Mr K's detailed points and descriptions – including his thoughts about the road surface condition and him having priority of way. As I've said this is an informal service, so I'm not to respond to each view here. But having viewed the footage, and considered Esure's explanation, I can't say it's made an unreasonable decision or achieved an unfair outcome for Mr K. So I'm not going to require it to do anything differently in regard to liability.

I've next considered the settlement offered by Esure. Mr K's policy allows Esure to pay to repair damage to his car or pay to settle his claim. It allows Esure to choose which method. In addition it says the most it will pay is the market value of the car at the time of loss.

Market value is defined by the policy as *'the amount you could reasonably have expected to sell your car for on the open market immediately before your accident or loss. Our assessment of the value is based on cars of the same make and model and of a similar age, condition,. And mileage at the time of the accident or loss. This value is based on research from motor trade guides...'*

Esure considered Mr K's car to be uneconomical to repair. It estimated repair costs, from the incident, of £2,500 against a market value of £1,500. So it chose to settle the claim based on a market value of £1,500.

I've first considered Esure's market value. It's not the role of our service to put an exact value on a vehicle. When looking into these types of complaints we usually check the relevant trade guides and consider whether the insurer has made a reasonable offer in line with them. We do also consider information other than trade guides, including adverts.

Esure used four trade guides to reach its market value of £1,500. These provided a range from £1,188 to £1,835. Our Investigator found three valuations - £1,318, £1,420, £1,530 and £1,750. The £1,500 is within the range of these.

But I've also considered Mr K's points about the work he did to the vehicle to keep it running long term. He's also referred to adverts supporting his claim for a higher market value. Having thought about these I'm not persuaded there's enough to say it would have a higher market value than that provided by the guides. I accept Mr K wished to keep the vehicle on the road in the medium term at least. But much of the work he has undertaken is necessary periodic maintenance or work that doesn't seem likely to have a significant impact on the car's value.

So overall I'm satisfied Esure's market value of £1,500 is fair and reasonable.

I've also considered Esure's decision to treat the car as a total loss – and so provide a cash settlement rather than undertake repairs. It hasn't provided any evidence of how it reached an estimate of £2,500 for repairs.

However, insurers often consider a car uneconomical to repair, or a total loss, when costs reach around 60-70% of its pre-loss market value. On a £1,500 market value that's around £900-£1,050. I've considered the information Mr K's sent in about various parts he's purchased. But having seen photos of the damage (including to the front wing, bumper and headlight) I'm satisfied the repair costs, using one of Esure's approved repairers, would probably exceed the 60-70% point. So I can't say its decision was unfair or unreasonable.

Esure accepted our Investigator's recommendation that the Category N marker be removed from Mr K's vehicle's records. He didn't dispute that recommendation. So, as that seems to be a settled issue, I'm not going to consider it here or interfere with that outcome – other than to require Esure to do what its already agreed to.

Our Investigator said Esure hadn't provided a reasonable explanation for how it had calculated the £395 salvage retention deduction. So he recommended it charge Mr K a correct amount based on evidence. Its now provided evidence that it would have received £395 from its salvage agent. So its fair for it to deduct that amount from Mr K's settlement if he has retained the salvage. That means I'm not going to require it to do anything differently.

Finally Esure also agreed to the Investigator's recommendation that it pay an additional £150 compensation. He felt that was justified by poor customer service. This included it providing misleading information about courtesy car provision and failing to respond to his enquiries at times. Having considered everything a total of £300, so an additional £150, compensation does seem fair and reasonable in the circumstances.

### **My final decision**

For the reasons given above, I require esure Insurance Limited to:

- pay Mr K £300 compensation in total (including any paid already) and
- remove the Category N marker from records of Mr K's vehicle.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 December 2023.

Daniel Martin  
**Ombudsman**