

The complaint

Mr L has complained that esure Insurance Limited has turned down his claim under his car insurance policy for the theft of his car.

What happened

Mr L made a claim on 20 October 2022 following the theft of his car, which he said took place between 14 and 19 October 2022. When Mr L reported the theft to esure electronically and in the validation call, he said when he left his vehicle prior to the theft he locked it remotely using one of the key fobs.

esure investigated the claim by asking Mr L to send his key fobs to a key expert, who I'll refer to as J, who carried out a forensic examination and provided a report on 28 November 2022.

esure then discussed what had happened again with Mr L and he said again he'd locked the car using the key fob. But it looks like he mentioned he'd had problems starting the car and had to hold the key in a certain place under the steering column to be able to do this.

esure turned down Mr L's claim. This was because J said in its report that it had scanned both key fobs and the scanners had not picked up a signal. It also noted both keys were corroded, although the corrosion on the one Mr L had been using was only light. In esure's opinion this meant that Mr L could not have used either of the keys he'd provided to start his car or to lock it prior to it being stolen. And it gave the reason for turning down Mr L's claim as not being able to verify his version of events.

Mr L then emailed esure and said he'd had problems using his key to start his car since he'd had a new alternator fitted, but that he had managed to do it by holding it under the steering column and pressing the start button. esure checked this with J, but J said this would not have been possible. So esure maintained it was right to turn down Mr L's claim. Mr L complained to esure, but it wouldn't alter its decision. So, Mr L asked us to consider his complaint.

One of our investigators did this and said it shouldn't be upheld. He explained that this was because he didn't think esure had acted unreasonably in relying on the key report to turn down Mr L's claim.

Mr L asked for an ombudsman's decision and his complaint was referred to me.

I spoke with Mr L and explained that as I saw it, esure did not believe he could have started his car using either of the keys he'd provided. And this meant it thought his version of the events leading up to the theft was untrue. And, in effect, it either considered he hadn't proved he had a valid claim, or it considered he'd made fraudulent statements in support of his claim.

I also asked Mr L about the issue he'd had with using the keys to start his car. He said he'd only used one of the keys since he got the car and that he'd had a problem unlocking and

locking the car remotely with it after his roadside assistance provider, who I'll refer to as R, changed the battery in his car a couple of months before it was stolen. He explained that he'd been using the key blade in the fob to lock and unlock his car in the period between when R changed the battery and when his car was stolen. He said he also had a problem starting the car in this period and had to hold the key under the steering column before pressing the start button to get the car to start.

I asked Mr L to provide evidence that R had changed the battery on his car and that he'd raised an issue with the remote locking not working soon after this. And he provided a job sheet from R showing it replaced the battery on his car in July 2022. And a note of his follow up with R to say the remote had stopped working after it did this. I also asked Mr L to provide evidence he'd bought fuel for his car in the period just before he reported it stolen. And Mr L has provided a bank statement showing he made a payment of £94.07 for fuel from his bank account on 7 October 2022, which is a week before he'd said he left his car prior to it being stolen. The bank statement has a sort code and account number on it and payments from a card held by Mr L, along with a direct debit to R, so I have no reason to doubt the statement is for Mr L's bank account.

Having spoken to Mr L, I contacted esure and suggested it should have the keys for Mr L's car rescanned. When I did this, I had not appreciated the scanners J had used were listed right at the bottom of its report on a separate page after the statement of truth and signature. So, I suggested to esure that the scanners J had used may not be the best available and that I thought esure should send the keys elsewhere to be scanned. esure wouldn't agree to do this.

esure's case handler pointed out the scanners J had used were listed at the end of its report. Having checked them, I explained that I was satisfied the scanners were of a good enough quality and would pick up a signal from a normally functioning key for Mr L's car. But I suggested that, although the scanners weren't able to pick up a signal from Mr L's keys, it was possible that the scanner in his car could still have done so.

I then issued an informal decision by email suggesting that esure should settle Mr L's claim on the basis I found his testimony that he'd been able to start his car with one of the key fobs credible. And that weighing this against the evidence provided by esure I found it more persuasive.

esure responded to say it didn't agree with my informal decision and it set out its expert evidence again. I also spoke to J's representative, who said that in his opinion, Mr L's key most likely no longer worked due to the fact it had been microwaved (rather than it being due to the corrosion). After this meeting I emailed esure and explained that if they could arrange to have the chip from Mr L's key moved to a dummy key and scan this, they could establish whether the chip was working. I understand this to be a simple process that could be carried out by a laptop repair centre. esure declined to do this and have said it's not something it would expect someone to do when assessing keys. esure also said it's not comfortable taking the key to a high street repair shop and didn't consider the results would provide persuasive evidence.

esure went on to express concerns and question my impartiality; suggesting my informal decision was based on my 'gut feel' for Mr L and ignored the available evidence, i.e. the key report it had provided. It also raised the following concerns:

- It had provided persuasive evidence supporting its declination.
- I had disregarded its evidence in favour of Mr L's testimony.
- Neither I nor Mr L had provided evidence to support Mr L's claim and we have in fact refused to provide it.

- I had continually asked esure to provide evidence to refute its own expert and my reasons for my concerns with its evidence seemed interchangeable.
- My suggestions to progress matters didn't seem reasonable.
- If I issued a decision upholding Mr L's complaint it would have repercussions across the insurance industry.

I issued a provisional decision on 25 October 2023 in which I set out what I'd provisionally decided and why as follows:

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

I should start by saying that it is my role to act impartially and decide the fair and reasonable outcome to this case based on the evidence provided. So, the fact I don't agree with esure's point of view or consider they could provide further evidence to help me decide the case, does not mean I am not acting impartially. My aim here is to make sure that the outcome to this complaint is fair and reasonable.

In considering this complaint, I have first of all considered what is covered by Mr L's policy and what he needed to do to establish in the first instance that he had a valid claim. His policy covers the loss of his car as a result of theft. And, having proved he owned his car and that he reported it as stolen to the police, I consider he did enough to establish a claim for consideration by esure in the first instance. And, if esure didn't want to pay the claim, I consider it needed to establish it was entitled to rely on a term in the policy to reject it. There is a fraud condition in Mr L's policy which states that if Mr L makes a fraudulent or false claim or false statements in support of a claim, esure may not pay his claim and will cancel his policy.

esure hasn't said specifically it doesn't think what Mr L has said is true, but it does seem from the fact it said it could not verify his version of events that this is what it meant. And, as far as I am concerned, this means esure has rejected Mr L's claim because it believes he has made fraudulent statements in support of it. This is supported by the fact it appears to have cancelled Mr L's policy after it rejected his claim.

So, to decide what the fair and reasonable outcome to this complaint is, I think I need to weigh up all the evidence and consider whether Mr L did make false statements in support of his claim. And, if I consider he did, I need to decide whether it is fair and reasonable to allow esure to rely on the abovementioned fraud condition to reject his claim because of this.

I agree the forensic key report is strong evidence. But I cannot rule out the possibility that the reason J's scanners did not pick up a signal from the key Mr L has said he'd been using is because it corroded further in the month or so between when Mr L said he last used it and when J scanned it. And it was not emitting a strong enough signal by the time J scanned it, but it was doing so just before Mr L reported his car stolen. The only way I think I can be sure the key didn't work when Mr L reported his vehicle as stolen or that it was tampered with prior to it being sent to J would be for the chip to be tested and for this to show it isn't working. I understand this to be quite a simple process which can be done by inserting the chip in a dummy key and then scanning that key to see if the chip works. So if esure had been willing to switch it and check it and it didn't work, I would have likely been persuaded Mr L could not have used this key to start his car or that he tampered with it prior to sending it to J. And I do not agree suggesting this was unreasonable or going further than should be expected of an insurer, if it helps make sure a customer gets the right outcome.

However, esure isn't willing to arrange this and it thinks it's case is strong enough based on the evidence it has already provided. Although it has now arranged for the key to be sent to

the manufacturer of Mr L's car for further testing. But – as things stand - it has left open the possibility that the chip in the key Mr L has said he was using does still work and the antenna on the key was still emitting a strong enough signal at the point Mr L said he last used it, but wasn't by the time J scanned it.

I have to weigh this against what Mr L has said and the evidence he has provided to support it. When he originally reported his claim Mr L did clearly say – both online and in the validation call – that he had locked his car remotely using the key fob. He appears to have said this again at the end of November 2022 when esure contacted him again. And he did not mention having any problem doing this. Although he did mention that he'd had problem starting his car using the keys at the end of November 2022.

When Mr L spoke with me after I'd reviewed the complaint, he told me that he had not been able to use the fob to lock or unlock his car remotely since the battery had been changed and he'd been using the key blade to do this via the passenger door. He also told me the battery was replaced a couple of days after the alternator on his car was replaced. Although, I can see from what he's provided the alternator was replaced in March 2022 and the battery wasn't replaced until July 2022. And Mr L didn't actually mention having to use the key blade at all initially or when esure rejected his claim.

I think what Mr L said about locking and starting his car when he spoke with me is true. This is because he gave me a very detailed account of how he locked his car prior to the theft and how he'd been doing this for a couple of months. He also explained very clearly how he used to start his car by holding the key under the steering column. And he's also provided what I consider to be good evidence to back up his testimony about having problems using the fob to lock his car, ie the job sheet and his communication with R about this issue. As well as this he's provided a bank statement which strongly suggests he was using his car only a week before he left it prior to the theft. I have asked our investigator to provide this evidence to esure. And, while I appreciate esure doesn't think Mr L could have used his keys to lock or start his car just prior to the theft, as I've already explained, I think there is a possibility it was still emitting a signal at the time he said he last used it. This combined with his subsequent testimony means that I think he was able to do so up to the point he left his car before it was stolen. I also need to consider the fact that esure could have asked Mr L to provide evidence he'd been using his car prior to the theft when he challenged its decision to reject his claim. And, at this point it may even have been possible for Mr L to obtain CCTV evidence from the fuel station to support his assertion that he'd recently added fuel to his car.

This means, that whilst it seems Mr L provided a false statement initially, which I think may have been because he thought it the best thing to say in the circumstances, he could never have gained any financial advantage by saying it. I say this because if he'd explained, as he later did to me, what he'd been doing to lock and unlock his car, it would not – in my opinion – have given esure a reason to turn down his claim. Therefore, I do not think esure can rely on the fact Mr L made a false statement to turn down his claim.

In view of this, and the fact I'm currently persuaded by Mr L's testimony that he was able to start his car using one of the keys, I think he has a valid claim for theft under his policy, which esure should settle in accordance with the claim settlement terms in it. It should also pay interest on the amount due at 8% per annum simple from the date it issued its final response on Mr L's claim to the date of actual payment. This is to compensate Mr L for being without funds he should have had. I appreciate he had finance on the vehicle and I'm not sure what the interest on this borrowing was. But overall, I consider 8% to be fair. I've chosen the date of esure's final response, as I think by this time esure should have completed further investigations and accepted Mr L's claim.

I appreciate esure thinks this outcome could have repercussions for the insurance industry, but it is my job to decide each case on its merits and it is not appropriate for me to comment on the impact of my decisions generally.

I gave both parties until 22 November 2023 to provide further comments and evidence in response to my provisional decision.

Mr L has responded to say he has no further comments or evidence to provide.

esure has responded to say it can't accept my provisional decision and it has made the following further comments:

- I am placing a much greater weight on the testimony provided by Mr L than the expert testimony provided by J.
- In effect, I've asked it to go to extreme unorthodox lengths to disprove its own expert.
- It has had the keys assessed by the manufacturer of Mr L's car and its findings didn't add anything to the evidence already provided. They simply confirmed that both keys appeared to be genuine, but for some reason they are both dead and they could not recover the serial numbers. They added that if their technician couldn't get the keys to work, no-one could.
- It has questioned the benefit of moving the chip to another key fob because the PCB shows multiple areas of corrosion. It has said that given the PCB that is corroded, moving it to another key fob would not change the level of corrosion and would likely result in the same result.
- It has provided evidence supporting its position. And – while I'm able to decide what information I need and how much weight I place on it – its view is that this should be within reason and proportionate. And it thinks my earlier suggestion that it sent the key elsewhere to be examined was unreasonable; as was my suggestion it should be taken to a PC repair shop. It does not think evidence from a PC repair shop would be more credible than the evidence provided by its own expert, i.e. J.
- It's satisfied with the evidence its supplied and if Mr L disagrees with its decision on his claim, he is welcome to supply his own evidence supporting his position.
- The evidence Mr L has provided from R simply proves his keys were not functioning.
- The proof Mr L purchased fuel around a week before his car was stolen isn't persuasive given he has more than one car in his household.

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.

Having done so, it remains my view that the fair and reasonable outcome to Mr L's complaint is that esure should be required to settle his claim.

I appreciate esure thinks I'm placing much greater weight on the testimony provided by Mr L than the expert testimony provided by J. But, as I explained in my provisional decision, I have to weigh up all the evidence and decide whether I consider esure was right to turn down Mr L's claim. I consider to do this I need to be able to say that esure has proved on the balance of probabilities that Mr L made a false statement or statements that would have gained him a financial advantage. This is because I consider he has established a valid claim which is covered by the policy and it is for esure to show it can rely on a term in it to turn it down. The only one I can see it could rely on is the term I mentioned in my provisional decision relating to Mr L making false statements. And Mr L's testimony is a key piece of evidence I need to take into account. I do of course also need to take into account J's report.

And I have done this. And I do accept the keys Mr J provided didn't emit a signal at the point J scanned them. However, as I also explained in my provisional decision, I do not think this proves categorically that the one Mr L has said he was using to start his car didn't work at the point he said he last used it. And he has now confirmed it could not be used to lock his car at this point. And I believe the evidence he has provided from R shows this to be the case. However, I do not agree with esure's point that the evidence from R proves neither key fob was functioning at all. In my opinion, all it proves is Mr L couldn't lock or unlock his car with them.

This means what Mr L said when he reported his claim wasn't correct, as he couldn't have locked his car with one of the key fobs he had. But I'm satisfied with his more recent testimony that he didn't actually do this is true based on all the evidence. And, while this also means Mr L made a false statement when he reported his claim, I do not believe he could have gained any financial advantage by doing this. I explained why I think this in my provisional decision. And this is why I don't think esure can rely on it to refuse Mr L's claim.

And, while I appreciate esure feels very strongly that the key fobs can't have worked when Mr L last said one of them did, I think there is a possibility one of them did and his testimony has persuaded me that this was the case, i.e. he was able to start his car by holding one of the key fobs under the steering column and pressing the start button.

I'm not surprised the manufacturer of Mr L's car drew the same conclusions as J. Although, I am pleased it also thought the keys Mr L supplied were genuine. This is because, as I explained to esure, as I understand it the only way to prove categorically that neither of the key fobs could have worked when Mr L last said he used one of them or that he'd tampered with one or both of them before sending them to J would have been to move the NXP semiconductors (the chips) to a dummy key and see whether the keys worked. If J had done this or outsourced it I would have considered the findings as additional from it and esure. I appreciate esure considers this method to be unorthodox and that it may well be further than esure wanted to go. However, I consider it a reasonable and proportionate suggestion. And that the evidence would have been credible. It was up to esure whether it wanted to obtain the further evidence it would have provided. It chose not to obtain it, so I must decide this case on the evidence I have.

I accept it is possible the fuel Mr L purchased a week or so before his car was stolen could have been for another car. But I am persuaded by his testimony that it was for the car he has claimed for.

I do not consider Mr L needs to provide any more evidence to support his position, because – based on the evidence currently available – I do not consider esure has enough to show it was entitled to reject his claim.

In summary, it remains my view that Mr L has established a valid claim for the theft of his car in the first instance and that esure has not shown that it is entitled to rely on a term in his policy to reject it.

Putting things right

For the reasons set out above and in my provisional decision, I've decided to uphold Mr L's complaint and make esure settle his claim in accordance with the claim settlement terms in his policy.

I've also decided to make it pay interest on the amount due to Mr L at 8% per annum simple

from the date of its final response letter on his complaint to the date of actual payment¹. This is to compensate Mr L for being without funds he should have had.

My final decision

I uphold Mr L's complaint about esure Insurance Limited and order it to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 December 2023.

Robert Short
Ombudsman

¹ Esure must tell Mr L if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Mr L if asked to do so. This will allow Mr L to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.