

## **The complaint**

Mr H complains that esure Insurance Limited (“esure”) has unfairly handled a claim made under his motor insurance policy.

Any reference to Mr H or esure includes respective agents or representatives.

## **What happened**

The background of this complaint is well known to both parties. So, I’ve summarised events.

- Mr H was involved in a motor incident with a third party. He contacted esure to make a claim. esure told Mr H, based on the details he’d given it, would treat the matter as a non-fault claim so his excess (of £600) would be waived.
- Around a month after, esure says it was notified of a dispute from the third party about liability. In turn, esure says it told Mr H his excess would now be payable.
- Mr H says he put forward a witness to confirm he was not at fault. esure attempted to contact this individual but was unsuccessful. Mr H complained to esure about its actions saying it should refund his excess as he wasn’t at fault.
- esure didn’t uphold the complaint, saying Mr H had agreed to a policy that included a compulsory excess of £350 and a voluntary excess of £250. And given the third party hadn’t accepted liability, the excess was payable. It said if the third party’s insurer did agree to this, then the excess could be waived, but this hadn’t happened.
- Mr H brought his complaint to this Service and one of our Investigators looked at what happened. She upheld the case saying esure’s decision on liability was fair, but its communication could’ve been better which had led to Mr H’s expectations being mis-managed. She said esure had only attempted to reach the witness once, but there was no guarantee from this it would’ve impacted overall liability. She said esure should award Mr H £100 in compensation.
- esure accepted the assessment, but Mr H didn’t. He said esure’s inaction in contacting the witness led to him being liable for his £600 excess.

So, the matter has been passed to me for an Ombudsman’s final decision.

## **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, I’m upholding this complaint. I’ll explain why.

Mr H hasn’t disputed that he agreed to a policy excess of £600 – made up of £350 compulsory excess, and £250 voluntary excess. So, on its face, it’s clear to me that if an excess is payable, Mr H would need to pay the first £600.

In this case, Mr H reported the incident and explained he wasn’t at fault. esure said for this

reason, based on the circumstances, it didn't charge an excess at the start. Since however, the third party disputed liability. I've seen evidence of this dispute, and to my knowledge this was still ongoing as of the date of esure's final response letter of August 2023. I am not considering events beyond this date.

As there's a liability dispute, I'd expect the excess to be payable as esure has stated.

Mr H has said esure's lack of chasing of a witness has led to him having to pay his excess. From what I've seen, esure did inform Mr H the witness hadn't responded. And given the nature of the dispute between parties, I'm not persuaded that a witness statement would have most likely resolved the matter as Mr H has suggested. And in any case, there was already a dispute at this time, so the excess would've still been payable.

For these reasons I'm satisfied esure has acted fairly regarding the excess in this case.

Our Investigator explained why she felt esure's actions led to a mismanagement of Mr H's expectations. esure has provided little in the way of detailing how the excess matter was first described to Mr H to counter this, so I'm minded to agree it most likely could've managed his expectations better than it did. esure has already agreed to pay £100 in compensation, I'm satisfied this is fair and reasonable in the circumstances and so, I'm not asking it to do anything further.

### **My final decision**

For the above reasons, I'm upholding this complaint and direct esure Insurance Limited to pay Mr H £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 April 2024.

Jack Baldry  
**Ombudsman**