

## The complaint

Ms V complains about the way esure Insurance Limited handled a claim she made on her car insurance policy.

## What happened

In late 2022, Ms V's car was involved in a collision with another vehicle. Ms V made a claim on her car insurance policy, which is underwritten by esure. She said she was stationary at a junction, with the front of her car extending into the exit road, when an oncoming car hit hers. She said the driver admitted at the scene they weren't looking at the road at the time of the collision and gave a written statement confirming this to Ms V after the incident.

esure accepted the claim but said it would be accepting fault for the accident on Ms V's behalf. It didn't think the signed statement from the third-party driver would be relied on in court, and as Ms V's car was turning out of a junction and her car was in the exit road, she hadn't given way.

Ms V complained about esure's decision. It didn't agree to consider it further, so Ms V brought a complaint to this service

When bringing the complaint to this service, Ms V complained about esure's decision to find her at fault for the accident. She also complained about the settlement amount offered by esure for her car, and that it cancelled her policy.

Our investigator said that esure hadn't had a chance to respond to her complaint about the settlement value of the vehicle or cancelling the policy. They clarified we'd only be looking at the claim decision on liability. Any other issues would need to be raised with esure as a new complaint.

Our investigator wasn't satisfied esure had shown it had fairly held Ms V at fault. They said esure hadn't submitted any legal opinion as to whether the apparent admission of liability would be accepted in court. So, they recommended esure update their records to show Ms V's no claims bonus is allowed. They also recommended esure pay £200 compensation for the distress and inconvenience caused to Ms V in not taking matters further.

Ms V accepted the outcome, but esure didn't. It said it had taken legal advice regarding the note provided by Ms V and it was satisfied this wouldn't be persuasive evidence in court. As esure didn't agree, the matter came to me decide.

In February 2024 I issued a provisional decision on the complaint. In which I said:

*As this is an informal service, I'm not going to respond to every point or piece of evidence Ms V and esure have provided. Instead, I've focused on those I consider to be key to determining the outcome of the complaint. 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. Ms V's policy terms allow esure to defend or settle any claim on her behalf. That means it might make a decision she 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 accept fault for the accident was unfair or unreasonable.*

*When submitting the claim, Ms V accepts that the front of her car was protruding about three feet into the road of oncoming traffic. As Ms V was coming from a side road and turning into another, esure said it's for her to give way to oncoming traffic. I think that's a reasonable finding given it's in line with the highway code. It's also pointed to previous caselaw where the party emerging from a minor road was found to be at fault. When I consider this – along with esure's entitlement under the policy terms to settle the claim if it doesn't think it would be able to successfully defend it in court – on the face of it, it seems esure has reached its decision fairly.*

*But Ms V says esure hasn't considered the note – in which the third-party driver accepted liability – and so, its decision is unfair.*

*Ms V's produced the note, in which the third party said she wasn't looking at the road and was using her mobile phone. esure says it doesn't think this note would make a difference to the outcome on liability if the matter went to court. It said there is no proof as to who wrote the note, or whether it was done so under duress. And the third party has also disputed liability with her insurer – which they are entitled to do. It also said being on a mobile phone when driving is a criminal offence, which would need to be decided in court. And it's unlikely a conviction could be made on this evidence alone. Ultimately, it didn't think the note would be sufficient for Ms V's claim to succeed if it defended the claim and took the matter to court.*

*Having considered everything, I don't think that's an unreasonable position for esure to take. I understand Ms V's frustration, and that she feels strongly that had the third party been more attentive, she could have taken evasive action to avoid her car. But the fact remains it was Ms V who needed to give way in this scenario, and she'd already started her manoeuvre - as her car was into the road of oncoming traffic - when the collision occurred.*

*Our investigator, in upholding the complaint, wasn't satisfied esure had taken legal advice on the matter. In response to the investigator's view, esure says it has consulted its solicitors who have confirmed an admission of liability at an accident scene is not legally binding. It would have been helpful if it could have provided this to our service at an earlier opportunity. But given what it has said, I think on balance, esure has made a fair and reasonable decision not to defend the claim and settle on a fault basis. esure says it has done so on a 'without prejudice' basis, meaning if Ms V wanted to bring her own legal proceedings against the third party, she's not prevented from doing so at her own cost. This seems reasonable to me.*

*As I think esure has acted fairly in deciding liability, it follows that I don't think it needs to make a payment of distress and inconvenience to Ms V.*

### **Response to my provisional decision**

esure didn't provide a response. Ms V didn't accept the provisional decision. She asked for proof that esure had taken legal advice on the matter.

### **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.

Ms V has asked for proof that esure did take legal advice in relation to this matter. It is for this service, and me making the final decision, to decide what evidence is required and what I find most persuasive in reaching my outcome. esure says it consulted its panel solicitors, who were of the view that an admission of liability at the scene of an accident [if it happened] is not legally binding. I consider this reasonable evidence.

I haven't asked esure to prove it did seek legal advice because I have no reason to doubt that it did. But I think it's important to say that even if I consider esure didn't obtain legal advice on this point, I still don't think it's made an unreasonable decision to settle the claim in the way it has, for the reasons set out in my provisional decision.

esure has discretion to settle claims however it feels is appropriate, and both Ms V and the third party's insurance policies both say it is a requirement that its policyholders do not admit to liability at the scene of an accident. So esure says any roadside admission isn't used when deciding how to settle claims. I appreciate Ms V's strength of feeling on this but having considered everything, I'm satisfied esure was reasonable to settle the claim based on the evidence it had about the way the vehicles were travelling.

I understand Ms V's point, she says its convenient esure has now mentioned the legal advice. I accept esure hadn't mentioned they'd sought legal advice initially, but it's told this Service it did so having received our Investigator's opinion that it hadn't handled the claim fairly. So I don't consider esure has acted unreasonably here. Both parties are able to provide information and evidence for this service to consider in response to our initial opinion.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms V to accept or reject my decision before 18 March 2024.

Michelle Henderson  
**Ombudsman**