

## **The complaint**

Mr C complained about esure Insurance Limited's handling of his claim under his motor insurance policy.

## **What happened**

In about October 2021 Mr C's car was hit by another car while it was stationary in a car park. Mr C was in it at the time, and he was injured. Mr C said the other party (the third party) was at fault. He gave esure the third party's details, and photographs of the third party's car's registration number. He also gave them details of the two independent witnesses to the accident, and the contact information for them to obtain the car park's CCTV footage.

Mr C assumed that this evidence would show that the third party was at fault and that esure would settle the claim on that basis. So he was surprised when he found out in about August 2023 that esure had recorded the claim as a fault claim against him instead.

This is standard industry practice when an insurer cannot recover their claim costs against a third party, and it doesn't mean that esure thought that Mr C was at fault. However Mr C said he had a fault free driving record and he was unhappy that this put his premiums up. He was also unhappy that esure hadn't followed up on the evidence he'd given them or told him what had happened. Mr C's wife was seriously ill, and sadly later died. Mr C did chase esure but when he didn't hear from them he assumed that they had simply settled his claim in his favour. By the time esure told Mr C that there was a fault claim against him, it was coming up to two years since the incident, and more than a year since they had last updated him. But esure said Mr C had asked them not to contact him because his wife was ill.

Mr C said this wasn't what he meant. He felt that esure's communication was poor, they took too long to reply to him and didn't answer his questions about what had been said and done in his claim. He felt that esure were trying to blame him for their inaction. He said they made things worse for him and having to keep dealing with the matter reminded him of what had been a difficult time for him.

esure did explain why they were unsuccessful in showing the third party to be liable. It was because the third party insurer denied liability for the accident and said that their insured was not in the accident area at the time. esure hadn't obtained the car park's CCTV footage. They said that of the two witnesses, one didn't reply to their enquiries and the other couldn't identify the third party's car registration number. esure took the matter to arbitration and were not successful in showing that the third party was to blame. Mr C thought they should have done more to investigate and use the evidence he'd given them.

In fact esure had made a significant mistake in dealing with Mr C's claim. They had failed to notice that in about March 2022 the third party's insurer had contacted them and had admitted liability and agreed to settle the claim. It was our investigator who discovered this. If esure had acted on that admission, they would likely have settled the claim as the third party's fault shortly afterwards.

Instead, esure didn't notice it. Instead, esure got the third party's car registration number wrong - despite Mr C having sent them photographs of it. esure then pursued the claim

against the insurer of the wrong car, whose driver was not responsible for the accident and was not in the area at the time. This culminated in esure losing the arbitration.

esure have now accepted that they had made this mistake and that it resulted in them being unable to recover from the third party and in the fault claim for Mr C.

Mr C wanted esure to remove the fault claim from his insurance record and compensate him for the distress and inconvenience esure had caused him.

The investigator recommended that his complaint should be upheld and that esure should remove the fault claim from Mr C's record and compensate him £1,000 for his distress and inconvenience. esure agreed to remove the fault claim but didn't agree with the compensation amount. So I've been asked 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 the investigator explained, in cases regarding liability it's not our role to decide who was at fault for the incident. Instead we look at how an insurer has reached their decision on liability and whether they've done so in a fair and reasonable way and that they have acted within the terms and conditions of the policy.

Here esure have accepted that they made a mistake in handling Mr C's claim and in their investigation and that their mistake resulted in Mr C having a fault claim against him. They agreed to remove the fault claim from insurance databases. As regards any premium increase which happened due to the fault claim, on its removal Mr C can ask his insurer to recalculate and backdate his premium based on the claim not being his fault. esure had already waived his policy excess and I think that is reasonable.

esure also offered Mr C £300 in compensation. But this was in response to our investigator's view that they should pay £1,000, which they thought was excessive.

esure didn't uncover their own mistake. It was our investigator who discovered it. Mr C had to come to this Service because he had already complained to them and esure had dismissed his complaint. esure maintained then that there was nothing further they could do to help Mr C as the arbitration decision was final. They attributed their lack of success in pursuing the third party to the poor quality of the evidence they had, and to Mr C not wanting them to contact him about the claim. At that point they were still not aware of their mistake.

esure said that they didn't contact Mr C during their claim handling process because he'd asked them not to, because his wife was seriously ill. So they felt that they were complying with his wishes.

I do see that in about July 2022 esure gave Mr C an update on the progress of his claim. It said that they would need to issue proceedings against the third party insurer because they wouldn't accept liability. Mr C's response questioned why they were telling him that when he was looking after his seriously ill wife.

I don't interpret Mr C's response as an instruction to esure not to contact him again. It was rather that Mr C was understandably preoccupied and stressed at that time and didn't want any unnecessary contact from esure. But I think esure should have reasonably expected that Mr C would, as he tells us he did, still want to know about the progress of his claim and the reason for the arbitration. Even if esure still hadn't noticed the admission of liability from the third party insurer in about March 2022, if esure had engaged with Mr C and explained their difficulties with the claim, it could have helped steer them back to the right evidence and the

correct third party car and insurer. This might have prevented his claim being mishandled or got it back on track.

I don't think that it was reasonable for esure not to tell him about the result of his claim until about August 2023, which was close to two years after the incident. So I don't think esure acted fairly and reasonably there.

esure offered compensation only after our investigator discovered esure's mistake and recommended £1,0000 compensation. They thought that it was excessive because Mr C didn't know what had happened and so it made no difference to him at the time. They didn't think that it would have changed the outcome if they'd involved him or kept him updated.

I take a different view. As I've said above, it's likely that if esure had explained to Mr C what was happening, he would have asked them what information they were using and helped them clarify that and at least review their file and potentially also spot their mistake. This could have made a difference to the outcome. Instead esure did not realise their mistake, and denied they did anything wrong, which meant Mr C felt he had no option but to bring it to the service to achieve resolution.

esure think that the compensation of £1,000 does not fairly reflect the impact of their mistake. But I don't think that esure has fully appreciated the impact that their actions had on Mr C. If esure had noticed and acted on the correct third party's admission of liability in March 2022 the matter would likely have been settled in Mr C's favour shortly after then.

Because they didn't, Mr C had to continue to deal with the matter by complaining to them and to bring the matter to this service. I think that was unfair and unreasonable of esure.

The incident happened through no fault of Mr C's own and he was injured in it. It happened when Mr C was waiting for his wife receiving treatment for the serious illness from which she has since died. It's clear from what Mr C has said consistently to us that the ongoing fault claim and his dealings with esure about that forced him to revisit the night of the incident and kept reminding him of it. He felt that this kept the matter hanging over him and effectively prolonged a terrible time in his life. I can tell that it has caused him significant anguish to have the matter continuing and unresolved when he wanted to put the accident behind him, and I think that esure's actions made matters worse for Mr C than they needed to be.

The investigator has already signposted esure to our guidance on awards for distress and inconvenience which have severe and lasting impact on a consumer. I think that does apply here and so the £1,0000 compensation is reasonable.

### **My final decision**

For the reasons given above, my final decision is that I uphold the complaint and I require esure Insurance Limited to do the following:

- Remove the fault claim against Mr C from all internal and external insurance databases and provide him with a letter confirming that the fault claim was recorded in error
- Pay Mr C £1,000 in compensation for the distress and inconvenience esure caused him.

esure must pay the compensation within 28 days of the date on which we tell them Mr C accepts my final decision. If they pay later than they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 July 2024.

Rosslyn Scott  
**Ombudsman**