

The complaint

Miss H complains about esure Insurance Limited (“EIL”) and their delay in paying her outstanding car finance, as part of the motor insurance claim she made. Miss H also complains about the service EIL provided her during this claim, setting out the impact this has had on her personally.

What happened

The claim and complaint circumstances are well known to both parties. So, I won’t be listing them chronologically in detail. But to summarise, Miss H held a motor insurance policy, underwritten by EIL, when she was involved in a road traffic accident. So, she made a claim on this policy.

Due to the damage her car sustained; it was deemed a total loss. As the car was purchased on a finance agreement, which had an amount outstanding, EIL settled the claim by clearing this finance, releasing any left-over payment to Miss H. But the finance company, who I’ll refer to as “X”, didn’t receive a payment from EIL after EIL had confirmed to Miss H it had been sent. This resulted in Miss H needing to engage with EIL and X to ensure payment was raised, with the inconvenience and stress this caused impacting her significantly. So, she raised a complaint.

Miss H complained about EIL’s failure to settle her finance when they said they would. And she was unhappy that the hire car she was provided was removed from her while the finance remained outstanding. She felt this prevented her from purchasing a replacement car on a similar agreement. Miss H also complained about the way EIL had communicated with her, and how this had triggered a relapse in her pre-existing mental health conditions, which in turn had impacted her life and financial situation overall. So, she wanted to be compensated up to £50,000 to recognise the above. Miss H engaged with our service during the complaint process with EIL, so we could help her liaise with EIL to ensure payment was raised.

EIL responded to the complaint and upheld it. They accepted there were delays in settling the claim she made on her insurance policy and that they failed to provide her with a reasonable level of service when communicating with her about this. And they recognised the hire car provided to Miss H was recalled before the settlement had been paid to X to clear her outstanding finance agreement. So, to recognise the above, they paid Miss H a total of £680, consisting of a £300 distress and inconvenience payment and £380 to recognise Miss H’s loss of use of a hire car, calculated at £10 per day for 38 days. Miss H remained unhappy with this response, so she asked our service to investigate.

Our investigator looked into the complaint and upheld it. They noted it was accepted by EIL that there had been delays in settling the claim, issues with the service they provided, and that Miss H had been removed from hire before the claim was settled. While they noted Miss H was only entitled to 21 days hire based on the policy terms, they didn’t think EIL had offered Miss H the chance to extend this hire at a discounted cost, that the terms stated they should have done. So, to recognise the above and the significant impact the situation had on

Miss H and her health based on the evidence we had on file, they recommended EIL increase their distress and inconvenience payment by £700 plus an additional £150 payment for Miss H's loss of opportunity regarding the discounted hire.

Miss H rejected this recommendation, providing several comments setting out why. These included, and are not limited to, her continued belief that the recommendation put forward failed to recognise the impact on her health, and how this then impacted her financially. So, she continued to maintain her view a payment of £50,000 was more appropriate. EIL also rejected this recommendation, setting out why they didn't think the issue of the settlement payment was within their control to avoid, as well as explaining why they thought the offer they put forward in their complaint response was a fair one. As neither party agreed, the complaint has been passed to me for a 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 the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I think it would be useful for me to set out exactly what I've been able to consider as part of this complaint. This decision focuses solely on the events and issues Miss H raised with EIL before their complaint response issued in February 2024. So, it considers the delay in settling the finance agreement that existed on Miss H's insured car, the issues regarding the provision of hire and when that hire was ended and the overall service EIL provided to Miss H, including their communication with her during the claim process. And when considering these issues, I've thought carefully about the impact they had on Miss H, and this includes the impact to her pre-existing mental health conditions.

But crucially, I'm unable to consider any complaints or issues Miss H has raised after EIL's complaint response. So, her new concerns that centre around the actual closure of her claim, how it's reported and how this has impacted her ability to obtain a new, affordable insurance policy would need to be raised with EIL first, and then handled by our service under a separate complaint reference if necessary. I note our investigator has already explained this to Miss H and set out the next steps for her to take, should she wish to do so.

And having considered the issues and complaints that I am able to decide upon, I note EIL have already accepted within their complaint response that there were delays in settling the outstanding finance on Miss H's car that was deemed a total loss. And I note they've accepted Miss H was taken out of hire before this finance was cleared and made a payment to recognise the inconvenience this caused. Finally, I note EIL have also accepted the service they provided to Miss H overall was unreasonable, considering her individual circumstances and vulnerabilities. So, because of the above, I think it's accepted that EIL have acted unfairly and as this isn't in dispute, I don't intend to discuss the merits of these issues in any great detail.

But for completeness, I want to make it clear to both Miss H and EIL that I have considered all the complaint issues thoroughly. And having done so, while I appreciate EIL's comments regarding the issues with the payment and why they don't feel the delays were within their control, I think it's clear the claim took longer than I'd expect to settle. And having carefully examined the timeline of events, as well as listening to the conversations between Miss H and EIL, I'm satisfied EIL should've been reasonably aware of the distress and harm being

caused to Miss H by needing to engage with both EIL and X to sort the settlement payment, when I don't think she should've needed to do so.

I would've expected EIL to note this and act proactively to ensure any harm and distress caused to Miss H was mitigated. And I think this would've included EIL taking control of the situation regarding the settlement of the finance, speaking to X directly to ensure payment was made as a matter of priority. But I don't think that was the case here. So, I'm satisfied EIL have acted unfairly and unreasonably, considering the individual circumstances of the claim and complaint.

I've then turned to what I think does remain in dispute, which is what EIL should do to put things right for Miss H.

Putting things right

When deciding what EIL should do to put things right, any award or direction I make is intended to place Miss H back in the position she would've been in, had EIL acted fairly in the first place.

In this situation, had EIL acted fairly, while I can't say for certain they could've ensured X received the first payment they issued, I think they could've reacted more positively, and proactively, when Miss H made them aware X were still awaiting payment.

I say this because I've seen evidence in EIL's claim notes, and on calls between Miss H and EIL, where I think Miss H made it reasonably clear how the situation was significantly impacting her pre-existing mental health conditions. And I've seen extensive medical documentation Miss H has provided detailing these conditions and the significant impact they had on her daily life. So, I would've expected EIL to have taken reasonable steps beyond their usual process to ensure reasonable adjustments were put in place, and additional support provided.

And had EIL done so, I think it's reasonable for me to assume this would've prevented the need for Miss H to engage with X, EIL and our service to try and ensure payment was arranged, so her finance could be cleared, to then allow her to purchase another car through a similar agreement.

So, I've turned to what I think EIL should do to fairly place Miss H back in the position she would've been in. And unfortunately, I'm unable to rewind the series of events that occurred and prevent the significant impact caused to Miss H and her health, none of which is in dispute. So, instead, I think EIL should make a compensatory payment to recognise the impact to Miss H, taking into consideration her testimony on how her life has been affected.

Our investigator recommended EIL increase their compensatory payment by £700, taking it to £1,000 in total, to recognise the above. And I think this payment is a fair one, that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this payment is significant enough to recognise how EIL's failings impacted Miss H's mental health in a way that impaired her ability to work during the time finance hadn't been paid. And, how it would've been triggering for Miss H, considering the stress and anxiety the situation would've created as she felt she needed the finance to be cleared in order to purchase a replacement car on a similar agreement. I think it also fairly takes into account how a relapse in Miss H's mental health then impacted decisions she made regarding the development of an app and her studies.

But I do also think it fairly takes into account the fact that Miss H's mental health conditions were present in the years before EIL's failings during the insurance claim. So, while I don't in any way intend to challenge Miss H's testimony or take away from her lived experiences, I don't think I'm able to say that EIL's actions alone were the sole cause of her mental health conditions, or the decisions she took because of the impact these had on her after September 2023.

Because of this, I don't think it would be reasonable for me to say EIL should be held responsible for Miss H deciding to spend a loan given to her to help fund the creation of an app. And even if this wasn't the case, I've seen no evidence such as a loan agreement to show what the loan was intended for. And the same applies for Miss H's comments regarding the rejection of another loan, and finance for another car. I've seen no evidence to show exactly why any credit applications were rejected that satisfies me they were rejected because of EIL's actions alone. So, I can't reasonably hold EIL responsible for these.

And the same follows for Miss H's comments regarding her loss of income. While I do think Miss H's ability to work was most likely impacted by the issues EIL created, I've seen no evidence to show the work Miss H had lined up at the time of EIL's error, to accurately understand and calculate what Miss H's loss of earnings were. But as I've explained above, I think the significance of the £1,000 total compensatory payment fairly takes into consideration my acceptance that Miss H did most likely miss out on opportunities to work during that time. So, the additional £700 payment is one I'm directing EIL to pay.

I also think that, had EIL acted fairly, they would've offered Miss H the chance to extend her hire at a discounted rate, in line with the policy terms and conditions. And I've seen no evidence to show they did that.

So, while I do note Miss H was only entitled to a hire car for 21 days, I do still think Miss H should be compensated for this loss of opportunity. And I think the £150 recommended by our investigator is a fair payment to reflect this loss, considering Miss H was able to remain mobile by arranging her own hire, alongside the fact she was given a hire car for longer than the 21-day period the policy allowed. I want to make it clear to Miss H I have considered her comments relating to what she believes to be a breach of contract considering EIL provided her with a hire car for longer than the terms allowed, but I don't think Miss H was negatively impacted by this breach, as she benefitted from extended use of a hire at no cost to herself.

And I do think the above is further supported by the £380 loss of use payment EIL have already paid as part of their own complaint response, to recognise they could've extended the hire for longer as a gesture of good will considering the delays, although they weren't contractually obliged to do so. So, this £150 is also a payment I'm directing EIL to pay.

I understand this isn't the outcome Miss H was hoping for. And again, I want to reassure Miss H I've carefully considered all the comments she's made, and information she's provided, even if I've not referred to them specifically. I also want to make it clear I've thought at length about the clear and obvious impact this complaint has had on Miss H's mental health and so, her life overall. I don't take this lightly, and I do recognise the risks this relapse has presented.

But for all the reasons I've listed above, I think a total additional payment of £850 is a fair one, in line with our services approach that is based on the rules and regulations put in place by the industry regulator. As set out on our website, payments of this amount are expected when the issue has caused substantial distress, upset and worry that may have seriously disrupted daily life over a sustained period, with the impact felt over many months, and

sometimes over a year. And I think this is an accurate description of the impact had on Miss H, as explained throughout my decision.

And I also want to make it clear to EIL that, while our service isn't intended to make a finding on a customer's health be that mental or physical, we are expected to consider the medical information provided to us and to consider this when deciding what we believe to be the impact of a business acting unfairly. So, this is what I've done on this occasion.

My final decision

For the reasons outlined above, I uphold Miss H's complaint about esure Insurance Limited and I direct them to take the following action:

- Pay Miss H a total additional payment of £850, which comprises of a £700 distress and inconvenience payment and a £150 payment for loss of opportunity.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 9 May 2024.

Josh Haskey
Ombudsman