

The complaint

Mr I complains that esure Insurance Limited (“esure”) wouldn’t pay to repair his car after it was damaged by a third-party recovery company.

What happened

Mr I had a motor insurance policy with esure covering his car which was a battery powered vehicle.

In April 2023 he was travelling with his family on holiday and stopped to charge his car. The car reported an error and shut down. The error was due to a failure of a battery cell.

Mr I called a third-party recovery company. The recovery company recovered his car but damaged the battery casing in the process of attaching the car to the recovery truck. The damage was done on the opposite side of the car to the failed cell.

Mr I made a claim. His car was ultimately taken to a main dealer. The main dealer reported that the cell could be replaced under the car’s warranty. But it said it wasn’t able to carry out the work due to the damage to the battery casing. The cost of replacing that casing was quoted to Mr I as being in the region of £42,000+VAT.

esure said it estimated the cost of replacing the battery casing, materials and labour as £6,025.16 – which it said was the most it would pay. It offered this, less the excess, to Mr I in settlement of his claim. It wouldn’t increase this amount.

Mr I remained unhappy and brought his claim to this service. He asks that esure settle his claim. He also asks that his inconvenience is taken into account.

Our investigator looked into it and thought it would be upheld. He said he thought esure should repair or cover the full cost of the replacement battery casing. If this was uneconomical then he said esure should settle the claim as a total loss. He also said esure should pay Mr I £300 in compensation for his distress and inconvenience caused by esure’s failure to understand the claim and progress it.

esure didn’t agree with the view. Because it didn’t agree, this complaint has been passed to me to make a 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.

I’m upholding Mr I’s complaint and I’ll explain why.

The facts of this case are, I think, clear. I’ve only provided a brief summary of them in the description above.

At the centre of this complaint is the fact that Mr I’s car broke down, and when it was being

recovered by a recovery company, that recovery company caused damage to part of the car. I can't see this is disputed by any of the parties. The recovery company wasn't part of Mr I's contract with esure.

The car's manufacturer has said that the damaged casing cannot be repaired. It must be replaced at a cost around £42,000 plus VAT, which seems to be in the region of, or slightly higher than, the market value of the car.

I've read Mr I's policy wording, which covers:

"All loss and damage to your car unless it's by fire, lightning [sic], explosion, theft or attempted theft. We will:

- pay to repair the damage or*
- replace what's been lost or damaged if it's more cost effective than repairing it; or*
- pay to settle your claim."*

The damage was done by a third-party recovery operator. I can't see an exclusion under the policy dealing with that situation.

In correspondence between this service, Mr I and esure I can see that esure has focused throughout this claim on the original cause of the breakdown and its subsequent repair. It seems to have looked at the cell failure and decided that was the central issue here and the subsequent damage caused by the recovery operator wasn't going to be covered. It said:

"It is the same principal [sic] that if the vehicle has been in an accident, and the damage caused wrote the vehicle off, if on recovery damage was caused by the recovery agent, we would not be seeking them to pay any costs, as the damage was caused to a total loss/ salvage value vehicle."

This example used by esure misses the central point in Mr I's complaint. His car wasn't 'written off' by the original problem – it's the damage caused by the recovery operator that has produced a repair cost roughly the same as the cost to replace the car.

From Mr I's point of view, the actual amount of the claim is irrelevant here. And so is any right of recovery esure may have from a third party. Any of those issues are esure's. It accepted Mr I's car on cover and charged him a premium for it, which means it should stand ready to settle claims under the terms of its policy wording.

It seems to me that Mr I's claim for the damaged casing is valid and what this means is esure needs to settle Mr I's claim for it under the remaining terms of the policy.

For the avoidance of doubt, if Mr I chooses to accept a payment from esure in lieu of repairs (in order that he has the repairs done himself) then esure needs to pay the cost of replacing the casing to the appropriate specification. It's not fair or reasonable for esure to limit the amount it pays to settle the claim to around £6,000 less Mr I's excess as I can't see that he's going to be able to have the work done for this amount. I've said above that the main dealer estimated the cost well in excess of this figure.

If the likely cost of repairs effectively writes the car off then Mr I should be aware of this and that esure will deal with the claim as such under the terms of the policy.

I've also thought carefully about esure's handling of Mr I's claim. It seems to me that the

significant amount of time that has passed since he reported the claim has been extended by esure failing to grasp the situation with the issues affecting the two areas of the battery.

As I mention above, esure's focus seems to have been about the failed cell rather than the damaged casing. But I can see from its internal notes that it was discussing how it could try and recover the cost of the entire claim from the third-party recovery company. What this seems to show me is that its focus was on limiting its costs rather than helping Mr I. And I don't think that's fair.

Mr I has been left in a position where esure's focus means he's suffered distress and inconvenience. It's my understanding that esure provided him with a hire car for a long period as it considered his claim, which is fair and reasonable. He's since talked about moving his family around using private hire cars, and car sharing. In this complaint I'm only able to consider his distress and inconvenience up to esure's final response letter to him. I've thought about this and I think the appropriate level of compensation is £300.

But I can see his inconvenience has continued for over a year from when the original incident occurred, so I think it's fair I say I'd expect esure to consider Mr I's increased costs for the extended period because I don't think it acted fairly when it limited his claim for the damage

My final decision

It's my final decision that I uphold this complaint. I direct esure Insurance Limited to:

- Pay Mr I £300 for his distress and inconvenience.
- Settle Mr I's claim for the damage to the battery casing under the terms of his policy.

esure Insurance Limited must pay the amount within 28 days of the date on which we tell it Mr I accepts my final decision. If it pays later than this, it must also pay interest on the amount 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 I to accept or reject my decision before 12 July 2024.

Richard Sowden
Ombudsman