

The complaint

Mr B complains that following an accident, esure Insurance Limited (esure) unfairly declined to pursue the third-party's insurer unless repairs were first arranged to his car, under his motor insurance policy.

What happened

Mr B was involved in a car accident in December 2022. He contacted esure but didn't want to pay his policy excess. He says he was given the option of providing a "pro-forma" invoice from a garage of his choice to demonstrate the cost of repairs. esure would then use this to pursue the third-party's insurer for his losses. Mr B agreed to this. But the business then told him it couldn't do this anymore. It said he'd have to agree to it arranging the repairs first. Alternatively, he could appoint his own repairer to do this by paying a higher excess fee. esure could then pursue recovery of its costs from the third-party's insurer.

Mr B didn't think this was fair. He says he received conflicting information from esure's agents, and no progress was made with his claim. Mr B complained to the business.

In its final complaint response esure says although it initially offered Mr B the chance to obtain a pro-forma invoice, it's no longer able to offer this. It says it requires the repair costs in full to pursue recovery from the third-party insurer. esure says Mr B's excess is payable regardless of the liability decision. It says if liability is settled in his favour his excess can be claimed back from the third-party insurer.

esure paid Mr B £50 compensation. This was because its agent told him his complaint had been settled, which was incorrect. The business told Mr B his options were to use its recommended repairer and pay a £650 excess fee. Alternatively, he could choose his own garage, but this would require a further £200 payment. The final option was for his claim to be closed.

Mr B didn't think esure had treated him fairly and so referred the matter to our service. Our investigator upheld his complaint in part. He says esure could've pursued Mr B's claim with the third-party insurer using his motor legal expenses cover. He says it should look to progress the claim and discuss the prospect of recovery with Mr B. Our investigator explained that this could be a lengthy process. He says Mr B still had the option of having his car repaired under his policy with esure if he preferred.

Our investigator thought esure had likely delayed Mr B's claim by not giving him the option to pursue the matter using his motor legal cover. He says this has caused Mr B inconvenience and resulted in a frustrating claims experience for him. He says esure should pay Mr B £450 compensation to acknowledge this.

Mr B didn't agree with this outcome and asked for an ombudsman to consider his complaint. It has been passed to me to decide.

I issued a provisional decision in April 2024 explaining that I was intending not uphold Mr B's complaint. Here's what I said:

provisional findings

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 my intention is to not uphold Mr B's complaint. I'm sorry to disappoint him, but I'll explain why I think my decision is fair.

Mr B contacted esure using its website in December 2022 to report his claim. It sent him a text message asking him to upload photos of the damage caused by his accident. The message said that once esure was in possession of this information it would confirm the next steps.

The claim records show esure contacted Mr B several times to remind him to upload the photos it had requested. It confirmed an excess fee of £650 will be payable in relation to his claim.

There is a note in mid-January 2023 that shows Mr B called for an update on the liability decision. It says he was told there was no update yet. The note says esure needed the car to be dealt with first. This is because esure needed to know whether it was repairable or a total loss in order to progress the claim.

esure sent Mr B an email dated 16 February 2023 advising it had been unable to contact him by phone. It asked him to contact its claims department to enable it to progress his claim. A few days later the records say Mr B had called. It says no photos of the damage had been provided. A text message was sent to Mr B asking him to make contact to confirm if he wanted to continue with his claim.

On 20 February 2023 esure called Mr B. He was told there was no liability decision yet. The note says:

"Advised we could look to issue further down the line but as no reps completed on the vehicle we cannot do this – Advised PH we need vehicle being done to continue with the claim – PH understood this – Advised PH about witness – he has the det's of the witness and there may be CCTV from the incident – PH asked if we could email him with the information and he will respond – email sent".

I can see esure confirmed the above information in an email to Mr B.

Mr B raised a complaint, which esure responded to on 21 February 2023. It says he had accepted that his complaint was resolved, based on the explanation highlighted above. On 23 February 2023 the records show esure called Mr B to ask if he was continuing with his claim. The note says he will call back. It also says the claim will be closed if no response is received. A further complaint was raised by Mr B in March. The records show he called on 3 April. The call was sent through to the wrong team initially – it's not clear if the claim was discussed on this occasion. On 12 April Mr B called again. The note refers to him not having uploaded the information esure had requested. It says another link was sent to Mr B to allow him to upload photos of the damage to his car.

Mr B sent an email to esure telling it he wants to repair his car. He asks the business to follow up with him to progress his claim. I can see the damage photos were received by esure on 18 April 2023. An estimate for the repair costs was prepared and arrangements to instruct a garage were made on 27 April. An email was sent to Mr B the same day to inform him the repairer would make contact about collecting his car. It confirms the excess that is

payable. The email also refers to the action esure will take to recover its costs from the third-party's insurer.

Mr B responded on 28 April 2023 to say he didn't agree to pay an excess fee. He says he wasn't at fault for the accident, and he pays for his insurance to protect him from any liability. He says he expects esure to handle this matter on his behalf. In his email Mr B says esure can either, "give a green light for the repair and recover the fees from the other party or wait for their response".

esure emailed Mr B on 12 May 2023. It told him the third-party insurer is denying liability. Without a figure to pursue the third-party for in court it says it's unable to progress his claim, unless he agrees to one of the following options:

- esure arranges the repairs through its approved repairer and Mr B pays a £650 excess when he collects his car – or Mr B appoints his own garage and pays an £850 excess - after this it will pursue recovery of its costs; or
- Mr B obtains a pro-forma invoice from his choice of garage and (if its engineers agree the price is reasonable) it will pursue the third-party insurer for the cost of repairs and pay this to Mr B at which time he can arrange the repairs himself; or
- Mr B can use his motor legal protection to pay for the repairs himself at his own choice of garage (after esure approves his quote) and esure will pursue the third-party insurer for the full cost of the repair.

The claim records show further contacts occurred in May and early June 2023. There is reference to Mr B asking questions about recovering costs. On 26 June esure wrote to Mr B to say the options of providing a pro-forma invoice was no longer possible. It says it requires an outlay to recover in order to pursue the third-party insurer. This means the repairs need to be completed and paid for first. The email explains that Mr B's excess is payable by him, but if liability is settled in his favour, it can be claimed back from the third-party insurer. esure concludes its email to tell Mr B he needs to contact its claims team to let it know if he wants to claim for the damage, and what garage he wants to use.

esure didn't agree to pursuing the claim using the pro-forma invoice route and so Mr B contacted our service.

I've read Mr B's policy terms. In the event of a claim the options are that Mr B uses esure's approved repairer or appoints a garage of his choice. The policy excess for using a non-approved repairer is subject to a further £200 payment. The policy terms say:

"Using a non recommended repairer

• You will need to send us a detailed estimate from your choice of repairer and details of the incident as soon as possible • We will only be liable for the repair costs once we have agreed on the estimate. • We will only pay for reasonable and necessary repairs and we reserve the right to say no to an estimate. • You will need to pay an additional £200 excess. This is in addition to any other applicable excess shown in your Schedule."

I can see Mr B has motoring legal protection as an optional extra. The additional benefits section of his policy booklet says:

"Motoring legal advice service

We will provide you with a motoring legal advice helpline at no extra cost. This is operated by [solicitors] and is available anytime of the day or night on [telephone number]."

Mr B's intention was to avoid having to pay his policy excess. This is why he wanted to use the pro-forma option that esure had offered. This meant he'd provide an invoice for the repairs and esure would pursue the third-party insurer for these costs. However, the business later advised that this wasn't an option. We queried with esure why it originally told Mr B this was possible. It responded to say this was an error on the part of its claim's handler. It says it made a business decision in 2022 to no longer offer this. I note esure's comments that it quickly advised Mr B of its mistake and apologised.

I asked esure to comment further on Mr B's view that his motor legal protection meant it could pursue the third-party insurer without first arranging for repairs to be completed. It responded to say the legal protection Mr B has in place is to claim back any uninsured losses. It says Mr B's losses are for the damage to his car, which is an insured loss. esure says these losses can't be claimed for under his legal protection cover.

I've thought carefully about this point. But I can't see that Mr B's policy provides for the action he wants esure to take here. Motor legal protection policies are generally used to pursue uninsured losses. For example, a loss of earnings. The loss Mr B wants to pursue using his legal cover is for the damage caused to his car by the accident. This is an insured loss covered by his main policy. So, I don't think esure acted unfairly with the claim options it confirmed to Mr B.

Mr B's policy terms, on page 23, say:

"Claims procedure

...We have full discretion in the settlement of your claim or any legal proceedings which may arise and we may take over, defend or settle the claim in your name for our own benefit. You and anyone covered by the policy must provide all the information, documentation and help we need to do this."

This is a common term used by the insurance industry. It essentially means that it's for esure to decide how to handle Mr B's claim. It must still treat him fairly, but it's able to decide how best to deal his claim. esure is ultimately responsible for paying the costs associated with Mr B's claim, so we don't think this is unfair.

esure incorrectly told Mr B it could pursue the third-party insurer if he obtained an estimate for the repairs. It was appropriate that it apologised for this mistake. But I don't think it treated Mr B unfairly when relying on its policy terms and confirming the repair options available.

Mr B's claim has been ongoing for some time. But having considered the evidence I don't think this was esure's fault. Mr B didn't want to proceed using the options available under his policy. The requirement for repairs to be completed was made clear at an early stage. This had to happen before costs could be claimed from the third-party's insurer. The delays here were largely down to Mr B not allowing esure to proceed with the claim under the cover provided by his policy.

In summary, I don't think esure treated Mr B unfairly when relying on its policy terms when handling his claim. It made a mistake when it offered the pro-forma option, but it responded appropriately to explain this wasn't possible and offered an apology. Because of this I can't reasonably ask it to do anymore.

I said I was intending to not uphold Mr B's complaint.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

esure didn't respond with any information or further comments for me to consider.

Mr B responded to say it isn't fair that esure changed its mind about offering the pro-forma option. He says he accepted our investigator's findings, so my reference to him asking for an ombudsman to consider his complaint isn't correct. He also says that he uploaded the photos esure requested earlier than it says he did.

Mr B says the information in esure's claim records is incorrect concerning the date of his second complaint. He queries why it's no longer possible for the business to offer the pro-forma route. Mr B says I should read his testimony and not just the information the business provided when making my 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 not persuaded that a change to my provisional findings is warranted.

In my provisional decision I set out esure's response to why it changed its mind about the pro-forma route. It explained this option was offered in error. Its agent shouldn't have told Mr B this was possible. This was after it had made a business decision in 2022 not to offer this anymore.

I understand that Mr B is upset. But it was his decision not to proceed using the options available under his policy. esure apologised for its agent's mistake and made clear, at an early stage in the claim, that repairs must be completed prior to it recovering costs from the third-party insurer. Mr B's further comments don't persuade me that a different outcome is needed.

I note what Mr B says about the photos he supplied. I don't dispute what he says, but I also have no further information to support this.

Mr B says he accepted our investigator's findings. But in his emailed response to our investigator, he says we should escalate the case. He doesn't mention accepting the outcome. However, this is essentially a moot point as esure didn't respond. As an agreement wasn't reached our process requires an ombudsman to consider the complaint and provide a decision. This is what happened here.

I read Mr B's testimony and evidence carefully prior to issuing my provisional decision. I've reviewed it again here. I note what he says about me having only considering esure's evidence. But that isn't the case.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 May 2024.

Mike Waldron

Ombudsman