

## **The complaint**

Mr M complains about esure Insurance Limited's decision to accept liability following a third party claim against his policy.

## **What happened**

The background to this complaint is well known to Mr M and esure. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

In October 2023 Mr M was told by another driver that he had damaged their car. A claim was made against Mr M's policy. Initially, esure contested liability, but following further evidence they conceded liability. Mr M was unhappy and raised a complaint.

Esure partially upheld the complaint. As a remedy, they reinstated Mr M's no claims discount and refunded any additional premium charged as a result. Mr M referred his complaint to our Service for an independent review. Our Investigator didn't recommend that esure needed to do anything further. As Mr M remained unhappy, his complaint has been referred to me for 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service. Our Investigator referenced Consumer Duty in their assessment and I've too kept it in mind when considering this complaint.

### *The scope of my decision*

It's clear to me that Mr M has very strong opinions about the incident, the third party claimant and how esure have handled things. But my decision won't determine or consider who is responsible for the third party's losses. That is something a court of law is best placed to decide. When coming to my decision, my key considerations are whether esure have:

- acted in accordance with the terms and conditions of the policy; and
- dealt with the claim fairly (including investigating it) when making their own decision on liability.

### *The liability decision*

The policy terms here allow esure full autonomy over the settlement of any claim. This isn't unusual for motor insurance policies. This means the decision about whether to contest or concede any claim rests with esure.

Esure aren't obligated to contest a claim in court. They are entitled to weigh up the evidence alongside potential costs and any risks in proceeding to court. Esure will have vast experience of motor claims and likely outcomes a court may reach. They will have factored this into their liability decision.

Esure initially contested the claim based on Mr M's account and an inspection that didn't show damage on Mr M's car consistent with the third party vehicle damage. This is what I'd have expected to happen. However, they later conceded liability when a video of the third party and Mr M was presented.

I note that Mr M raised concerns about the video provided and has alleged the actual encounter with the third party driver was much longer than the video shows. Having watched the video (and kept in mind Mr M's comments), I've not seen sufficiently persuasive evidence to conclude, on balance, that it was digitally altered or manipulated. Overall, I'm satisfied that it was reasonable of esure to rely on the video as key evidence.

Esure's decision to concede liability was summarised as:

*"...this is a fault claim based on:*

*1) him [Mr M] accepting fault in the incident*

*2) the presence of the mark on his car in the video which wasn't there when [inspection company name redacted by Ombudsman] inspected and doesn't appear to have been disclosed to engineer to allow them to consider if related to accident or not."*

Mr M has argued that he may have said words that could be interpreted as him admitting liability in the video because he felt threatened. He's also said the mark in the video likely wasn't on his car when inspected because it was dirt and/or he had cleaned his car. I've noted Mr M's concerns about the general authenticity of the claim, but I've not seen sufficiently persuasive evidence that undermines esure's decision when responding to this claim.

Overall, having considered the video alongside the rest of the evidence and Mr M's counter arguments, on balance, I don't find that esure have acted unreasonably or treated Mr M unfairly when conceding liability. Instead, I find that they reasonably investigated matters (as evidenced by their initial defence) before reaching a reasonable decision based on the overall evidence.

Mr M has recently referred to the colours of the two cars involved being incompatible with the 'marks' in the video. Our Investigator shared this information with esure and they have said it doesn't change their overall position. I find this to be reasonable.

#### *The service provided overall*

It's clear that there were aspects of the service provided by esure that Mr M is unhappy about. For example - the time taken and communication. Whilst the service provided may have not met Mr M's expectations, I'm not persuaded that it was poor to the extent that esure need to do anything further to put things right.

Mr M has raised issue with esure's sharing of information related to the claim. Although I'm satisfied that esure have fairly shared appropriate information with Mr M and given him an opportunity to respond, any concerns Mr M has with esure's handling of data would be best directed to the Information Commissioner's Office. <https://ico.org.uk/>

Esure reinstated Mr M's no claims discount (NCD) and refunded the increased premium charged initially. This was a positive action by esure and not one I'd seek to interfere with - as it's in Mr M's favour. It wouldn't be uncommon for a NCD to be affected following a claim.

### *Summary*

I acknowledge that my decision will disappoint Mr M, but it brings to an end our Service's involvement in trying to informally resolve his dispute with esure. He retains all other dispute resolution options.

### **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 Mr M to accept or reject my decision before 28 October 2024.

Daniel O'Shea  
**Ombudsman**