

The complaint

Mr H complains about esure Insurance Limited ("EIL") and the settlement offer put to him following the total loss of his car. Mr H is also unhappy with the service EIL provided during the claim process.

What happened

The claim and complaint circumstances are well known to both parties. So, I don't intend to list them chronologically in detail. But to summarise, Mr H held a motor insurance policy, underwritten by EIL, when he was involved in a road traffic accident. So, he contacted EIL.

Initially, Mr H dealt with the third-party insurer ("TPI") directly, but he was unhappy with the settlement offer the TPI provided. So, he returned to EIL to make a claim. But he was unhappy with how long the claim took, and the impact this caused. Mr H was also unhappy that EIL sold the car without his knowledge, and the settlement offer of £2,664, less the applicable policy excess, they eventually offered him. So, he raised a complaint, seeking significant compensation to recognise the inconvenience he'd been caused.

EIL responded to the complaint and upheld it in part. They thought the settlement offer put to Mr H was a fair one, calculated in line with the policy terms and standard industry approach, considering his car had previously been declared a total loss before the most recent accident. But they accept the service they provided to Mr H, including delays in settling the claim, was both unfair and unreasonable and so, they paid Mr H £500 to recognise the distress and inconvenience this caused. Mr H remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They didn't think EIL had reasonably evidenced why a 20% deduction to the car's valuation was applicable in this situation. So, they thought EIL should pay Mr H the remaining amount need to ensure he received full highest valuation of the car which the motor trade guides showed to be £3,330, plus 8% simple interest from the date EIL first offered the settlement to the date of payment.

But they thought the £500 EIL had already paid to recognise their service failures was a fair one, considering the evidence available to them and our service's approach. So, they didn't think EIL needed to pay anything more for this aspect of the complaint.

Mr H didn't agree, setting out clearly why he didn't think the £500 was enough to compensate him for the time he spent engaging with EIL's claim process and the inconvenience he was caused by the delays, both financially and emotionally.

And EIL also disagreed, stating why they felt the 20% deduction they applied was fair and in line with what they felt our service expected. As neither party agreed with our investigator's recommendation, 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 want to recognise the impact this complaint has caused Mr H. I don't doubt the inconvenience he will have been caused by his involvement in a road traffic accident, which both Mr H and EIL have accepted wasn't his fault, especially considering this led to the total loss of his car. I appreciate Mr H would've taken the policy with EIL to help assist him, both practically and financially, in situations such as the one he found himself in. So, when Mr H felt EIL's settlement offer left him out of pocket, and that he'd encountered delays during the claim process, I can understand why he'd feel unfairly treated and raise a complaint.

I've first thought about Mr H's unhappiness with the settlement offer EIL have put to him. And when doing so, I've thought about the actions EIL have taken and compared them against the policy terms, and our service's approach and expectations.

Our service's approach to motor valuations has evolved recently and is well documented. We expect an insurer to obtain valuations from the motor trade guides and, unless there is evidence to persuade otherwise, pay the highest valuation provided by these guides.

In this situation, I've seen the highest trade guide valuation for Mr H's car was £3,330. And it's not in dispute here that EIL used this valuation when calculating their settlement offer. So, I do think they followed the approach our service would expect. But crucially, EIL applied a deduction of 20% to this amount, as Mr H's car had been deemed a total loss previously in 2015.

Applying a deduction for a total loss in itself isn't evidence of EIL acting unfairly, as this is something they are able to do. But crucially, our service expects a business to be able to evidence why this percentage deduction has been applied. So, I'd expect to see the reasoning, and the calculation, setting out why a 20% deduction is fair. I note during our investigation, EIL have been asked to provide this information.

But from what I can see, EIL haven't been able to provide an engineer's report and other accompanying evidence setting out why 20% is the correct deduction to make. So, without this, I don't think I can be persuaded that the 20% deduction is fair. And it's not my role, or the role of our service, to speculate on what a deduction should be. So, in line with our service's approach, I must say the deduction has been applied unfairly. I'll discuss what I think EIL need to do to put this right later within the decision.

I've then turned to the service EIL provided, which includes the length of time the claim has taken as well as their communication with Mr H, and the sale of his car. I note EIL have accepted they've acted unfairly here, and paid Mr H £500 to recognise their errors. Because of this, I don't think the complaint issue itself remains in dispute. But for completeness, I do think it would be worthwhile for me to explain that, having reviewed the information available, I do think EIL could've been more proactive in progressing and settling the claim. And I do think they could've been clearer about the location of Mr H's car and crucially, when it was sold. So, I'm in agreement with both EIL and Mr H that EIL have acted unfairly and reasonably here and so, I've then turned to what I think EIL should do to put things right.

Putting things right

When thinking about what I think EIL should do to put things right, any award or direction I

make is intended to place Mr H back in the position he would've been in, had EIL acted fairly in the first instance.

In this situation, for the reasons set out earlier within my decision, had EIL acted fairly I don't think they would've applied a deduction to the total loss settlement but to Mr H. So, I think EIL should raise a payment for the additional £666 required to ensure he has been paid the highest valuation amount for his car. And I think EIL should pay 8% statutory interest on this amount, from the date they paid the first settlement payment to Mr H to the date the remaining amount is paid, to recognise the time he's been without access to these funds.

But I don't think EIL need to pay anything more than the £500 already paid to Mr H to compensate him for their service failings. This is because 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 paid.

This is because I think it fairly recognises the inconvenience and frustration Mr H will have been caused needing to chase EIL for updates, as well as the shock and upset he felt when he discovered his car had already been sold without his knowledge.

But I think it also fairly takes into consideration the fact that Mr H himself chose to engage with the TPI first to try and settle his claim. And that by doing so, this will have caused some delays in the settlement of the claim, through no fault of EIL. I think the payment also reflects the fact that some of the delays were caused due to EIL needing to confirm if the TPI had paid out on the claim themselves, as the TPI had recorded the claim as settled on external reports. As the TPI had reported onto these, I don't think EIL were unfair or unreasonable to seek clarification on this first.

And while I do think EIL could've proactively made Mr H aware his car had been sold, I must note that when his car was sold Mr H had already made EIL aware he wished to pursue a claim through his own policy, than that of the TPI's. And, that it had already been deemed a total loss. I don't think EIL had any reason at this point to expect that Mr H would then choose to return to the TPI again, when he was unhappy with the settlement EIL put forward, so I think they were fair to assume they would be settling the claim and so, ultimately taking responsibility for his car.

Finally, while I appreciate Mr H has explained he incurred financial losses having to use alternative transport while he was without a car, I must take into consideration the fact Mr H would never have been entitled to a replacement car under his policy, due to it being deemed a total loss. And in Mr H's own testimony that I've seen on the file in conversations with our service and EIL, he made it clear he expected to take time to ensure he sourced an adequate replacement for his car, which he expected himself to take up to some months to do. So, I don't think I can be persuaded that, even if EIL had settled the claim sooner making an offer without the deductions, Mr H would've sourced a replacement in a time frame that would've reduced his financial losses up to the point EIL issued their complaint response, which is the time frame I can consider.

So, because of the above, I won't be asking EIL to make an additional compensatory payment above the £500 already paid.

I understand this decision is unlikely to be the total outcome he was hoping for. And I want to reassure Mr H I've thought carefully about all the comments he's made, even if I haven't commented on them directly. I understand Mr H feels his time is worth more than the £500 he's been paid, considering what he feels is his loss of earnings as well as alternative transport costs.

But our service doesn't consider loss of earnings in the same way Mr H has calculated what he thinks is a fair payment. And for the reasons set out above, and the fact no evidence of transport costs have been provided, I'm unable to consider these either. I do think the £500 falls within the range of reasonable payments, considering our service's approach to compensatory awards considering the length of the delays, and the number of times Mr H has needed to contact EIL unnecessarily due to EIL's failure to act as proactively as they should have.

My final decision

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

- Pay Mr H the remaining £666 needed to ensure he receives a total loss settlement that equates to the highest motor trade guide valuation; and
- Pay Mr H 8% simple interest on this amount from the date their first settlement payment was issued, to the date the remaining amount is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 August 2024.

Josh Haskey
Ombudsman