DRN-4936125

The complaint

Mr L has complained about his car insurer, esure Insurance Limited (Esure), regarding his accident claim. He feels it unfairly declared his car a write-off and that its settlement paid in that respect was too low.

What happened

Mr L had an accident in June 2023. Esure said the car had some structural damage and was beyond economic repair. It paid Mr L £36,500 which it said was the market value for the car. Mr L was disappointed; he didn't think that was enough and didn't want to lose the car, but he also didn't want to keep the car which had been declared a structural write-off. So he accepted Esure's settlement.

Later Mr L was told by an acquaintance that they had brought his car and repaired it for around £2,500. Mr L complained to Esure – he said it needed to show that there had been structural damage to the car. He wanted it to justify declaring his car a write-off when it had been possible to fix it for so little cost. He'd replaced the car since – but hadn't been able to find a similar car for the sum Esure had settled for. So, he didn't think the claim had been settled fairly.

Esure felt it had settled the claim fairly. It said it was its choice how to settle the claim and it had relied upon its engineer's report in doing so. It said the market value had been fair based on the way values had been assessed at the time of the claim.

Our Investigator noted that Esure's estimated cost for repairing the car had been around £20,000, about 56% of the car's overall value. She thought, as this was less than 60% and Esure hadn't shown costs were likely to increase from there, that its decision to write the car off had been unfair. She said it should pay £150 compensation. She also felt its settlement sum had been unfair. She said it should increase its settlement based on the car's fair market value being £37,252.

Mr L thanked our Investigator for her assessment. Esure said it didn't agree with it.

One of Esure's objections was that the way fair market values are assessed by this Service had changed in the period since the claim was settled and before Mr L made his complaint. Our Investigator pointed out to Esure that the market value it had ascribed was actually lower than three of the four available market values at the time (with its engineer having discounted the fourth and lowest guide as being out of line and so not a reliable indicator of fair market value).

Esure still wasn't persuaded about the market value. It said the difference (£752) between what our Investigator felt the fair market value was, and what it had paid, was insignificant to warrant a change in outcome against it.

Regarding its decision to write the car off, it felt that this had been fair. It noted that it hadn't shown how costs would likely rise from those estimated – but emphasised that is because costs which arise once work starts are often unforeseen/unforeseeable. Esure said it reserves it right in the policy to decide how to settle the claim and here it had done that based on its expert engineer's assessment. It felt it had acted fairly.

The complaint was referred to me for an Ombudsman's decision. Having reviewed it I found I agreed with our Investigator about the market value for the car. But not regarding Esure's decision to write the car off having been unfairly made. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

<u>"Write-off</u>

The policy allows Essure to choose how to settle the claim. But we'd expect an insurer to apply that right fairly. Often insurers will decide to write a car off if the cost to repair it reaches 60-70% of the car's market value. In very general terms, we don't usually find a decision like that is unfair.

Esure's engineer found structural damage to the car – damage to the rear inner wing and wheel housing. I've no reason to doubt his report in this respect. I also note there was damage to the suspension and axle. The engineer estimated the damage would cost £20,593 to repair.

I bear in mind that repair estimates are just that. And it isn't uncommon for the cost of repairing a car to increase once work starts. That can often be simply because an estimate is completed on a non-invasive basis, once work starts and parts are removed, other damage can be found. But also the costs can increase if the cost of parts rises, or if the supply of parts are delayed.

It's also important to bear in mind that an insurer, when restoring a car, has to use manufacturer approved parts. So whilst an individual might be able to repair a car for less than an insurer, that could be because they do the work themselves and/or use generic or second-hand parts.

Esure, at the time of its total loss decision, felt the fair market value for the car was £36,500. That put the estimated cost of repair at 56.42%. As I noted above, often it is when repair costs are at 60-70% that an insurer will decide to write the car off. But Esure is correct in that there is no hard and fast rule about what % it's fair for an insurer to show before writing-off a car. The figure of 60-70% is commonly what we see. But if costs are approaching that bracket, and it's highly likely that they'll increase, the decision to write-off may be fair.

Here I bear in mind that the monetary value of the estimated repairs is actually very close to 60% – the cost would only have to increase by around £1,300 for the 60% 'threshold' to be reached. That's not a high margin. I'm mindful the car was damaged along the whole of one side – whilst it was classified as moderate, a large area of the car was affected. With some, as I've said, structural damage, but also some mechanical parts affected such as the suspension and axle. I think, in the circumstances here, it would be very easy, and therefore likely, for the estimated repair cost to be exceeded. I think it was reasonable for Esure to view the car as beyond economic repair.

I appreciate that Mr L would have rather kept his car. But I can see that he didn't want to keep it if it was a structural write-off. For the reasons set out above, I do think Esure's decision in this respect was fair. Even amending the market value somewhat, as I've set out below, doesn't change my view in this respect – amending the value as below still suggests writing the car off based on the estimated repair costs was a fair decision.

<u>Fair market value</u>

Esure is aware that this Service's approach to determining if an insurer has applied a fair market value has recently changed. It feels it isn't fair to apply that approach in a situation like this when the claim and its settlement were determined before the approach was changed. However, whilst that argument has a certain sense of logic, I'd struggle to say Esure's initial market value was fair, even if I wasn't applying this Service's current approach.

I say that because Esure's expert engineer considered four valuations returned by the commonly used motor valuation guides. In his expert opinion he felt the lowest of these four was not reliable, so he discounted it. He then averaged the three remaining values to return a sum of £36,689. Having done that he recommended a settlement to Mr L of £36,500. He gave no reason for either settling below the lowest of three guide valuations relied upon or for making any deduction from the average sum he'd calculated. So, based on the engineer's findings alone, I can't say that market value was fair.

Turning to our current approach to motor valuation complaints, which seeks to avoid consumer detriment whilst allowing an insurer a reasonable chance to show the settlement they made was fair. In short, where the different motor valuation guides return different values, we'll expect an insurer to pay in line with the highest valuation – unless it has good reason to support a payment in line with any lower sums returned. Esure has not presented anything to support the lower market valuation sum it applied here. So it fairly has to pay an increased settlement to Mr L based on the highest valuation returned by the guides of £37,252, less its lower valuation of £36,500.

I appreciate that Esure thinks that difference, of £752, is not significant. However, Esure has not satisfied me that the market value it applied was fair or reasonable. Whilst I know Esure thinks it's unfair for it to now have a complaint upheld on the basis of this sum and our new approach, as I've said above, Esure initially settled this claim based on an unfair valuation – even based on what it knew then. Then, when Mr L complained to it, Esure had a chance to revise its settlement and I bear in mind that, at that time, it was aware of the approach explained above. So if Esure had wanted to avoid having a complaint upheld against it by this Service, it should have ensured a fair settlement was initially made or, in the alternative, following Mr L's complaint, revised its settlement, to ensure it was in-line with our current approach.

<u>Compensation</u>

I'm not minded to award compensation to Mr L on this occasion. I know he was unhappy that he couldn't keep his car. But I explained above why I think Esure's write-off decision was fair and reasonable. I have found the market valuation it applied wasn't fair. And I know it was difficult for Mr L to find a car he was happy with for the settlement made. However, I bear in mind that when he did find a car it, it cost more than £10,000 more than the settlement Esure paid. I'm not persuaded that the difficulty Mr L had in finding another car was because of Esure's unfair settlement.

I award compensation for upset caused by an insurer's failures. As I haven't seen that Mr L was caused upset by what I've found to be Esure's failure in paying a fair settlement for his claim, I can't reasonably award compensation."

Mr L thanked us for considering the matter. Esure said it was pleased with the findings I'd made regarding the write-off decision and compensation. It said it disagreed with the decision on market value.

Regarding market value Esure said it wanted to point out that I had said the difference in repair costs between 56% and 60% was £1,300 which was “not a high margin”. It said that the difference in market value – at around half that sum (£752) – must also not be a high margin. It said it felt this was an important final point to make.

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 note Mr L has not objected to my findings and that Esure has agreed with the comments I’ve made regarding its write-off decision and compensation.

I thank Esure for making a final point regarding market value. But I’m not persuaded it adds anything to the balance of my findings. I noted provisionally that Esure felt the amount I was looking at making it pay was not a significant sum. But I also explained why I felt it was appropriate to uphold this complaint against it.

As I said, if Esure had wanted to avoid having a complaint upheld against it, for what it is keen to emphasise is a relatively small sum, it should have made sure to treat Mr L fairly in the first instance. Or, at the very latest, when it had chance to review its outcome when he complained. But it didn’t. Rather it attempted to settle the claim based on a figure which was less than all three of the accepted guide valuations returned, with absolutely no reasoning being given for why paying a lesser amount was felt to be fair. I remain of the view that wasn’t fair, that Esure didn’t treat its policyholder, Mr L, fairly. In light of that I don’t think Esure can reasonably expect the complaint to not be upheld.

My view of this complaint remains as that stated provisionally. My provisional findings are now those of this my final decision.

Putting things right

I require Esure to pay Mr L £752, plus interest* applied on this sum from the date of loss until settlement is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Esure to take off tax from this interest. If asked, it must give Mr L a certificate showing how much tax it’s taken off.

My final decision

I uphold this compliant. I require esure Insurance Limited to provide the redress set out above at “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 26 August 2024.

Fiona Robinson
Ombudsman