

The complaint

Miss H complains about the liability decisions esure Insurance Limited (“esure”) made on two separate claims on her car insurance policy. Miss H is also unhappy with difficulties she experienced in contacting esure.

What happened

In 2023 Miss H was involved in two separate road traffic accidents which she says weren’t her fault.

The first accident (which I’ll call “claim one”) happened in May 2023. Miss H says that a scooter being driven at high speed attempted to overtake her vehicle from behind and struck her car’s side mirror, resulting in the scooter driver toppling over.

The second accident (which I’ll call “claim two”) happened in August 2023. Miss H says that as she was reversing slowly to make space for another vehicle, a van collided with the rear nearside of her car. Miss H says she considers the van driver to be at fault because she was signalling at the time and doesn’t think the van driver was paying attention.

Following investigations, esure decided to accept fault for both claims on Miss H’s behalf.

On claim one, esure said it had instructed an independent assessor to investigate the claim and found that Miss H wasn’t willing to attend court and had admitted to not seeing the scooter. In addition, esure said there was a lack of evidence such as dashcam footage or witnesses. For these reasons, esure decided to accept liability.

On claim two, esure said it had decided to accept liability because Miss H had admitted to reversing at the time and it was mentioned by both Miss H and the third party that Miss H was holding a mobile phone at the time.

In response to the complaint about communication difficulties, esure said that it had no record Miss H had complained on either claim about call wait times. However, esure said that it was aware there were some issues with customers reaching it by phone due to a system migration and in response to this it made a proactive settlement offer to pay Miss H £75 compensation.

Miss H decided not to accept the £75 compensation offer so our investigator considered the complaint. He said that the terms and conditions of the policy allowed esure to decide how to settle the claims and that on both claims he didn’t think esure had unfairly decided to accept liability. He also thought that £75 was a fair amount of compensation for the difficulties Miss H may have had in contacting esure.

Because Miss H didn’t agree, the complaint has been passed to me to provide 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.

Having done so, I've decided to uphold the complaint in part. I understand Miss H will be disappointed by this but I'll explain why I have made this decision.

Our services role isn't to decide who is liable for a road traffic accident. That's a matter only the courts can decide in circumstances where liability disputes aren't resolved informally. My role is to consider whether esure acted fairly and reasonably in how it investigated the claims, and in how it decided it would accept liability.

I've begun by reviewing the terms and conditions of the policy. These say:

"You must not admit liability for, or negotiate to settle, any claim without our written permission. 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."

I'm satisfied this term gave esure discretion to reach its own decision on whether to accept liability - which is consistent with how other car insurance policies work.

I've next considered if esure carried out a fair and reasonable assessment of both claims before deciding to accept liability. I'll address each claim in turn.

Claim one

Miss H said this incident was witnessed by police and, after being approached by representatives of the third party holding her at fault, she enquired with the police about getting a report but was informed there wasn't one due to there being no injuries.

According to esure, there wasn't any other evidence available such as dash cam footage or other witnesses. I haven't seen evidence to suggest otherwise, so I don't think esure overlooked anything on this claim which may have helped produce a more favourable outcome for Miss H on liability.

An independent assessor was appointed by esure to carry out an interview with Miss H. I've read this report and find it supports esure's comments about Miss H not being willing to attend court and not seeing the third party prior to the impact. More specifically, it says:

"We are of the opinion that she would acquit herself well whilst under cross-examination should she be required to give evidence at court, but is not keen to attend."

...

"She indicated to the right, but does not know for how long, checked her mirrors and did not see anything so moved to the right."

Miss H's own written statement about the incident also supports she didn't see the third-party approaching:

“The moped approached me from behind and was not there when I checked my mirrors so he must have been travelling at excessive speed.”

An email Miss H sent to esure in September 2023 further supports she was unwilling to attend court:

“its such a very minor incident its not worth going to court as no claim from me as no damage.”

Miss H has since informed our service that she would be willing to attend court. But esure said given that this was about a year after her statement to its investigator, and liability was established shortly after Miss H's statement, it can't now retrospectively change its stance. I don't find the reasons esure has given here to be unreasonable.

Although I recognise Miss H's strength of feeling that she wasn't at fault for this accident, I find esure were entitled under the terms of the policy to accept fault on her behalf and did not do so unreasonably as the evidence shows esure considered the relevant material facts and evidence available in connection with the accident before reaching its decision.

Claim two

As with claim one, I haven't seen any evidence here such as CCTV or witness statements which esure has overlooked that would show Miss H wasn't at fault for the accident.

Miss H's comments show she accepts she was reversing at the time and was holding her phone – although she says she wasn't using the phone and had just picked it up because it fell from its cradle.

I've been provided a copy of the third-party driver's statement. The third party says that Miss H reversed into their car and their passenger, as well as another witness, saw Miss H using the phone, rather than just putting the phone away.

I've also been provided with a recording of a call between representatives of the third party and a witness who saw the accident from a nearby café. The witness said that the third-party van was stationary at the time of the accident and reversed into by Miss H. The witness also said they thought they'd saw Miss H was on the phone.

As with claim one, I appreciate Miss H strongly denies being at fault for this accident, but I don't find esure's decision to accept liability in these circumstances to be unfair. I say this because I find esure carried out a reasonable investigation and assessment of the claim by considering the material evidence relating to the accident before deciding to accept liability.

Communication issues

Miss H says that she's spent hours trying to reach esure by phone over the course of several months without success.

I haven't seen direct evidence showing the extent to which Miss H has tried to contact esure, but esure accepted that there have been issues on its side in reaching the claims teams due to a system migration. Accordingly, I don't doubt Miss H may have had some difficulty in reaching esure by phone.

I've also been provided with claim notes from esure. I think these show Miss H has been updated at key points in the claims such as being notified when liability was disputed and the notes have captured Miss H's version of events. So although Miss H may have had

difficulties at times in contacting esure, I don't think this has resulted in her version of events not being taken into account, or Miss H being prevented from sharing key information that may have helped support she wasn't at fault for either accident.

I find it will have caused some distress and inconvenience to Miss H not being able to reach esure by phone to discuss her claims and that compensation is warranted for this. But on the evidence available to me, I find esure's offer of £75 compensation to be in line with our award levels for this type of issue and a fair and reasonable way to put this right.

My final decision

For the reasons I've set out above, my final decision is to uphold this complaint in part, and I require esure Insurance Limited to pay Miss H £75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 16 October 2024.

Daniel Tinkler
Ombudsman