

The complaint

Miss O complains about how her insurer, esure Insurance Limited (esure), dealt with a claim made under her motor insurance policy following an accident.

References to esure in this decision include their agents.

What happened

In March 2023 Miss O was involved in an accident in which her vehicle was hit by a third party vehicle. Her vehicle sustained damage to the front passenger door and wheel arch and wheel and was recovered by the police to one of their storage pounds. Miss O initially contacted an accident management company (AMC) about the accident at the time it happened, but then contacted esure the following day (when she hadn't had a promised call back from AMC). She told esure about the accident and lodged a claim. esure arranged for the vehicle to be taken from the police storage pound to an approved repairer (ARC). ARC carried out repairs and provided a courtesy car.

When Miss O first contacted esure, esure initially recorded the claim as non-fault and would seek to recover the costs of the claim from the third party (or their insurer). Miss O said she was pulling out of a parked position to proceed in the opposite carriageway when the third party vehicle hit her. esure then deemed it to be a fault claim, which Miss O disputed. But esure settled the claim from the third party.

When her vehicle was returned from ARC, Miss O was concerned it was pulling to one side while driving, which she thought made it unsafe. She contacted ARC and esure to ask the vehicle be taken back to be checked and the issue rectified. She said a tyre had worn and there were also issues with the sunroof and stop/start mechanism. Her vehicle was checked by ARC and returned (April 2023). However, Miss O still thought the vehicle was pulling to one side, so she complained to esure. In their final response (June 2023) esure said ARC took in the vehicle and returned it, with no further action required.

Miss O was also unhappy at esure's decision to deem the accident a fault claim. So, she made a further complaint (November 2023). Miss O also complained to this Service (November 2023) unhappy at the quality of repairs to her vehicle, saying she'd had to pay for rectification work herself (to check the vehicle tracking/alignment and replace two tyres). She was also unhappy at esure accepting liability for the accident and deeming it to be a fault claim as well as concerns about the courtesy car she was provided with.

esure issued a further final response in April 2024, on the issue of liability for the accident. They said their decision was based on several factors:

- They couldn't physically prove the speed of the third party vehicle.
- The third party would be seen as the established party as they were proceeding along the main road.
- They thought a judge would rule in favour of the third party, should the matter proceed to court. So, esure could not risk the third party issuing court proceedings against them..

Our investigator upheld the complaint, concluding esure hadn't acted fairly. He thought esure were aware of Miss O's concerns about the vehicle pulling over and their final response in June 2023 didn't address the issue. On the liability decision and deeming the claim to be a fault claim, he thought esure were entitled to decide liability and settle the claim (including that from a third party). So, he didn't uphold this element of Miss O's complaint.

On using an accident management company, as AMC wasn't regulated by the Financial Conduct Authority (FCA) to handle insurance claims, then the remit of this Service (to look into complaints against regulated businesses) meant our investigator couldn't consider any issues relating to AMC's actions. However, based on information provided by esure, he concluded esure had referred Miss O to AMC. But that Miss O hadn't understood that in doing so she was stepping outside her insurance contract with esure and would be dealing with an unregulated business. In recognition of this, he thought esure should pay Miss O £250 compensation.

On the issue of the repair costs incurred by Miss O, the investigator (having provided evidence of the invoices and costs to esure) thought esure should review the invoices as a separate issue.

esure disagreed with part of the investigator's view. They said Miss O contacted AMC before she contacted them to tell them about the accident, so esure had not been in a position to advise her about the benefits of using AMC. When she did contact them, they instructed ARC to carry out repairs and contact Miss O about a courtesy car. esure provided recordings of calls they said supported their view. They agreed to consider the invoices from Miss O about the costs she'd incurred for alignment/tracking and replacement tyres.

Having listened to the calls and considered esure's response, our investigator maintained his view, but thought esure should pay £200 compensation to Miss O. He thought the calls indicated Miss O was concerned about a courtesy car, so esure should have explained to her the pros and cons of using AMC.

esure maintained their disagreement with the investigator's view, asking that an ombudsman review the complaint. They hadn't known Miss O had gone to AMC before she first contacted them, so couldn't advise them of the pros and cons of doing so. As a business, their practice wasn't to refer policyholders to accident management companies. Miss O contacted AMC herself (believing them to be esure). But they had no affiliations with esure.

In my findings, on the issue of liability for the accident, while I recognised Miss O's clear view of what happened and the accident being the fault of the third party, I didn't think esure acted unreasonably in deeming the claim to be a fault claim.

On the issue of the quality of repairs, I concluded it was reasonable for esure to say they would assess the invoices Miss O has provided. If they agreed to reimburse Miss O for some or all of these costs, they should also add interest, from the date Miss IO paid the invoices to the date they reimburse her.

On the issue of whether esure referred Miss O to AMC, I couldn't see any indication esure referred Miss O to AMC and in the call Miss O made to esure the day after the accident it was clear it was the first occasion esure were aware of the accident. As an accident management company, AMC didn't fall within the remit of this Service (it's not a regulated financial service business) so what may or may not have happened between them and Miss O isn't something I could consider.

As I couldn't see any evidence esure referred Miss O to AMC, I couldn't hold esure responsible for what happened before she first contacted them the day after the accident.

On the issue of provision of a courtesy car, I didn't have the evidence or information to enable me to reach a clear conclusion on whether esure acted fairly and reasonably towards Miss O. So, I invited Miss O and esure to provide any additional evidence or information they feel would be relevant to my consideration of the issue.

Because I reached different conclusions to those of our investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether esure have acted fairly towards Miss O.

There are several aspects to Miss O's complaint. First, esure deeming her claim to be a fault claim and accepting liability for the accident. Miss O maintains she wasn't at fault for the accident. Second, the repairs carried out on Miss O's vehicle by ARC, which she maintains left her with the vehicle pulling to one side. She says she had to incur costs rectifying the issue. esure say they will consider the costs incurred by Miss O. There's also the issue, which esure challenge in their response to our investigator's view, about the role of AMC and whether esure referred Miss O to them. esure say Miss O contacted them after she'd initially contacted AMC, so they didn't refer her to AMC.

On the first issue, that of liability for the accident and the claim being recorded as a fault claim. I've considered the evidence and information available. In their case notes, esure record the following, summary account from Miss O:

"I was parked up, collecting something [from my] sister, getting ready to move out from [a] parked position and indicated and waited to go out. One driver stopped at a good distance away for me to have good visibility for me to move out a bit. When I moved out I looked down the road behind me and there was nothing coming. I then proceeded to move to the other side of the road and looked again and then that's when I see her [the third party] speeding towards me and she was talking to her front seat passenger. That's when she hit me."

I've also listened to the call made by Miss O to esure when she first notified them about the accident (the day after the incident, having initially contacted AMC). The call recording is consistent with the above summary (Miss O says she estimated the third party vehicle was doing between 30mph and 40mph in a 20mph speed limit area).

While it isn't my role to determine liability, it's to decide whether esure acted fairly and reasonably in determining liability and deeming the claim to be a fault claim (against Miss O). Their final response on the issue, set out above, gives their reasons for their decision. Looking at them alongside Miss O's description of the accident, I've concluded they acted reasonably in considering the circumstances when coming to their decision. They've assessed the likely outcome were the matter to proceed to court. While Miss O maintains the third party vehicle was speeding, there's no independent evidence to support this (the call recording indicates no CCTV or dashcam footage was available and the driver of the vehicle that stopped to allow Miss O to move out did not provide their details, so couldn't be a witness). And Miss O was moving into the opposite lane, the lane in which the third party was proceeding. Taking all these factors into account, while I recognise Miss O's

clear view of what happened and the accident being the fault of the third party, I don't think esure acted unreasonably in deeming the claim to be a fault claim.

Moving on to the second issue, the quality of repairs, esure's first final response indicates no issues were raised by Miss O following the vehicle's return from ARC after they checked it over. Miss O has provided evidence of wheel alignment/tracking she had carried out and purchase and fitting of two replacement tyres.

esure say they will assess the invoices Miss O has provided, which I think is reasonable.

The third issue relates to Miss O initially contacting AMC, before contacting esure the day after the accident. Miss O says she thought AMC were [part of] esure. esure say she only contacted them the day after the accident, having first contacted AMC.

I've listened to the call recording between Miss O and esure when she first called them about the accident. What seems to have happened is that Miss O contacted AMC at the scene of the accident (she says they also spoke to the police at the scene) thinking (assuming) they were esure. And that they (AMC) said they would call her back. When they didn't, she called esure the following morning.

From the recording it's clear esure didn't have any details of the accident, so proceeded to take the details. The number Miss O says she first called isn't one the call handler recognises – nor is it the number to report an accident and make a claim (or arrange for recovery) in esure's policy booklet.

The call handler notes Miss O's vehicle was recovered by the police (given the accident was blocking a road) to their storage pound. The call handler notes that if Miss O had contacted esure at the scene, they could have arranged for recovery within two hours. The call handler says they will arrange recovery of Miss O's vehicle from the police storage pound (given the high storage costs that would be incurred). Subsequent call recordings indicate esure arranging for the vehicle to be taken to a repairer (ARC) to be assessed. They note Miss O's need for a courtesy car and say (initially) it would be provided through their car hire agent – although subsequently this is through ARC.

Taking all these points together, I can't see any indication esure referred Miss O to AMC and in the call Miss O made to esure the day after the accident it's clear it's the first occasion esure are aware of the accident. As an accident management company, AMC don't fall within the remit of this Service (it's not a regulated financial service business) so what may or may not have happened between them and Miss O isn't something I can consider.

As I can't see any evidence esure referred Miss O to AMC - the call handler on the first call Miss O made to them couldn't see any record on their systems of her having previously contacted them. That being the case, I can't hold esure responsible for what happened before she first contacted them the day after the accident. When contacted, they arranged for Miss O's vehicle to be moved from the policy pound and taken to ARC for the damage to be assessed and repairs carried out. And for a courtesy car to be provided (through ARC) while Miss O's vehicle was in for repairs.

This is what I would have expected them to do after they were notified about the accident. So, I don't think it's fair or reasonable for them to have to compensate Miss O.

On the issue of provision of a courtesy car, esure don't refer to this issue in either of their final responses. But looking at the policy booklet, it includes the following statement under a heading Our Courtesy car service

- ✓ “A courtesy car is provided whilst your car is being repaired by the recommended repairer as part of a valid claim, as long as you have a comprehensive policy which remains in force for the duration of repairs. We aim to provide a courtesy car to you within two working days...
- ✓ The courtesy car will be a small car, such as a Nissan Micra or Toyota Aygo, which will automatically be insured on your policy at no cost...”.

While I haven't seen the details about what courtesy car(s) were provided while Miss O's vehicle was in for repair, she's told us it wasn't suitable for her circumstances. In particular those of one of her children. I appreciate what she's said about those circumstances, but the policy wording indicates the type of vehicle likely to be offered. Given the make and model of Miss O's vehicle, I recognise a small courtesy car would feel very different to the vehicle she (and her children) would be used to.

But at this point, I don't have the evidence or information to enable me to reach a clear conclusion on whether esure acted fairly and reasonably towards Miss O in respect of this issue. Although there is an indication from esure's case notes a courtesy car couldn't be provided by their normal car hire agent.

I would invite Miss O and esure to respond with any additional evidence or information they feel relevant to my consideration of the issue.

Taking all these points together, I've concluded esure have acted fairly towards Miss O in respect of their decision to deem the claim a fault claim and their response from the point she first notified them of the claim. However, I'm not persuaded, on the evidence I've seen, they acted fairly in respect of the repairs Miss O says she had to carry on her vehicle because of the vehicle pulling to one side when driving. I think esure's offer to assess these costs is reasonable.

My provisional decision

For the reasons set out above, it's my provisional decision to uphold Miss O's complaint in part. I intend to require esure Insurance Limited trading as esure to:

- *Assess the costs of the repairs Miss O had carried out on her vehicle following its return from the approved repairer, based on the invoices and other evidence she's provided.*

If esure Insurance Limited trading as esure agree to reimburse Miss O for some or all of these costs, they should also add interest, at a rate of 8% simple, from the date Miss O paid the invoices to the date they reimburse her.

Miss O responded to make several points. She said she hadn't contacted AMC to repair her vehicle, the number she used at the time of the accident (which she thought was esure) was to get approval for the police to recover the vehicle because of the obstruction of the road from the accident. When she did contact esure and it was clarified the call she'd made wasn't to them, she thought esure should have rectified the situation. She said esure arranged for recovery of her vehicle from the police pound to AMC, not the repairer. She also questioned the role of AMC in the repair of her vehicle, which she wasn't involved with.

esure responded to say they accepted the provisional decision conclusion about reviewing the invoiced costs of repairs to Miss O's vehicle and, if they agreed to reimburse Miss O, adding interest. On the courtesy car issue, they didn't think Miss O had contacted them to say the courtesy car provided wasn't suitable – but acknowledged what the provisional decision said about the terms and conditions of the policy being met.

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.

Looking at Miss O's response, it isn't disputed she made a call from the scene of the accident and that the police subsequently recovered the vehicle to their pound as it was causing an obstruction. But from what I've seen, the call wasn't to esure, as the events I set out in my provisional decision indicated. And this decision covers the actions of esure towards Miss O – it doesn't cover the actions of AMC nor those of the police.

And as I set out in my provisional decision, when Miss O contacted esure, they arranged for her vehicle to be taken from the police pound to the repairer (ARC) – not to AMC. And esure subsequently paid ARC for the repairs to Miss O's vehicle. As far as I can see, AMC had no role in this process.

In my provisional decision, I asked Miss O and esure to respond with any additional evidence on the issue of the provision of a courtesy car. Only esure responded on this point, saying they didn't think Miss O had contacted them about the courtesy car provided and that they'd acted within the terms and conditions of the policy. That being the case, I can't reasonably conclude esure have acted unfairly towards Miss O on this issue, so I won't be asking esure to take any further action.

esure accepted my provisional finding about assessing the costs of the repairs Miss O had carried out on her vehicle following its return from the approved repairer (ARC) and if they agreed to reimburse Miss O, to add interest. That being the case, then my final decision remains the same as my provisional decision.

My final decision

For the reasons set out above, it's my final decision to uphold Miss O's complaint in part. I require esure Insurance Limited trading as esure to:

- Assess the costs of the repairs Miss O had carried out on her vehicle following its return from the approved repairer, based on the invoices and other evidence she's provided.

If esure Insurance Limited trading as esure agree to reimburse Miss O for some or all of these costs, they should also add interest, at a rate of 8% simple, from the date Miss O paid the invoices to the date they reimburse her.

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 10 October 2024.

Paul King
Ombudsman