

The complaint

Miss C complains about esure Insurance Limited trading as esure ("EIL") and the way they've handled the recovery of a claim she made on her motor insurance policy. Miss C also complains about EIL's lack of communication, and the impact caused to her insurance premiums.

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, Miss C held a motor insurance policy, underwritten by EIL, when her car was damaged while parked in 2021. So, she contacted EIL to make a claim.

EIL settled Miss C's claim by November 2021. But by November 2023, EIL hadn't been able to recover the costs they incurred from the third-party who they were holding at fault. So, they contacted Miss C to explain her claim was being passed to a solicitor to progress. Miss C was unhappy about this, so she raised a complaint.

Miss C was unhappy that the claim remained open, without recovery being made. And she was unhappy with the lack of communication she had received since 2021, and how her policy premiums had been impacted without her knowledge considering her policy documents showed the claim as recovered. So, she wanted to be compensated for the above.

EIL responded to the complaint and upheld it. They accepted they hadn't kept Miss C updated as they should have, and they paid Miss C £100 to recognise the impact this caused. But Miss C remained unhappy with this response, so she referred her complaint to us.

While the complaint was with our service, EIL offered to record the claim as non-fault, allowing Miss C's no claims discount ("NCD") and to re-rate the policy based on these changes, on top of the payment already made.

Our investigator looked into the complaint and upheld it. They accepted there had been delays in EIL pursuing the recovery of their costs, as well as a lack of communication with Miss C. But they also noted that it was usual for insurers to record a claim as open until recovery had been made and so, they felt EIL's most recent offer was more than what they would be able to direct. So, in recognition of this and EIL's service failures, they recommended EIL increase their compensatory payment to £300 to fairly resolve the complaint.

EIL accepted this recommendation. But Miss C didn't, providing several comments explaining why. These included, and are not limited to, Miss C's continued unhappiness that she had been paying an increased premium without her knowledge, due to the claim being open. Miss C also referred to previous complaints raised with EIL during the actual claim itself between September – November 2021, which had previously been addressed by EIL.

Our investigator considered all of Miss C's comments, but they remained of the opinion that the increase to £300 compensation, alongside EIL's offer to rerate the current policy, was a fair one. Miss C continued to disagree and so, 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.

Before I explain why I've reached my decision, I think it would be useful for me to explain exactly what I've been able to consider. I note in reply to our investigators initial view, Miss C raised points that related to complaints about the actual claim process, and the service EIL provided during the total loss of her car. I've seen EIL's system notes, and I can see EIL responded to these complaints at the time, awarding Miss H with compensation as well as providing referral rights to our service. So, Miss C would've needed to raise these concerns with our service within six months of EIL's response, which I can't see that she did. So, I'm unable to consider these issues as part of this decision here.

I'm also unable to consider or comment on Miss C's unhappiness with the way EIL handled her most recent complaint, including the time it took EIL to issue a response, as complaint handling is an unregulated activity and so, outside of our services jurisdiction.

My decision instead focuses on the merits of Miss C's more recent complaint that she raised after being notified that her claim would be passed to a solicitor to pursue recovery from the third-party. This centres around the length of the time it took EIL to reach this point, and the communication they provided during this time, alongside the impact this has had on Miss C's premium.

I note EIL accepted our investigator's recommendation, which set out an increased compensatory award to acknowledge the delays in EIL pursuing the recovery of their costs, and the lack of updates provided to Miss C. As EIL accepted this recommendation, I think it's reasonable for me to assume they have also accepted they acted unfairly and unreasonably. So, I don't think the merits of these complaint issues remain in dispute and because of this, I won't be discussing them in any further detail. Instead, I've focused on what I think does remain in dispute, which centres around what EIL should do to put things right. And this includes the impact on Miss C's premium price, and how EIL should recognise this

Putting things right

When thinking about what EIL should do to put things right, any award or direction I make is intended to place Miss C back in the position she would've been in, had EIL acted fairly in the first place.

In this situation, had EIL acted fairly, I think they would've progressed the recovery of Miss C's claim more effectively, keeping her updated during this process. Having reviewed EIL's system notes, I can't see that their claim was put to the third-party until May 2023. And that between November 2021, the settlement of Miss C's claim, and this date, there were around 12 months where I think there were delays that could've been avoided. So, had EIL acted fairly, I think they could've submitted their claim to the third-party in May 2022.

And following this logic, and what has actually happened in the claim, I think it's reasonable for me to assume the third-party would've failed to respond as they have done. So, following the actual timeline of events and incorporating the 12-month delay, I think EIL would then have most likely passed the claim to their solicitors in November 2022, again a year earlier than they did.

But I must note that I have no way of knowing how long the legal process would take from this point. Nor am I able to speculate on what the outcome of this legal process would be, even though I take on board Miss C's comments regarding the accident circumstances. So, I am unable to say for certain that had EIL acted more promptly, Miss C's claim would've been settled and recovered by the time she complained.

So, I've then thought about what I think EIL should do to recognise the above, and their acceptance that Miss C could've been kept better updated. I note our investigator has recommended EIL increase their compensatory offer to £300, alongside EIL's offer of rerating Miss C's most recent policy as if the claim was non-fault, with her NCD being allowed. Having considered this recommendation, I think it is a fair one that falls in line with our services approach and what I would've directed had it not already been put forward. So, it's one I'm directing EIL to make, and I'll explain why.

I think the increase to £300 fairly recognises the shock and confusion Miss C would've felt when she was contacted out of the blue to explain solicitors would be appointed, considering her policy documentation from 2022 onwards suggested the claim had been recovered. And I think it also fairly compensates Miss C for the unhappiness she would've felt when she became aware she may have been paying a higher premium than she initially thought at the time, based on the information contained within her policy documentation.

But I think it also reflects the fact that it is standard industry process for an insurer to treat a claim as open, and risk rate any policy premium on this basis, until a claim is fully recovered. And that even though there have been delays and a lack of updates, I have no way of knowing for certain when Miss C's claim would've been fully recovered, if at all.

Because of this, I don't think it would be fair for me to say EIL should re-rate all of Miss C's policies that were put in place following the claim. Instead, I think EIL's offer to re-rate Miss C's most recent policy is a fair one. This is because, based on the information I have available to me, I think that even if EIL had progressed the recovery as they should've done, the claim would've most likely still remained open, with their full costs outstanding, in November 2022, as it was in November 2021, when her policy was due for renewal. So, I think directing EIL to re-rate all policies would place Miss C in a position of betterment.

I recognise Miss C is unlikely to agree. And I want to reassure Miss C I've considered all the comments she's put forward, even if I haven't commented on them specifically. And I again want to recognise the length of time the claim has remained unrecovered, and how this is likely to have impacted Miss C, especially considering EIL's lack of updates. But I must also make it clear that EIL are unable to control the third-party and their lack of response to EIL's request for recovery. And this has added to the length of time the claim has remained open. I think they've acted in Miss C's best interests by instructing solicitors considering this, to try and obtain full recovery so her future policies and premiums are no longer impacted.

So, while I do appreciate this outcome isn't the one Miss C was hoping for, I am directing EIL to increase their total compensation to £300, while rerating Miss C's current policy and premium as if the claim was non-fault, with her NCD being allowed.

I also want to make it clear that this decision focuses solely on the events and issues raised up to the point of EIL's complaint response in April 2024. Any further issues about events

after this time would need to be raised and considered separately.

My final decision

For the reasons outlined above, I uphold Miss C's complaint about esure Insurance Limited, trading as esure and I direct them to take the following action:

- Increase the compensation to £300 in total and pay the additional amount required to ensure this is paid in full; and
- Continue to re-rate Miss C's policy as they offered to do, including classifying the claim as non-fault with Miss C's NCD being allowed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 20 November 2024.

Josh Haskey
Ombudsman