

The complaint

Mr O has complained about the service he has received under his motor policy from esure Insurance Limited following a claim made by a passenger on a bus. He's particularly complained that his premium for his motor policy has increased significantly.

What happened

On 6 January 2023, Mr O said he was driving his car in his own lane which was beside a bus lane. The bus made an emergency stop which caused one of the passengers to fall. This bus passenger decided that Mr O was responsible for causing her to fall and suffer some personal injury. So, the bus passenger brought a negligence claim against Mr O which was notified to his insurers, esure. This happened on 20 May 2023. The criminal case was also brought against Mr O for dangerous driving which was dismissed as Mr O said the bus passenger never turned up to give her evidence in those criminal proceedings.

The personal injury action by the bus passenger against Mr O remains ongoing. Esure re-rated Mr O's premium when it became aware of the bus passenger's personal injury action. This meant his premium increase significantly due to the fact that this claim is still open. Mr O complained that he wasn't responsible for fact the bus passenger fell, and so he felt that the claim should be closed, or alternatively his premium should not be increased to this extent.

Mr O complained to esure, and it issued a final response letter on 24 April 2024. It explained that the dismissal of the criminal case doesn't mean that the civil case has been resolved. That means the claim must remain open until the civil case has been concluded. Therefore, given the claim remains open, that will affect the premium price.

Mr O remained dissatisfied and so he brought his complaint to us. The investigator didn't think esure had done anything wrong. Mr O disagreed so his complaint has been passed to me to decide.

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 not upholding this complaint. I'll now explain why. I do understand and appreciate that Mr O will be very disappointed with my decision. However, my role is to assess what if anything esure has done wrong as regards to the law, the regulations, the industry best practice and the policy terms and conditions.

Further my assessment of Mr O's complaint is limited to the date of the final response letter esure issued on 24 April 2024. Any other issues that Mr O has for events following that date do need to be raised with esure first. This is because this service can't get involved unless

the business, esure here, has had a chance to deal with the issues raised by their policyholder first.

The policy says the following:

'Liability to other people and their property

1a. Cover for your liability to third parties

We will cover you for all the amounts which you may be legally liable to pay if you have an accident in your car and:

- someone else is killed or injured; or*
- someone else's property is damaged.*

...

2. Cover for others

...

- Any laws, damage, death or injury arising as a result of a road rage incident and/or deliberate act caused by you or any driver insured to drive your car.*

What happens to your NCD if a claim is made under your policy?

- If we've been unable to recover all our losses in relation to the claim - known as 'non recoverable' or 'fault' claim, your NCD entitlement will be reduced at renewal to the amounts shown on your Schedule.*

...

The following claims will not affect your NCD.

...

- Claims where we have been able to recover all of the losses on your behalf - also referred to as 'recoverable' or 'non fault' claim.*
- Claims where the third party responsible for the damage has been identified and they are not insured. (We will need the drivers name and address and vehicle registration number).*

No Claim Discount Protection

- If you purchased NCD protection as an enhancement when you purchased a renewed your policy your NCD will not be reduced during the policy. Regardless of the number of claims you make.*

...

- By adding NCD protection to your policy, your premium may still increase at renewal whether or not you've made a claim, due to other rating factors which may apply. At renewal depending on the number of claims incidents recorded on your policy, we may be unable to offer you a renewal quote.*
- If you haven't protected it and a non recoverable claim(s) is made against your policy, your NCD will be reduced as shown in the table above.'*

So, essentially Mr O's policy like virtually every other motor policy provides indemnity if Mr O is held responsible for causing an accident or injury to another party. The circumstances of what happened with Mr O are frankly very unusual. The bus passenger is apparently

alleging that because the bus driver did an emergency stop allegedly due to the position of Mr O's car on the highway, this caused her the alleged personal injury.

I can understand why Mr O didn't believe he was at all involved in what happened to the bus passenger. His evidence is that he was driving on his own lane wanting to turn across the bus lane but was waiting for the bus to continue its journey. However, the bus driver then did the emergency stop causing the bus passenger who was standing up to get off the bus, to fall.

There was an attempt to prosecute Mr O for dangerous driving, but the matter was struck out as the bus passenger who was the key witness, didn't attend the court on two occasions. It does appear that instead the bus passenger has decided to initiate civil legal proceedings for negligence against Mr O. She doesn't appear to have included the bus driver in these proceedings but has included esure.

Esure is defending these proceedings on its own behalf and that of Mr O, which I consider is the right thing to do given the very unusual circumstances here. That is clearly detailed in the policy as being the type of cogent indemnity motor policies provide for consumers such as Mr O in these circumstances.

The law and regulations are clear that until the outcome of the civil case, the claim against Mr O by the bus passenger must remain classed as 'open' on all internal and external databases. This is because all claims under insurance policies are either deemed fault claims or non-fault claims. Essentially this means whether the insurer was able to claim the costs of the claim from another party. If they could the claim is registered as a non-fault claim against the policyholder and if they couldn't then it is deemed a fault claim against the policyholder. What is important is solely whether that insurer recovered all of its losses. In underwriting terms, the risk profile of the policyholder changes by first that a claim was made against them and secondly whether their insurer recouped their costs of that claim. Each insurer is entitled to underwrite the consequent risk as they then wish as that's permitted under the regulations as part of their commercial discretion. Some insurers rate any claim made quite harshly and other insurers will rate a fault claim more harshly against the applicant.

Therefore, in turn that demands that any claim will remain as 'open' until it's known what the eventual outcome will be. Having an 'open' claim will indeed affect Mr O's risk profile with esure and indeed any other insurer. This is despite like in Mr O's case where he also paid extra premium to protect his NCD. But as I said, insurers can rate such things differently from one another.

But esure aren't doing anything wrong in recording this claim as 'open' on Mr O's record. It's obliged to do this. Esure also aren't doing anything wrong in indemnifying Mr O against this personal injury court case that the bus passenger is making against him. In the policy esure is permitted to make its own decision on how to handle any claim made against its policyholder as it thinks fit (given its experience of dealing with claims against its policyholders on a daily basis) and I'm happy to see it has decided to defend Mr O against this claim rather than just settling it against him thereby ensuring he has a fault claim on his insurance record. Given the circumstances alleged against him, defending this claim from the bus passenger is certainly the right thing to do.

Sadly, for both Mr O and esure, it doesn't have any substantial control over how fast or slow such court proceedings might take and sadly these days such court proceedings can take a long time. So, in conclusion on these points, I consider esure hasn't done anything wrong. Mr O has also complained his premium has risen consequently. As I explained above there are cogent reasons for this. And indeed, the policy terms go some way to explaining this too as I've detailed above. But Mr O complains that he was never informed of this or notified it

was going to happen until increased premium amounts began to be taken from his bank account. I consider esure could have done more to explain the matter to Mr O. However, its failure to do so hasn't made any difference to the situation Mr O presently finds himself in.

Mr O's policy was due to renew on 13 April 2023 which it duly did. But esure wasn't aware of this issue from the bus passenger at that time. It became aware on 23 May 2023. So as the event with the bus passenger happened on 6 January 2023, esure then recalculated the premium Mr O should have paid from 13 April 2023. This meant that a further £335.70 needed to be paid for Mr O's premium making the total premium for that policy year to be £1,120.25. Esure has shown us it sent an SMS to Mr O on 5 June 2023 and sent him further documents in relation to it on 9 June 2023. Esure also explained that Mr O changed address in October 2023 which reduced his premium amount slightly.

Esure has also shown us that it followed its procedure for an event which happened before the renewal date thereby showing me that Mr O wasn't singled out and treated differently from anyone else in the same situation. Sadly, once the policy has renewed esure was fully entitled to readjust the premium when it came to light that the bus driver decided to issue this personal injury action against Mr O and indeed esure. As the event concerning the bus passenger happened before the policy renewal date, then the premium amount originally issued to Mr O had to change. I also consider esure made the appropriate efforts I would have expected to ensure it notified Mr O of this.

So, whilst I have a great deal of sympathy for Mr O and the situation, he finds himself given the actions of the bus passenger against him, I consider it's appropriate esure is defending Mr O against this personal injury claim. I also consider esure has done nothing wrong with recalculating the premium. Neither has it done anything wrong in recording the claim the bus passenger has made against him as an 'open' claim presently.

My final decision

So, for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 December 2024.

Rona Doyle
Ombudsman