

The complaint

Mr G complained about how esure Insurance Limited dealt with a third party's claim under his motor insurance policy.

What happened

Mr G's car made contact with a parked car in a car park. Mr G said that the third party's car wasn't entitled to be parked there and so he shouldn't be to blame for the damage to it. He said that the damage was only a minor scuff which happened at low speed.

He was unhappy that esure settled the third party claim, paid the third party costs, recorded it as a fault claim against Mr G and reduced his no claims discount (NCD). Mr G said that esure failed to tell him the third party costs before they settled the claim and so had denied him the opportunity to challenge those costs, which he thought were excessive and fraudulent.

Mr G was also unhappy that having the fault claim on his insurance record had increased his future premiums, and he wanted esure to compensate him for the stress he said they'd caused him.

esure apologised for the delay and lack of communication during the claims process in not having told Mr G the third party costs before they settled the claim. They offered him £50 in compensation. However they stood by their decision that Mr G was liable for the incident and that the third party costs were reasonable, and they had acted in line with the policy. Mr G didn't agree and brought his complaint to us.

The investigator thought that esure had acted reasonably in settling the third party claim as they did. However she thought that it would have been fairer if esure had offered £100 in compensation. esure agreed to this but Mr G didn't agree. So I've been asked 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.

As the investigator explained, in cases regarding liability we don't decide who was at fault for the incident. Instead we look at how esure have reached their decision on liability and whether they've done so in a fair and reasonable way. We also need to make sure that esure have acted within the terms and conditions of the policy.

In Mr G's policy document esure say that they can take over and defend or settle any claim under his policy. This means that esure do have the final say on the matter. By taking out the policy with them and becoming insured with them Mr G has agreed to this term. It isn't an unusual term and it's one that we consider to be fair.

As regards liability for the incident, esure explained to Mr G that it didn't matter whether the third party's car was entitled to be parked where it was, as it was stationary and was there to

be seen. Mr G admitted that his car was moving and had made contact with the third party car which was damaged. esure said that on all the evidence they considered the incident to have been Mr G's fault. I don't think their decision on liability was unreasonable.

This also meant that under his policy esure were entitled to reduce his NCD. They also had to record the claim on the insurance database.

Mr G said that he had asked esure repeatedly to tell him the third party claim costs but esure had failed to do this and so were negligent. Mr G thinks that if he'd known those costs before esure paid them he could have challenged those costs and paid them himself thereby avoiding having a fault claim on his policy and esure reducing his NCD. He thought that esure's failure to do this had meant he couldn't challenge the costs. He thought the costs were disproportionate and that having that amount on his record would make future insurers think that the incident was worse than it was.

esure's file notes show that esure did say they would tell Mr G the third party costs when they got them from the third party insurer. But esure didn't do that and settled before that. That communication issue lead esure to apologise and offer Mr G £50 in compensation. They later agreed with the investigator's recommendation to increase that to £100.

But even if esure had told Mr G the third party costs before they settled, I'm not persuaded that it would have made any difference to the outcome. That's because as I said above, ultimately esure can decide to settle any claim under his policy as they think fit, even if Mr G doesn't agree with them. This means that esure do have the final say on the matter, including as to whether costs are reasonable.

Mr G said as follows. The third party costs claimed didn't reflect the true damage to the car or what he thought was reasonable for hire car costs. It should be a much lower amount and if it had been, he could have paid that lower amount and avoided a claim against him with its consequences for increased premium and NCD reduction.

esure have suggested that they had offered Mr G the chance to pay the third party costs himself but he didn't want to as they were too expensive, but Mr G denies this and I've no reason to disbelieve him. However to be successful in his complaint Mr G has to show that he could have forced esure to agree to pay a lower amount of third party costs than they did, costs which were affordable to him. But these were not things within his power.

It's not for us to assess what would be reasonable for third party repairs or other costs arising from an incident, as this is a matter for the experts in these situations, the insurance companies, and engineers. Similarly an insured person such as Mr G doesn't have power to decide that costs are unreasonable, or to require a third party to obtain alternative repair quotes. It's another part of esure's right under the policy to settle as they wish, that they decide if the costs claimed reflect damage consistent with the incident and reasonable hire car costs for the third party during the car's repair.

esure said before settling the claim that they'd checked and were satisfied that the repair damage the third party claimed was consistent with the accounts of the incident, and that the hire car costs were reasonable. After his complaint they checked again. They said they had no concerns about this, and they would only settle on the best terms possible.

It's not in esure's interests to pay more than they had to, and the costs involved were in line with what they would expect to pay to settle that type of claim. Mr G was also concerned that the amount of the costs would give future insurers the impression that the incident was worse than it was, and this could affect him. However the amount of costs an insurer pays doesn't affect that. A fault claim will give rise to a claim on record and NCD reduction and premium increase later, but that's irrespective of the amount of third party costs.

I've decided to partly uphold the complaint because I think that esure's failure to tell esure the third party costs before they settled was a minor service mistake and that £50 is not enough to compensate for that. In line with our approach to that sort of issue, £100 is more reasonable. However that mistake didn't cause the other adverse consequences Mr G claims.

It's clear that Mr G would have preferred to direct how the claim was handled and what the third party's reasonable costs were. But although that may have been Mr G's preference, it couldn't have been the third party's preference because the third party insurer was involved and so were esure. Insurers have a duty to act on a claim to them, they don't have choice to leave it to their policyholder. So esure had to act on the third party's claim. I can see that Mr G found this frustrating, and he will be disappointed by my decision, but I think they otherwise esure's actions in settling the claim as they did were fair and reasonable.

My final decision

For the reasons given above, it's my final decision that I partly uphold the complaint.

I require esure Insurance Limited to pay Mr G £100 in compensation for his distress and inconvenience, less any amount they have already paid him for that.

esure must pay the compensation within 28 days of the date on which we tell them Mr G accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 January 2025.



Rosslyn Scott
Ombudsman