

## **The complaint**

Miss A and Mr M complain about how esure Insurance Limited dealt with a claim against Miss A's motor insurance policy. Reference to esure includes its agents.

## **What happened**

In summary, Miss A had a motor insurance policy underwritten by esure. Mr M is a named driver on the policy. In January 2021, Miss A had an accident whilst driving. She made a claim against her policy. When Miss A first told esure about the accident, she reported to esure details of the injuries to her children, S and G, who were in her car at the time of the accident. esure said Miss A was at fault for the accident. Miss A doesn't dispute that. esure told Miss A it would review the case and contact her to discuss the matter.

In February 2021, esure dealt with Miss A's claim in relation to her car. In July 2022, esure settled the claims from the driver and passenger in the other car involved in the accident.

In September 2023, Miss A contacted esure about its settlement of claims arising from the accident in January 2021. esure told Miss A it had settled the claims from the driver and passenger of the other car. In November 2023, Miss A asked about S and G's claims. esure hadn't dealt with S and G's claims. Miss A complained about that. esure instructed its solicitors and Mr M acted as litigation friend for S and G.

In January 2024, there was an assessment of the children's injuries which Miss A and Mr M say was unsatisfactory due to the time that had passed since the accident. Subject to the court's approval, Mr M accepted damages in relation to S' claim. I understand there hasn't been a satisfactory offer in relation to G's claim

In response to Mr M and Miss A's complaint, esure apologised for its poor communication and delays. It said it wasn't able to say when claims will be resolved and claims like the ones here take time. esure said a large number of factors are beyond its control. It said it couldn't provide Mr M and Miss A with a breakdown of the settlement of the claims by the driver and passenger of the other car.

esure paid Mr M and Miss A compensation of £250 in relation to poor service. Mr M and Miss A didn't think that was fair and pursued their complaint. They want more than the compensation of £250 esure paid. Mr M and Miss A also want interest on the settlement amounts for S and G.

One of our Investigators looked at what had happened. She said esure didn't progress the claim until Miss A contacted it in September 2023, but she would have expected Mr M and Miss A to have contacted esure sooner than they did to find out what was happening. The Investigator said there's no evidence to suggest the settlement of the children's claims would have been higher if esure had proceeded promptly.

The Investigator said esure had acted reasonably in providing information about the overall settlement of the claims by the driver and passenger of the other car. The Investigator thought esure's offer of compensation of £250 was fair and reasonable.

Mr M and Miss A didn't agree with the Investigator. Mr M responded to say, in summary, esure caused unnecessary delays and are liable for resulting losses. He said esure's lawyers also delayed S and G's claims. Mr M says esure's delays meant the children received a settlement later than they should have and lost out on the use of the settlement money. He wants interest on the children's settlement from the date esure settled the claims of the driver and passenger of the other car.

The Investigator considered what Mr M said but didn't change her view. Mr M asked that an Ombudsman consider the complaint, so it was passed to me to decide.

### **My provisional decision**

On 12 November 2024, I sent both parties my provisional decision in this case in which I explained that this service has no power to consider the part of the complaint about S and G's claims against Miss A's policy. I also said the compensation esure had already paid in relation to the remaining part of the complaint was fair and reasonable. I said:

*'Why I can't consider the part of the complaint about esure's handling of S and G's claims*

*The rules about complaining to the Ombudsman set out when we can – and can't – look into complaints. I'll explain what that means for this complaint.*

*We don't have a free hand to investigate all the complaints referred to us. We can only consider complaints within our jurisdiction, the parameters of which are set out in the Financial Conduct Authority Handbook (the 'DISP rules'). Before we can consider the merits of any complaint, we have to make sure we have the power to do this under the DISP rules.*

*Part of the complaint is that S and G suffered loss because of esure's delay in dealing with their claims against Miss A's policy. The relevant rule here is DISP 2.7 which includes the following:*

*'2.7.1 A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant.'*

*It then goes on to explain that to be an eligible complainant 'a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent' before providing a list of these qualifying relationships. The one that's relevant here says:*

*'(5) the complainant is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent,'*

*In the circumstances here, S and G aren't individuals for whose benefit Miss A took out the policy. That's because the insurance policy esure provided to Miss A wasn't intended to be taken out for the benefit of S and G at its inception. Miss A took out the policy to protect herself and Mr M, the named driver. So, I'm unable to say S and G are eligible complainants under DISP 2.7. That means I have no power to consider this part of the complaint.*

*I appreciate Mr M is S and G's litigation friend but this part of the complaint isn't in his capacity as a named driver, it's in his capacity as S and G's litigation friend.*

*I'm sorry to disappoint Miss A and Mr M but for the reasons I've explained, I can't consider the part of the complaint about how esure handled S and G's claims.*

*Miss A's complaint about esure failing to keep her informed about the progress of claims by others.*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable.*

*Miss A complains that esure didn't keep her informed about the progress of the claims arising from the incident in January 2021. It's common ground esure didn't contact Miss A for a considerable period. I don't think esure acted fairly and reasonably in failing to contact Miss A when it had settled the claims made by the driver and passenger of the other car. I think the compensation of £250 esure has already paid is fair and reasonable in this case. In reaching that view, I've taken into account the nature, extent and duration of the distress and inconvenience caused to Miss A by esure's error in this case.'*

## **Responses to my provisional decision**

esure didn't respond to my provisional decision. Mr M responded to say that the only remaining issue is S and G's loss of interest. He said it's arguable that the policy was taken out for the benefit of anyone who is directly affected by the policy, especially immediate family, as they would be travelling in the car during the policy. Mr M is disappointed by my provisional decision and asked whether there's a free, impartial service that can consider this part of the complaint.

## **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.

I appreciate Miss A and Mr M are disappointed that we can't consider part of the complaint. This service operates a two-stage complaint process. That means that a complaint is first investigated by one of our Investigators. If either party to the dispute disagrees with the Investigator's findings then they may ask for the complaint to be referred for an Ombudsman's decision. That's what happened here. Miss A and Mr M disagreed with the conclusions of our Investigator and asked for an Ombudsman to review the complaint.

Where a complaint is passed to an Ombudsman it's considered afresh. An Ombudsman isn't bound by the findings of the Investigator. Where, like here, an Ombudsman doesn't agree with an Investigator's findings, a provisional decision is issued to give both parties the opportunity to comment further before a final decision. My provisional decision set out the reasons why I reached the conclusions I did.

I've noted what Mr M says about S and G in relation to the policy. I remain of the view that S and G are not eligible complainants. I don't think Miss A took out the policy for the benefit of S and G at inception, although I appreciate that, as events turned out, S and G can claim against the policy. I'm sorry to disappoint Miss A and Mr M but, for the reasons I've explained, I can't consider the part of the complaint about how esure handled S and G's claims.

In answer to Mr M's question, I'm not aware of any other free and impartial service that can consider the complaint about S and G's claims.

Neither Miss A nor Mr M have commented on the part of my provisional decision which relates to esure's failure to keep Miss A informed about the progress of claims by others.

Considering everything, I remain of the view that this service has no power to consider the complaint about S and G's claims, as they are not eligible complainants, within the meaning of our rules. I don't uphold the remaining part of the complaint because the compensation esure has already paid in relation to that is fair and reasonable.

### **My final decision**

My final decision is that the complaint about S and G's claims is outside the jurisdiction of this service, so I can't consider it. I don't uphold the remaining part of the complaint because the compensation esure has already paid is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Mr M to accept or reject my decision before 8 January 2025.

Louise Povey  
**Ombudsman**