

## **The complaint**

Mr J complains about the way esure Insurance Limited handled his motor insurance claim. He says they caused delays in resolving liability and in paying his total loss settlement.

## **What happened**

Mr J held a motor insurance policy with esure. He contacted them in October 2023 to make a claim following a road traffic accident. The claim was accepted, and an engineer inspected Mr J's vehicle, who concluded the damage caused would mean it was a 'total loss'. They said it would cost more to repair the vehicle than it was worth and valued it at £9,241.

As Mr J's vehicle had outstanding finance against it, esure said they needed to know what the settlement figure was so they could make payment to the finance provider in line with the policy's terms. But Mr J was with how esure were handling the claim when he said they failed to respond to his Guaranteed Asset Protection (GAP) insurer. He said his GAP insurer needed to be provided with a liability decision and up to date figures of the claim and loss so they could make up any shortfall in the settlement figure with the finance provider.

esure responded to Mr J and said there had been delays due to the third-party insurers disputing liability, and not providing them with a full account of the third-party driver's version of events. Mr J remained unhappy that liability hadn't been resolved and that esure had made a settlement offer for his vehicle without finalising who was at fault for the accident.

Mr J then stopped paying his monthly premium finance instalments (as his policy premium wasn't paid in full when he took it out). He said he wasn't prepared to pay esure for his policy when he wasn't getting the service he had paid for. Esure then cancelled the policy and let Mr J know there was an outstanding balance of £148.88. Around this time, esure also received a 50/50 split liability offer from the third-party's insurers; but they rejected this and said they held the third-party driver liable for the accident.

Mr J raised a complaint about how esure were handling the claim, which they responded to in April 2024. They said they would be upholding his complaint as they recognised he had found it difficult to contact someone at esure to discuss progressing his claim. But Mr J remained unhappy with esure's response – so he brought the complaint to this Service.

An Investigator looked at what had happened and recommended the complaint should be upheld. He thought there had been delays in providing information which had caused Mr J distress and inconvenience and he thought esure should pay £200 compensation to reflect this. But the Investigator also concluded that the delays had been in part due to Mr J not providing information about the settlement value of his vehicle's outstanding finance, as well as stopping payment of his premium finance instalments. The Investigator said Mr J would need to provide the finance settlement figure before the claim could be concluded.

In response, esure agreed with the Investigator and said Mr J would need to pay any premium finance instalments outstanding in order for them to conclude the claim. But Mr J didn't agree with the Investigator's recommended outcome. He said he had sent esure all the relevant information they needed, and they still hadn't made a decision on liability for the

claim. He also said he wasn't made aware of any outstanding premiums and disagreed with the recommended compensation amount of £200.

As the complaint is yet to be resolved, it's 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.

I've only provided a summary of what happened here as the details of this claim are well known to Mr J and esure. This is not intended as a discourtesy, but instead reflects the informal nature of the Financial Ombudsman Service. Instead, I've focused on what I consider to be the key issues of the complaint – which are the policy cancellation, the total loss settlement, and the liability decision. I've addressed each in turn.

#### Policy cancellation

I understand Mr J said he stopped paying his monthly premium finance instalments when he considered esure were not providing him with the service he was paying for. And I appreciate why he would feel frustrated that esure maintained he needed to pay any outstanding instalments and then cancelled the policy when he didn't resume payments. I recognise what Mr J has said about the impact of having the policy cancelled had on him. But there are some instances where we would say it's reasonable for an insurer to cancel an insurance policy – so I've considered whether esure acted fairly here.

In cases where an insurer cancels an insurance policy due to non-payment of premium finance instalments, we'd need to consider what the reasons that led to the cancellation were. And given the adverse impact having an insurance policy cancelled can have, we'd expect an insurer to take reasonable steps to contact a policyholder to discuss the reasons for non-payment, for example any financial difficulties being experienced. And before proceeding to cancellation, we'd usually expect an insurer to give their policyholder a reasonable opportunity to clear any arrears before the policy is cancelled.

Generally, we'd also say an insurance policy should only be cancelled in situations where a refund is payable under the terms of the policy. That's because there's no benefit in cancelling an insurance policy if a refund isn't going to be made - for example, where a claim has been made under the policy. But we may conclude it was fair for an insurer to cancel an insurance policy if a consumer didn't engage with the insurer, or where the insurer can provide another compelling reason why they cancelled the policy.

Having considered why the policy was cancelled, I don't find that esure acted unfairly. Mr J expressed dissatisfaction with esure's handling of the claim and expressly said he would be stopping payments of his premium finance instalments – so I'm satisfied there were no financial difficulty reasons raised that esure needed to account for.

Additionally, esure did explain to Mr J that he would need to pay his premium finance instalments in full as he had made a claim. I appreciate Mr J says he wasn't aware of any premium finance instalments being owed, but I can see esure wrote to him in November 2023 and said:

*“If you pay your premium by monthly instalments, your monthly direct debits will continue to be collected. You should not cancel this direct debit without first contacting our Customer Services Team. As you have had a claim, you will be liable for the full amount of the outstanding annual premium.”*

I can also see that Mr J's policy terms and conditions allows esure to cancel a policy in situations like these. It follows that I'm satisfied Mr J was made reasonably aware that he needed to pay his premium finance instalments and esure took reasonable steps to highlight why this was important. And this means, in the particular circumstances of this complaint, I find that it was fair and reasonable for esure to cancel Mr J's policy when he continued to refuse to make payment of the premium finance instalments due.

#### Total loss settlement

The terms of Mr J's policy explain what esure is required to do in the event his vehicle is deemed a total loss – which is to pay the market value of the vehicle. The terms also say:

*“If your car is a total loss, we will make a payment to anyone who has a financial interest in your car and pay you the balance.”*

What this means in practice is that esure would need to make the total loss payment to Mr J's finance provider first. In the event the market value of the vehicle was the same as the outstanding balance, then no further payments would be due. In the event the payment resulted in a surplus, this would then be paid directly to Mr J. And in the event of a shortfall, a customer with the benefit of GAP insurance could then make a claim under that policy to cover the difference.

I do appreciate Mr J has said he felt esure caused delays to the claim by not providing information to his GAP insurer. And he said he would have provided esure with the settlement figure once they'd confirmed he wasn't going to be left out of pocket.

However, this is not the normal process a motor claim would follow, as Mr J would only need to involve his GAP insurer if esure's payment for the total loss of his vehicle didn't fully clear the outstanding finance owed. From reviewing the claim and complaint history, the delays are down to esure not being able to settle the vehicle's outstanding finance, in line with the terms of the policy. And this appears to be due to Mr J not providing esure with the authority they need to contact his vehicle's finance provider to settle the claim.

I can see esure requested the finance information from Mr J - however he said he couldn't agree with a settlement figure from esure for his vehicle's total loss and would provide esure with the finance figure once he had confirmed he wasn't left out of pocket.

Ultimately, Mr J needed to provide esure with his vehicle's outstanding finance balance so esure could settle the claim in line with the terms of the policy. This would then have allowed them to pay the finance provider directly. And I'm satisfied this is the same standard process other insurers in the market would follow to conclude a total loss claim, so I find esure's actions to be fair.

Additionally, as esure did provide a settlement figure for the vehicle early in the claim's process, Mr J would have been able to compare this against the outstanding finance due on his vehicle to determine whether he needed to then involve his GAP insurer. So, while I recognise there have been delays in concluding the claim, I can't fairly say esure caused these delays by acting unreasonably, when their inability to settle the claim was due in part to Mr J not providing information they needed.

I also understand that because of Mr J not paying his premium finance instalments, there's an outstanding balance due of £148.88, which esure has said needs to be paid before they can settle Mr J's total loss claim. Generally, we'd say it's unfair for an insurer to delay settling

a claim due to an outstanding balance being owed. That's because the agreement to pay the policy's premium via finance instalments is separate to the insurance policy itself.

I can also see the policy's terms allow esure to reduce a claim payment made against any outstanding sums where the vehicle is found to be a total loss. So, I would consider it good industry practice for esure to have paid the total loss claim despite Mr J having an outstanding premium finance instalment. And I'd need to consider whether there was any detriment as a result of esure's actions in not doing this.

However, as I've set out above, esure's inability to pay the total loss settlement to the vehicle's finance provider was due to them not being provided with Mr J's outstanding finance balance. So, in this particular complaint, I can't fairly conclude that esure have caused a delay in finalising the claim as a result of their actions in asking Mr J to pay the outstanding premium finance instalment.

### The liability decision

I understand Mr J's frustrations around liability taking a long time to be concluded. And from reading his messages to esure, it may be that he understood that liability needed to be resolved before he could finalise the total loss claim. However, it's important to note that there is a separation in terms of concluding the liability aspect of the claim, against paying the total loss of a policyholder's vehicle.

I can see in a messaging exchange between Mr J and esure that he was unhappy a total loss amount had been proposed despite liability for the accident not being concluded at that stage. But the liability decision would have had no bearing on esure's ability to settle the claim for the total loss of his vehicle. This is because Mr J's total loss claim was being made under his fully comprehensive insurance policy, and this means he could have been paid for the total loss of his vehicle to settle his outstanding finance without liability having been concluded at that time.

So, in terms of a normal claim process, it would be right for esure to record the claim as 'fault' on Mr J's insurance record as they would have no other party to claim their costs back from. And at the stage liability is then resolved, this can be updated and amended. And as this is standard industry practice within insurance claims, where a claim is paid despite liability not being agreed, I don't find esure's actions to be unreasonable here.

Unfortunately, I can see the claim was open for some time, as the third-party was disputing liability. But I'm not persuaded any delay in liability being resolved was due to anything esure did wrong. I say this because, from looking at the timeline of what happened during the claim, I can see that esure were making regular attempts to establish liability with the third-party driver's insurer.

And when the matter was passed to an arbitrator to make an impartial determination on liability - who ultimately determined that it should be split on a 50/50 basis - esure continued to chase the third-party insurer for a full admission of liability. And this could have continued even if Mr J had agreed with the total loss payment when it was originally made.

I can also see a letter from Mr J's solicitors which confirms that liability has now been accepted by the other driver and his personal injury claim is progressing. As such, I'm satisfied esure fairly and reasonably progressed liability on this claim and in any event, this didn't cause any delays in them settling Mr J's total loss claim.

## **Putting things right**

In order to conclude the claim, Mr J will need to give esure the outstanding balance due under his finance agreement in order for esure to pay this. He can then discuss any shortfall with his GAP insurer.

In respect of Mr J's concerns over esure's handling of the claim, I recognise that they initially caused some communication issues, and the Investigator thought £200 compensation was warranted, which esure have agreed with.

Having looked at everything that's happened here, I can see that esure did cause some delays, but I can also see Mr J has at times delayed things himself. For example, by not providing information that was required and stopping payments for his premium finance instalments.

So, in respect of these issues, I find that £200 is overall a fair and reasonable sum and is in line with similar awards this Service would make. While I appreciate Mr J feels the sum offered isn't enough to compensate him – I'm satisfied this total award produces a fair and reasonable conclusion in this particular case.

I understand esure has said the outstanding premium finance balance Mr J owes of £148.88 could be deducted from the £200 compensation in order to conclude. However, I think it's important to make a distinction between compensation awarded for the impact a businesses' mistake has caused, from financial sums related to an insurance policy.

As such, I think it's fair and reasonable for esure to deduct the outstanding premium finance instalment from the total loss settlement payment - in line with the policy's terms and conditions - in order to conclude this issue.

## **My final decision**

My final decision is that I uphold this complaint. I direct esure Insurance Limited resolve this complaint in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 3 March 2025.

Stephen Howard  
**Ombudsman**