

## The complaint

Mr S has complained about esure Insurance Limited's decision to settle a claim as a fault claim under his car insurance policy.

## What happened

In March 2024 Mr S was involved in an incident with a third party vehicle (TPV). esure settled the third party's claim and recorded the claim as a fault claim against Mr S.

Mr S complained to esure as he was unhappy the third party claim had been settled and disputed the amount of costs claimed for. He said no contact was made between the vehicles and there was no damage to the TPV.

esure didn't uphold Mr S's complaint. It said based on Mr S's account of what happened, and the evidence provided by the third party, it correctly settled the claim as a fault claim in line with the policy.

Mr S didn't agree and asked us to look at his complaint. One of our Investigators didn't recommend the complaint should be upheld.

Mr S didn't agree. So the case 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.

While I have read all of the correspondence and listened to the key call recordings provided, my decision will not address each and every point raised by Mr S. I have addressed the salient points of Mr S's complaint which he raised with esure.

We don't decide liability. That is a matter for the courts. But we can look at whether an insurer reached its decision reasonably and in line with the policy.

esure set out its claims procedure under the policy wording when Mr S bought his policy. esure says;

*"We have full discretion in the settlement of your claim or any legal proceedings that arise and we may take over, defend or settle the claim, or take up any claim in your name for our own benefit. You and any other person covered by this policy must give us all the information, documentation and help we need to do this."*

This term isn't unusual as most – if not all insurers – include it in their policy wording. We don't disagree with this term in principal, provided an insurer can show it treated its customer fairly when applying it.

The incident took place on 1 March 2024. Mr S told us that there was no contact between the two cars. However, a claims management company on behalf of the third party contacted Mr S a couple of weeks after the incident. Mr S called esure to report the incident as he believed the claims management company had contacted esure.

When Mr S reported the incident to esure, according to its notes, he said

*"I was driving south at 16:00 and there were traffic lights. I slowed my car behind a (make of third party car inserted here) whilst I braked something fell on the passenger side. With my left foot on the clutch, while picking up the stuff that fell at the passenger side footing, I think my left foot came off the clutch and the car jerked forward as it was in gear"*

I've listened to a recording of this call in March 2024 and another call provided by esure, both of which have been forwarded to Mr S and he has provided his comments on.

During the above call, and in follow up emails to esure and to us, Mr S went on to explain that the third party driver got out of his car after Mr S stalled his, and so Mr S did too. Both parties looked at their cars. Mr S provided his details to the third party driver who identified minor damage to the bumper of his car, near the number plate. Mr S said there was no damage to his car, and he didn't take any photos of either car at the scene.

Mr S said it was agreed that the third party would bring his car to a garage and if repair costs were between £30 to £40, he would do nothing. If it were more, he would be in touch with Mr S. Mr S believed the damage – if it had occurred by contact with his car – was minimal and could be easily buffed over with paint.

Mr S acknowledged that his car jerked forward while stationary – and that after this happened the driver in front got out of his car. I find that this exchange doesn't support Mr S's account that there was no contact between the cars. It may well be that Mr S didn't hear or feel contact. But it doesn't make sense that after Mr S's car jolted forward a couple of inches, the third party in front got out of his car to look at the rear of his car – if there was no contact.

So when esure subsequently received a claim from the third party, I think esure had sufficient information to decide to accept that Mr S was at fault for the incident, given the circumstances. esure confirmed how it would record the claim and what impact this would have on Mr S's No claims Discount (NCD) in an email to Mr S dated 21 March 2024. esure explained;

*"Because we've recorded this as a fault incident, we'll now deal with the claim submitted against your policy, then let you know when the claim has been closed unless you've requested other updates."*

At the time of Mr S raising his complaint, this claim was still open.

As Mr S had two fault claims recorded in the policy year, this reduced his NCD to one year at renewal in line with the NCD table set out under the policy.

I understand Mr S doesn't agree with the costs esure paid the third party to settle the claim. However, there isn't anything to contradict the evidence by way of the third party engineer report. The costs to carry out repairs to the third party's car along with the photos are consistent with the area of damage Mr S said the third party identified to his car. I appreciate that Mr S believes some or all of the damage claimed for by the third party was pre-existing. But based on the information provided, the repairs costed were for damage consistent with the incident – a low impact collision to the rear bumper. esure referred the report to an 'in house' engineer who found the costs were reasonable and consistent for the damage identified from the incident.

An insurer can make a decision to settle a claim on the best terms possible taking into account the evidence available and its experience of what a Judge might decide if it disputes liability, ending in court action. There is a risk of significant court costs in disputing a claim, so an insurer is entitled to consider the likelihood of success with the evidence before it – and whether it is better to settle the claim.

In this case, I think esure's decision to settle the third party claim with the information it had was reached in a reasonable way and in line with the policy. I appreciate that Mr S is

unhappy he wasn't given the opportunity to dispute the claim costs. But esure can make the decision to settle the claim how it sees fit, even if Mr S disagrees.

There isn't anything to suggest the claim was fraudulent. I think esure acted reasonably and treated Mr S fairly and as it would any other customer in the same circumstances.

Mr S says the compensation esure paid is to conceal their agreement to settle the claim through negligence and incompetence.

esure paid Mr S £100 compensation. In its response to Mr S's complaint, it says it paid this for the delays it caused while reviewing Mr S's complaint. As I haven't found anything to show the way esure settled the claim was unreasonable, I'm not asking esure to remove the recording of the claim, or do any more.

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 March 2025.

Geraldine Newbold  
**Ombudsman**