

The complaint

Mr N complains esure Insurance Limited (esure) are holding him partially responsible for an accident under his motor insurance policy.

What happened

In April 2024 Mr N was unfortunately involved in an accident involving another vehicle. Mr N reported the accident to esure but wasn't looking to claim for the damage to his vehicle. esure logged the claim as incident only. esure later received notification the third party was disputing liability and so the claim was re-opened. In September 2024 an independent arbitrator reviewed the evidence and decided the claim should be settled on a 50/50 split liability basis. esure made Mr N aware the claim would be settled in this way. Mr N didn't think this was reasonable and so raised a complaint.

On 8 October 2024 esure issued a final response to Mr N's complaint. It said as liability couldn't be agreed, the claim was passed to an independent party who holds specialist experience in liability settlement. It said the independent arbitrator made the decision on liability, ultimately deciding the claim should be settled on a 50/50 split liability basis. Mr N didn't agree and so referred his complaint to this Service.

Our investigator looked into things but didn't uphold Mr N's complaint. He said he thought esure had tried to settle the claim in Mr N's favour whilst gathering and sharing the relevant information. He said he didn't think arbitration was an unreasonable way to resolve the claim, nor that esure had acted unreasonably when accepting the outcome of arbitration.

Mr N didn't agree with our investigator. He said the evidence showed he wasn't at fault for the accident and he thought esure should have proceeded to court.

As Mr N didn't agree with our investigator, the 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.

I want to acknowledge I've summarised Mr N's complaint in less detail than he's presented it. I've not commented on every point he has raised. Instead, I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Mr N and esure I've read and considered everything that's been provided.

I should explain it isn't this Service's role to say who's at fault for causing an accident as that is the responsibility of the courts. Our role is to look at whether esure carried out a fair investigation, reviewed all the evidence it has and has come to a reasonable decision.

The terms of Mr N's policy allow esure to take over and conduct the defence or settlement of any claim made under the policy. So, it was entitled to settle the claim on what it believed to

be the best terms and it had the final say in how to settle a claim. However, it needed to exercise this right fairly, taking into account everything both parties have provided.

I can see esure gathered all of the evidence available to it, including Mr N's version of events and CCTV footage of the accident and was attempting to hold the third party responsible for the accident. As a decision on liability couldn't be reached with the third-party insurer the evidence was reviewed by an independent arbitrator who esure have said holds specialist experience in liability settlements. The independent arbitrator decided liability should be settled on a 50/50 split liability basis.

I think esure have acted fairly when it made its decision on liability. It gathered all of the relevant information about the incident, including Mr N's version of events, and the CCTV of the incident. I think it's reasonable for esure to rely on the decision of the independent arbitrator given they have specialist knowledge in the field and had access to all of the available evidence when making their decision.

Mr N believes esure should have pursued his claim through the courts but I don't think esure were required to do so. As explained, the terms of Mr N's policy entitle esure to settle the claim on what it believed to be the best terms, and this includes whether to pursue a claim through the courts. I think it was reasonable for esure to settle Mr N's claim based on the evidence it had without the need to proceed through the Courts.

esure have confirmed the liability decision has been made on a without-prejudice basis and so the decision on liability doesn't prevent Mr N from taking his own action against the third party if he wishes to do so.

Mr N is unhappy esure said his no claims discount wouldn't be impacted as a result of the accident, but later that the claim would be settled on a 50/50 split liability basis. I can see when Mr N first reported the accident he wasn't looking to claim for the repairs to his vehicle. Based on the circumstances Mr N described, esure believed it was a non-fault accident and so closed the claim as incident only, allowing Mr N's no claims discount. I think it was reasonable for esure to close Mr N's claim in this way and allow his no claims discount based on the information it had at this time. Once it became apparent the third party was disputing liability, esure re-opened Mr N's claim and carried out the appropriate investigation into liability.

I know Mr N feels strongly he wasn't at fault for the accident. However, I don't think esure have acted unreasonably in the way it agreed to settle his claim.

My final decision

For the reasons I've outlined above, I don't uphold Mr N's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 30 April 2025.

Andrew Clarke
Ombudsman