

The complaint

Mr and Mrs C have complained about their car insurer esure Insurance Limited (Esure) regarding its handling of a claim they made when their car was damaged in an accident.

For ease of reading I'll mainly only refer to Mr C in the body of my decision.

What happened

There was an accident in April 2024 involving Mr C's car (V) and another car. A claim was made to Esure by Mr C and in May 2024 V was taken to a salvage yard. Esure told Mr C the car was definitely being written off and that decision would not change. In need of a car, Mr C bought a replacement (P).

Esure was contacted by the other driver's insurer. They said their driver was not at fault. Esure didn't think Mr C had been at fault either. Ultimately an agreement was reached that liability for the accident was split between the drivers.

The decision to write-off V did change. Esure decided to repair it. It was moved to Esure's approved repairer in June and was only returned to Mr C in September 2024. With Mr C now having an extra car he decided to sell V. It was sold in November 2024.

Mr C was unhappy with how the claim had progressed and that the decision to write-off the car had changed. He felt he'd suffered various losses as a result and been caused a lot of distress and inconvenience. Such as purchasing another car but also being without V for an extended period (with V having extra seating capacity). Esure accepted there had been delays and miscommunication in the early stages of the claim and it paid £200 compensation. Mr C complained to the Financial Ombudsman Service.

Our Investigator felt Esure had failed Mr C by telling him the car was definitely a write-off. She was satisfied he had been led by its confirmation to purchase another car. She said Esure should refund Mr C's additional insurance costs for the period Mr C had two cars. She also said it should pay £600 compensation. Our Investigator was satisfied Esure could choose how to settle the liability element of the claim.

Esure said it would agree to reimburse the insurance cost for V from the date P was purchased until 14 days after it had returned V to Mr C, plus interest. Our Investigator said she felt that was fair.

Mr C said he didn't agree with the outcome. Particularly he noted that he had suffered a financial loss regarding V. V had been purchased shortly before the accident for £25,650 and sold in November 2024 for only £15,250. Mr C felt that low sale cost was because it had been sold privately. He felt he should be getting the difference in cost between the sale price for V and the write-off sum he should have received. He remained of the view that the other driver was at fault, he felt Esure hadn't done enough to challenge that.

The complaint was referred to me for an Ombudsman's decision. Having reviewed it, like our Investigator, I felt Esure had failed Mr C. I noted that Esure had seemed to accept that, with

it also having mostly agreed with our Investigator's recommended redress. But what I thought was required to put matters right differed from that suggested by our Investigator. So I issued a provisional decision to set out what I thought was needed – reimbursement of tax and insurance for V, payment of £750 to recognise a financial loss to Mr C, plus some interest payments and £600 compensation. My provisional findings were:

"the error"

Esure told Mr C it was writing off V. Mr C asked if Esure was sure – he had also been told V might be repairable. Esure said this was definite and would not change. Mr C explained that, if that was the case, then he'd look at going ahead and buying a replacement car because being without a car in the interim had been challenging. Mr C was assured that the only thing left for Esure to decide was the market value of V, and it said he'd be able to challenge it on that if he didn't agree with its figure. I can see why Mr C, acting prudently to mitigate his loss and inconvenience at that time, went ahead and bought a replacement car.

I note Esure has accepted it was at fault for telling Mr C it was definitely writing off V. It's clear to me that Mr C acted in good faith based upon that incorrect detail. Esure reasonably has to make up for Mr C's losses which stemmed from that error.

losses

Mr C had free choice when looking to buy his replacement car. He chose a car which was quite different to V. And this, P, was the car he kept after V was returned to him. From 13 May 2024, when P was purchased, until 11 November 2024, when V was sold, Mr C owned and incurred costs for two cars.

I'm satisfied that, but for Esure's failure in this matter, Mr C would not have had to pay for two insurance policies and two road tax charges in 2024 until the date V was sold. I'll note here that arguably, but for Esure's failure, Mr C would always have incurred these type of costs for V – he wouldn't have had them for P. However, because Mr C ultimately kept P and sold V, I think the fair and simple way to resolve this is to say Esure should reimburse the cost of insurance and road tax for V. So I'm going to require Esure to reimburse Mr C for insurance and tax for V from 13 May 2024 until it was sold on 11 November 2024. To any amounts Mr C paid for these during that time, which together make the total sum to be reimbursed, Esure should add interest applied to each individual amount from the date Mr C paid that sum until settlement is made.

Mr C thinks he has lost around £10,000 as a result of Esure's actions – based on what he considers a reasonable write-off value for V, as at the date of the accident, of around £24,000, whereas he sold V around seven months later for just £15,250. I'm not persuaded, even if Esure had stuck to the write-off decision, that it would ever have paid £24,000 for V. Having checked the motor valuation guides, I think the market value Esure would have used to settle a write-off claim would have been significantly less than that, no more than £20,000. But, in any event, I don't think it would be fair, in this situation, to make Esure stick to the write-off decision. It was always up to Esure to decide how to settle this claim and, in principle, it wasn't unreasonable for it to have changed its mind. The error was in the communications it had with Mr C and the misleading comments it made.

So I've thought about what actually happened here. In May 2024, because of Esure's comments, Mr C incurred an outlay to purchase P of £16,000. Mr C then was able to mitigate his loss in respect of that initial outlay by selling V in November 2024. He sold V for £15,250. Meaning he had a net loss due to Esure's error of £750. I think Esure should pay Mr C this sum. I bear in mind that the extension of my above logic is that Mr C was without £16,000 of funds for an extended period because of Esure's failure. I think it's, therefore,

reasonable to require Esure to pay interest to Mr C, on the sum of £16,000 from 13 May 2024 until 11 November 2024, and then on the sum of £750 from 12 November 2024 until Esure pays this sum to him.

compensation

But for Esure's communication error about writing off V, Mr C would not have had to search for and buy P. He was also clearly upset when Esure told him it was actually going to repair V. Esure itself acknowledges that this all took too long as well, V was with its salvage agent for about a month before being moved for repair. Clearly Mr C was caused distress and inconvenience as a result of all of this.

I know that one of the causes of upset Mr C has detailed is that V, once Esure had chosen to repair it, was away for too long which left him without its larger seating capacity. However, I'm not convinced that V being away for repair and the length of time over which that occurred was really a cause for upset for Mr C – at least not in respect of him not having access to or use of V. That's because, by the time V was being repaired, he had already bought P – which although had less seating capacity, was purchased by Mr C who at the time, thought it would be a satisfactory replacement for V. Mr C chose to purchase P, knowing it was different to V, including having less seating capacity. So I'm not going to compensate Mr C for loss of use of V whilst it was being repaired.

But Mr C clearly still had a vested interest in V whilst it was being repaired. And I can see that communication from Esure was poor throughout and that Esure has also acknowledged some poor repair issues. The issues were mainly resolved but only after intervention from Mr C. And I note that he feels some issues were never satisfactory resolved with V being sold with those issues outstanding. So I accept that Mr C put in a lot of effort to get V repaired – which could have been avoided if Esure had handled things better. The repair period during which all of this upset was occurring was June to September 2024.

When V was returned to Mr C, he then had a 'spare' car. He chose to sell one, and I accept that it took a degree of effort from him to organise and complete the sale. But for Esure's error, he would never have been in the position of owning two cars and then having to sell one. So that inconvenience suffered is Esure's fault.

Our Investigator considering this complaint recommended compensation for distress and inconvenience of £600. I note Esure agreed to this sum and Mr C felt it was too low (although his main concerns really focussed on the value for V he felt had been lost). Having reviewed everything that happened and the impact caused as a result, I find £600 compensation to be a fair and reasonable sum. I acknowledge that had Mr C not purchased P, the impact of V being away for so long might well have been greater, and it's possible I would have felt a higher award of compensation was due. But, in an ironic twist, Esure's failure at the outset which caused Mr C to buy P, actually meant the distress and inconvenience he was caused by its further failings in the repair of V, were reduced.

This upset occurred over the period of a few months. But, with P having been purchased, I'm satisfied there wasn't an impact on daily life such as there might have been had I been taking loss of use of V into account. The upset I've described occurring above, over the relevant timeframe, satisfies me that an award of £600 compensation is in line with our guidance and is, therefore, fair and reasonable.

liability

As Mr C has acknowledged, there are no witnesses to this accident and no camera footage. Seemingly two drivers were approaching each other on a narrow lane and both of them feel

the other was at fault for not moving out of the way in time to avoid the cars colliding. The incident seems to have been recorded as one of split liability. It doesn't seem as though Esure did much to challenge that position, or put forward Mr C's view on the matter. However, in the circumstances I don't think even a robust challenge from Esure would have made a difference. Simply put there is no way to 'prove' which driver was at fault. The policy allows Esure to settle matters as it sees fit. I think a decision of split liability was a reasonable one."

Esure said it accepted the decision. Mr C said he was pleased the additional costs for tax and insurance had been accounted for. But he didn't think the amount of £750 recognised the full extent of the financial loss he'd suffered for V. Nor was he satisfied that £600 compensation for upset was fair and reasonable.

Mr C said that buying P, with its lower seating capacity, had been a necessary compromise at the time. He said he hadn't had funds to purchase something more similar to V in terms of seating capacity, P was the closest affordable match. He has more recently purchased another seven seater car. Mr C said he didn't specifically choose to sell V – he couldn't afford both V and P, so put both of them up for sale to see which sold first. But the price achieved was low because the car had only been owned for a short time, was being sold privately and had evidence of the recent accident repair. But he can show the true value for V as of at least August 2024 as he has screen shots of cars for sale for £24,000 from a website. Therefore, Mr C maintained that his 'net loss' was far higher than £750.

The true loss, Mr C said he should be compensated for is between £5,000 and £10,000. He explained the basis for that:

- He spent £41,650 to purchase both V and P, having paid £16,000 for P.
- It can be assumed that the value of P remained £16,000.
- He sold V for £15,250.
- Meaning the end value of the asset he was left with was £31,250.
- That is £10,400 less than the sum paid for both cars.
- Or, using a market value for V of £20,000 as I had suggested, £4,750 less.
- Or, using the £24,000 he thought should be paid for V, £8,750 less.

Regarding compensation, he said he'd been cornered by Esure's failure, to use personal funds to effectively insure against Esure's incompetence because he did not know how long it would take to repair V. He said it's unfair to limit the compensation award on the basis that Esure's failure limited the impact on him. He said my decision penalises him for having acted diligently and rewards Esure for its failure.

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 Mr C's explanation about why he chose P to replace V. I note he has since purchased another seven seater car. However, Mr P did not have to replace V with P when he did. I absolutely understand that he felt he was doing the best thing possible in the circumstances because being without V, whilst Esure decided its market value, was difficult. But Esure had not delayed the claim to that point – it was still within a reasonable period for deciding how it would settle it. It was Mr C's choice to move ahead with replacing V using his own funds.

I can see why Mr C chose to try and sell one of the cars by putting them both on the market and seeing which sold first. But that still comes down to him having chosen to sell V and keep P.

This Service wouldn't usually rely on the advertised price of cars for sale to determine a car's market value. And we would always look at the cars pre-incident market value (the incident here having occurred in April 2024, not August 2024). As I said provisionally, a review of the valuation guides, used for determining market value, satisfied me that Esure would never have found V's market value to be £24,000.

I've considered the 'net loss' calculations put forward by Mr C, which I've set out above. I'm not persuaded though that requiring Esure to settle this by making a payment of between £5,000 and £10,000, rather than £750, is fair and reasonable. In short Mr C has his view of what is fairly due – and I've explained my view on fair and reasonable redress provisionally. Mr C's comments do not persuade me I was wrong in what I said provisionally.

When Mr C used his personal funds to pay for P, he did that because Esure told him unequivocally that it definitely would be settling for V as a total loss – so not repairing it. So any failure by Esure regarding the subsequent repair of V did not prompt Mr C to buy P. But the purchase was, nevertheless, on account of an error by Esure – that unequivocal statement about settlement. So it is from that error which I've then assessed the upset caused to Mr C. And I've set out my thoughts on compensation provisionally. My thoughts in that respect have not changed.

To be clear here though, I am certainly not looking to penalise Mr C, or to make him worse off because of the choices he made. And nor am I looking to unfairly limit what Esure should pay to make up for things. But it would be wrong for me to overlook Mr C's prudent actions which did limit the upset he was caused and, instead, award compensation on the basis of upset he may have faced but did not. That is not 'rewarding' Esure for having failed Mr C – it is applying redress to fairly and reasonably make-up for the actual upset suffered by Mr C on account of its failure.

Having reviewed the responses to my provisional decision, my view on the complaint remains the same. As such my provisional findings, along with my comments here, are now those of this, my final decision.

Putting things right

I require Esure to:

- Reimburse Mr C's outlay for tax and insurance for V from 13 May 2024 to 11 November 2024.
- Add interest* to any sum reimbursed above, applied on each amount that makes up the overall sum, from the date Mr C paid the individual amount until settlement is made.
- Pay Mr C £750 as the shortfall loss for P once V was sold.
- Pay Mr C an amount equivalent to interest* applied on the sum of £16,000 from 13 May 2024 until 11 November 2024.
- Pay Mr C an amount equivalent to interest* applied on the sum of £750 from 12 November 2024 until this sum is paid.
- Pay Mr C £600 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Esure to take off tax from this interest. If asked, it must give Mr C a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require esure Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 20 June 2025.

Fiona Robinson
Ombudsman