

## **The complaint**

Mrs P and Mr P complain about esure Insurance Limited's ("esure") liability decision following a claim against their car insurance policy.

Mrs P has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any actions taken, or comments made, by either Mrs P or Mr P as "Mrs P" throughout the decision.

## **What happened**

Mrs P was involved in an accident, following which her car was written off. Many months later Mrs P chased esure to ask whether the claim had been settled as she hadn't received any communication. Esure then informed Mrs P liability for her accident had been settled at 50/50. Mrs P then complained to esure about their decision to split liability and about not being informed about this decision and not giving her an opportunity to challenge this.

Esure responded and explained the claim had been reviewed by independent arbitrators who were of the opinion that the claim should be settled at 50/50 liability as there was no evidence to support how the accident happened, and they felt both parties' version of events was plausible.

Esure apologised that Mrs P wasn't made aware of the claim outcome and said they'd provided feedback to the claim handler as all customers should be notified of the outcome of a claim.

Our investigator looked into things for Mrs P. He thought esure had acted fairly in relation to their liability decision, but they didn't update Mrs P about the claim outcome, so he recommended they pay £100 compensation. Esure agreed but Mrs P disagreed so the matter has come to me for a decision.

## **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.

Having done so, I've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters. I understand Mrs P and Mr P will be disappointed by this but I'll explain why I have made this decision.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. The key dispute here relates to esure's decision on liability and to hold Mrs P partially responsible for the accident.

When an accident occurs, it's the insurer who'll decide how the claim should be settled - this includes determining which party was at fault. An insurer might choose to accept liability, propose or agree to split liability, or choose to defend any allegation of liability. While this

decision rests with an insurer, and it's not the role of our service to decide who is at fault for an accident, we can look to see whether an insurer has handled the claim in a fair and reasonable manner. In this case, Mrs P's policy terms and conditions say esure "*...have full discretion in the settlement of your claim...and we may take over, defend or settle, or take up the claim in your name for our own benefit.*" So, although the terms and conditions allow esure to decide liability in the claim made by Mrs P, I've looked into how and why esure reached their decision and the evidence and arguments they considered before making a decision.

The information shows an independent arbitrator was appointed to assess all the evidence and provide a report on liability. The report says the independent arbitrator reviewed the evidence and notes provided and reached a liability apportionment of 50/50. The report shows that the arbitrator took into account both parties' version of events. The report refers to the independent arbitrator having viewed the accident location and also taking into account there weren't any witnesses.

The arbitrator found there was a dispute over which driver was carrying out a manoeuvre and which was stationary, and that both parties had presented a credible account of events and there was no independent evidence to verify either parties' account. I've considered the information which was available, and this doesn't include any independent witnesses or dashcam footage which could potentially support a party's version of events. Given the lack of independent evidence and the account of events provided by both parties, I don't think esure acted unfairly in settling liability at 50/50 – particularly as this was a view reached by an independent arbitrator.

Mrs P has provided CCTV footage, but this doesn't show the moment of impact between the two cars and only shows Mrs P's car swerving into the opposite side of the road. So, this doesn't prove which party was performing a manoeuvre which then led to the accident. I acknowledge Mrs P has provided comments on how the area of damage supports her version of events, but it's clear the independent arbitrator took into account Mrs P's version of events and also the area of damage, but they were still of the opinion that a 50/50 split liability decision was fair given the lack of independent evidence. Taking this into account, I don't think this was unreasonable, or that it was unfair for esure to follow the independent arbitrator's opinion.

Esure though accept they got things wrong as they didn't provide Mrs P with an outcome to her claim. This didn't happen until many months after the claim was settled and after Mrs P chased them for an update. Esure accept all customers should receive an email letting them know how their claim has been settled, and they apologised that wasn't the case here. I've considered the impact of this on Mrs P, and I don't think an apology goes far enough. I say this because it's clear Mrs P was frustrated when she did find out that the claim had been settled on the basis of split liability and left upset that she wasn't given an opportunity to challenge this at the time a decision was made. I can see Mrs P was also given incorrect information about her No-Claims Discount not being protected. This was corrected shortly after, but it did still cause Mrs P a level of frustration. So, taking this all into account, I think compensation of £100 is fair and reasonable in the circumstances.

### **Putting things right**

I've taken the view that esure didn't keep Mrs P updated about her claim. So, esure should pay Mrs P and Mr P £100 compensation for the upset and frustration caused.

**My final decision**

My final decision is that I uphold the complaint. Esure Insurance Limited must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 25 July 2025.

Paviter Dhaddy  
**Ombudsman**