

The complaint

Mr B complains that esure Insurance Limited trading as esure ("esure") wouldn't cover his claim for water damage to his car under his car insurance policy.

What happened

Mr B had a car insurance policy with esure covering his sports car, which is about 19 years old.

Following heavy rain in November 2024, Mr B noticed that his car's interior was wet. He contacted esure and asked whether water ingress was covered under his policy.

He made a claim. There were some issues assessing the amount of damage and recovering the car which caused a delay. esure initially said it thought the claim would be covered. His car was eventually recovered to his choice of repairer, which is a company which says it specialises in his brand of car.

Water had leaked into the car and caused damage to some electrical components. These components apparently tried to open the car's convertible roof, and damage had been caused to the mechanism as a result. Repairs were estimated at about £3,800.

esure looked into Mr B's claim and appointed an engineer. The engineer carried out a remote investigation and spoke with Mr B's repairer over the phone. Two months after the damage happened, the engineer declined the claim saying that water ingress wasn't covered because it'd been caused by wear and tear. It said the wear and tear had caused seals to fail, which allowed the water ingress. The engineer said the car should have been able to deal with the amount of rain that fell.

Mr B complained. esure paid £300 compensation for the problems getting the car to the repairer, and because it took a long time to decline the claim. But it still declined his claim, so Mr B brought his complaint to this service. He asks that esure repair his car. He's also talked about his distress and substantial inconvenience, and he's incurred extra transport costs.

Our investigator looked into it and said he thought it would be upheld. He thought esure hadn't reasonably shown it could exclude the claim, and he thought it should reconsider it.

He also said it should pay an additional £250 compensation for Mr B's distress and inconvenience as it'd unfairly declined his claim.

Mr B accepted the view, but esure didn't. It provided pictures apparently showing Mr B's parking spot was covered by a large tree, which it said may have blocked drain holes. It said Mr B's repairer's report may not be reliable and it didn't think it was an expert report. It also said there was lots of anecdotal evidence on the internet about similar leaks on the same model of car as Mr B's.

Because esure didn't agree, this complaint has been passed to me to make a decision.

I issued a provisional decision intending to uphold Mr B's complaint and require esure to

consider his claim on the remaining policy terms. But I also thought it needed to pay his reasonable evidenced costs as I thought it'd unfairly rejected his claim:

In thinking about the circumstances of Mr B's claim, it's important that I say that the burden of proof lies with a claimant to show they've suffered losses covered under the policy. But if an insurer wishes to decline a claim, then the burden of proof falls upon it to show that the claim isn't covered.

For esure, what this means is that it needs to reasonably prove that the exclusion it's used to decline the claim, which is wear and tear, is valid. The exclusion, from esure's policy wording, is:

"Exceptions which apply to Sections 2, 3 and 4

What is not covered

- Loss or damage caused by wear and tear or depreciation."*

esure has spoken at some length about the way water entered Mr B's car's cabin and caused the damage. It provided evidence from the internet about the number and circumstance of water ingress both to the same make and model as Mr B's and also of other cars made by the same manufacturer.

I've looked at information provided to Mr B by his repairer. This says:

"The car appears to have been damaged in a storm, where water has entered the Rear control unit, and in turn lead [sic] to the roof motor being operated which in turn damaged the mechanical roof lifting mechanism. Given the electronic control unit has failed, the car cannot be driven. I have seen this happen to many [Brand], especially convertibles, regardless of whether new or old."

This point is, I feel, at the centre of the matter. Mr B's repairer, who ostensibly is from a company that specialises in this brand of car, makes the comment that it's not the age of car that's the issue here.

The email from the repairer continues:

"[Mr B] was unlucky that an overflow in a drainage pipe allowed water into the cabin that day. It would not have occurred had it not have been for the storm.

We inspected the drain tubes and they were clear with no obstructions"

It seems to me that Mr B had parked his car up as usual (although he does mention he would normally use a cover, which he hadn't done on the day in question). He said he looked after his car and the interior was dry.

There followed a period of heavy rain, which reasonably overwhelmed the drainage built into the car, and resulted in water ingress.

I think Mr B has reasonably shown via his repairer that the age of the seals is not a factor in the water entering the car, as it happens to a range of cars and ages from that particular brand.

The repairer seems to have experience at dealing with the make and model in question, and they inspected the car and reported on its findings. esure's engineer, although I'd recognise

them as an expert in automotive matters, didn't physically inspect the damage. So it follows that I think Mr B's repairer's opinion has greater weight.

So, I don't think esure has shown that the failure of the roof seals was due to wear and tear. I don't think esure has acted fairly in declining Mr B's claim.

I'd also say that esure accepted Mr B's car on cover, and charged him an appropriate premium, based on its extensive knowledge of motor insurance. In other words, it assesses risks according to the damage it's likely to cover. And in Mr B's car's situation, there's evidence that the manufacturer may not have allowed sufficient capacity in the drain holes to mean the car can clear water away. But that's not Mr B's fault or responsibility. It's esure's responsibility to assess and accept risks it wants to cover.

esure now needs to reconsider Mr B's claim on the remaining policy terms.

I've also thought about Mr B's distress and inconvenience. I can see esure offered him £300 compensation because of the mistakes it made in handling his car, and then the delays in declining his claim.

Mr B has explained he's spent a significant amount of time chasing esure for progress on the claim. And I need to consider his distress and inconvenience caused by esure's unfair rejection of his claim.

I think £250 is appropriate compensation for the distress he's been caused by esure's unfair rejection of his claim and the extra time he's used chasing it up. I can see Mr B accepted that in the view.

I also asked Mr B for evidence about the extra costs he'd incurred by not being able to use his car for an extended period. He sent this service information about the journeys he'd made from November 2024 to May 2025, and compared these to the same time period for the previous years. He also asked me to consider that he'd continued to pay for car insurance and his Vehicle Excise Duty ("VED") during this time, but I'm not able to consider the costs Mr B would have incurred anyway. So things like VED and insurance would be payable whether or not he'd used his car.

I've looked at the information he's supplied and I think it's reasonable to think that, given esure's unfair rejection of his claim, that it now needs to pay Mr B his reasonable incurred costs.

I thank Mr B for his diligence in preparing the figures for me, but I need to say I'm not going to ask esure to pay for an exact amount in this decision. The reason for this is that I can see his costs are ongoing.

What this means is that I'm reaching a provisional decision because I'm upholding his complaint, but also saying esure needs to pay for his reasonable additional costs for the period he didn't have his car.

So, although Mr B has kindly provided me with details of those costs, I'm going to require esure to pay his reasonable evidenced costs for the period during which he hasn't been able to use his car. The period I'm going to ask esure to account for will start two weeks after he reported his claim, as I think that's a reasonable amount of time to think that esure should have been able to validate his claim and start the repair process.

Responses to my provisional decision

Mr B accepted my provisional decision, but esure didn't. It said didn't think Mr B had looked after his car. It also thought Mr B was aware of the risk of his car being damaged by water ingress, and so it didn't think it should pay for Mr B's acceptance of that risk.

It suggested that it shouldn't have to cover Mr B's lack of maintenance or the manufacturer's lack of foresight in designing the drainage system. It suggested it would be wrong to make it accept all risks associated with insuring a car.

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 considered esure's responses and I don't think they're helpful. I've said above that esure is the expert about what types of cars it wants to accept on cover, and at what rates and terms.

It offered Mr B a policy, and when he made a claim under that policy it reasonably needs to settle his claim unless it can show that cover wasn't in force.

As I've said above, I don't think esure has shown that the exclusion it used to reject Mr B's claim was fair. Mr B's expert repairer said the drain system was clear. esure didn't physically inspect the car.

It follows that I'm now going to require esure to deal with Mr B's claim on the remaining policy terms. I can see he's accepted the remainder of my provisional decision, so the amount of compensation I set (a total of £550) for his distress and inconvenience will stand, and I think it's fair esure pay his reasonable, evidenced costs as I think it rejected his claim unfairly.

My final decision

It's my final decision that I uphold this complaint. I direct esure Insurance Limited trading as esure to:

- Pay Mr B a total of £550 compensation. It's my understanding that £300 has already been paid so this can be deducted.
- Consider Mr B's claim for the damage to his car in line with the remaining terms and conditions of his policy
- Pay Mr B his reasonable, evidenced costs caused by its unfair rejection of his claim, from a period two weeks after he submitted his claim.

esure Insurance Limited trading as esure must pay the amount within 28 days of the date on which we tell it Mr B accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

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

Richard Sowden
Ombudsman