

## **The complaint**

Mr W complains about esure Insurance Limited's decision to settle a third-party claim against his motor insurance policy.

## **What happened**

Mr W had a motor insurance policy with esure. In January 2024, he was involved in an accident with a third-party cyclist.

In April 2024, after Mr W received notification of the third-party's claim, he told esure he wasn't at fault for the accident.

Following this, esure investigated the circumstances, including gathering witness statements. And in June 2024, it made the decision to accept liability for the claim.

Mr W complained in November 2024. He was unhappy with esure's liability decision and the impact of this on his no claims discount (NCD). This reduced from 20 years to 3 years.

esure issued a complaint response in December 2024. It said it wasn't wrong to accept liability in the circumstances.

Mr W referred his complaint to the Financial Ombudsman Service. He acknowledged esure's discretion to decide liability but was unhappy with the reduction of his NCD as he was not at fault. He remained unhappy with the reduction of his NCD.

The Investigator didn't uphold the complaint. They said esure exercised its right to decide liability fairly. They said 'fault' relates to payments made by esure under the claim and the NCD was reduced fairly, in line with the terms.

Mr W didn't agree. He maintained he wasn't at fault so the NCD shouldn't be affected. He said the NCD information wasn't clearly explained.

## **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 should first set out that I acknowledge I've summarised Mr W's complaint in a lot less detail than he has presented it. Mr W has raised a number of reasons about why he's unhappy with esure. I've not commented on each and every point he's raised but, instead I've focused on what I consider to be the key points I need to think about. I don't mean any discourtesy by this, but it simply reflects the informal nature of this service. I assure Mr W, however, that I have read and considered everything he's provided.

Mr W says he wasn't at fault for the accident with the third-party. I should explain that the Financial Ombudsman Service isn't able to say who's at fault for causing an accident – that is the responsibility of the courts. Our role is to look at whether esure has carried out a fair investigation, reviewed all the evidence it has and come to a reasonable conclusion.

Mr W's policy, like all other car insurance policies, allows esure to take over, defend or settle the claim. So it was entitled to settle the claim, on the best terms it thought fit. And it had the ultimate and final say in how to settle a claim. But it needed to exercise this right fairly and reasonably, taking into account everything both parties had provided.

I can see esure did take Mr W's statement, along with the statement of the witnesses that responded to its contact. esure accepted the statements were in its favour. And in trying to obtain the CCTV footage, esure made contact with the retail premises where the accident occurred. And the manager of the retailer told esure the footage had been deleted without being passed on to any other parties, including the police. They also told esure they'd reviewed the CCTV at the time, and couldn't say whether Mr W's vehicle was moving or stationary when the accident occurred.

Overall, keeping in mind the above, I think esure carried out a fair investigation, and reviewed the relevant available evidence. Mr W didn't notify esure of the accident until April 2024, despite it being a condition of his policy to report any accident as soon as he is aware of it, even if there's no damage to his vehicle. So, I don't consider esure was at fault for the CCTV no longer being available.

Mr W also said the Police reviewed the CCTV at the time of the accident and made the decision not to pursue him with any charges. But I don't consider the Police decision not to pursue criminal charges against Mr W amounts to strong proof he wasn't at fault for the accident. Rather, I think this shows Mr W's actions didn't amount to anything the Police considered criminal.

esure said it wasn't confident of defending the claim in court, despite the above, because Mr W was the reversing party, and part of his vehicle (wheel fixed to rear), likely encroached the third-party cyclist's right of way. This is supported by the available evidence, including Mr W's signed statement. In addition, esure noted the third-party cyclist is classed as a vulnerable road user. It was based on this, and the advice of its investigating agent, that esure made the decision to accept liability. So I think esure's decision was reasonable. And in the circumstances of this complaint, I think its decision was a fair and reasonable application of its right to decide and settle the claim under the terms of the policy.

Mr W said he was unhappy with esure's decision to reduce his NCD based on the amount of NCD it recognises. He said the information esure provided about this was not clear and was misleading.

I've reviewed the policy terms, and they make it clear that a 'fault' claim is where esure is unable to recover payments it makes under a claim. This is in line with what a fault claim is generally considered by insurers to be, so I don't consider it unusual.

The terms go on to say in the event of a fault claim, the NCD will be reduced as outlined in Mr W's policy schedule. And on page six of seven in the schedule, esure makes it clear that Mr W would start the policy with 20 years NCD, but if there was one claim within that 12-month period, his NCD would reduce to three years.

Mr W pointed out a case study on the Financial Ombudsman Service website, where it was found the insurer hadn't provided clear enough information. Each case is decided on its own merits, and in the circumstances of Mr W's complaint, I think esure made the relevant information about the NCD sufficiently clear. I consider the information in the schedule is outlined in an easy-to-understand table, with clear and not misleading information. The schedule says the NCD would be reduced "*to the amount shown*" and not "*by the amount shown*", as Mr W says he interpreted it.

As outlined above, whether someone is at fault for an incident isn't the deciding factor in determining whether a claim is a 'fault' claim. esure made it clear it would classify a claim as 'fault' where it pays money on a claim and doesn't get a full recovery of that outlay from another party. And because esure accepted liability and incurred an outlay on the claim, it wasn't unreasonable that it reduced the NCD in line with the policy terms.

So overall, for the reasons outlined above, I don't consider esure acted unfairly in accepting liability for the claim, or in reducing Mr W's NCD following this.

### **My final decision**

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 W to accept or reject my decision before 16 July 2025.

Monjur Alam  
**Ombudsman**