

The complaint

Mr M complains about how esure Insurance Limited ('esure') handled a claim made on his car insurance policy, and the total loss valuation it paid for his car.

What happened

In May 2024, Mr M contacted esure to make a claim on his car insurance policy after his car suffered malicious damage.

esure initially thought the car was repairable, so it provided Mr M with a courtesy car on 29 May 2024 when his car was checked into a garage for repairs. But on further inspection, esure thought the car had been involved in an impact and that second hand parts had been installed to it. So, it decided to instruct an independent engineer to carry out a physical inspection.

The independent engineer carried out their inspection on 11 June 2024 and said in their report they found evidence that the car was involved in a previous accident and following this was repaired to a below commercially acceptable condition.

The independent engineer valued the car using two motor valuation guides which produced valuations of £35,230 and £31,432. However, the independent engineer calculated there was over £24,000 of pre-existing damage to the car. So, he proposed that half the cost of repairing the pre-existing damage should be deducted from the total loss settlement to reflect the condition of the car - resulting in a £12,000 deduction being made from the £35,230 valuation, and a total loss settlement figure of £23,230.

As the car was deemed a total loss, esure withdrew the courtesy car which was returned to it on 21 June 2024 and Mr M was provided a hire car instead on the same date. Since Mr M's car was subject to a finance agreement, esure requested he provide a settlement letter from his finance company, which he did on 12 July 2024. Following this, Mr M's hire car was returned on 17 July 2024, and esure paid the total loss settlement of £23,230 to the finance company on 19 July 2024. Since the settlement balance for the finance agreement was £38,257.70, this left Mr M with a shortfall to pay on the finance agreement of £15,027.70.

Mr M complained about how esure had handled and settled the claim, and it provided a final response to this complaint on 20 August 2024. It said it had made numerous attempts to contact Mr M for the finance agreement settlement letter and acknowledged he had disputed the total loss settlement value, saying that its engineer was reviewing this and would contact Mr M if any increase was agreed. Additionally, it acknowledged there were issues in extending the hire car for Mr M, and it agreed to pay him £350 compensation.

esure did not subsequently agree to increase the total loss settlement, and Mr M referred his complaint to us.

I issued a provisional decision upholding the complaint in part, and I said:

"I should start by saying while I've read and considered everything Mr M and esure have provided, I won't be commenting on every point made. I'll instead concentrate on what I consider are the key points I need to think about for me to reach a fair and reasonable decision. This isn't meant as a discourtesy to either party, but instead reflects the informal nature of this Service.

I've began by looking at the terms and conditions of Mr M's policy. These say if esure decide the car is a total loss, it will pay no more than the car's market value, and that if the car was obtained via a lease, contract hire, or contract purchase agreement, it will pay the outstanding finance, up to the car's market value, to the legal owner. The terms define 'market value' as the amount the car could reasonably have expected to sell for immediate before the accident or loss.

I should say here it isn't the role of this service to work out exactly what the value of an individual vehicle is. We look at whether the insurer has applied the terms of a policy correctly and valued the vehicle fairly.

esure used motor valuation guides to value the car, which is standard industry practice and isn't unreasonable given these guides are generally based on the prices of similar vehicles for sale.

It's generally good industry practice for insurers to base their settlement on the highest figure produced by valuation guides, unless they can show it would be unfair to do so. This is to avoid the risk of detriment to a consumer in not receiving a fair market value for their car.

esure didn't do that here. Although the highest valuation it obtained from the valuation guides was £36,273, the settlement it paid was instead based on a lower valuation of £35,230 from a different guide. The difference between these two valuations wasn't insignificant, and esure hasn't provided anything more to show why it was fair for it to use the lower valuation. So, I'm not persuaded that esure has shown there isn't a risk of detriment to Mr M in not receiving a fair market value by using a lower valuation. As such, I intend to require esure to pay an additional £1,043 to bring the total loss settlement in line with the highest valuation from the guides.

I've next considered if it was reasonable for esure to deduct £12,000 from the claim due to the condition of the vehicle. The independent engineer's report says the engineer found evidence the car had been involved in a previous accident and repaired to a below commercially acceptable standard, with damage found to the front chassis legs of the car and issues with the previous repairs due to recycled parts being used and bolts either being missing or of the wrong type.

Mr M informed our investigator that prior to his car suffering the malicious damage which he claimed for, the car was damaged after being driven over a pothole. Mr M didn't make a claim with esure for this damage but instead took it to a garage for a private repair. It was after Mr M took the car to this garage that it suffered malicious damage by having parts stolen from it.

I asked esure if Mr M had informed it about the accidental damage which was caused to his car after being driven over a pothole. esure said it has no record of Mr M reporting this damage when either he first made the claim, or later. esure has provided transcripts and call recordings from when Mr M reported the claim, and I think these show Mr M didn't inform it about the accidental damage caused by the pothole when he first made his claim.

The damage caused by the car being driven over a pothole and the malicious damage caused while the car was at the garage were two separate events. So, had Mr M wanted the

accidental damage caused by the pothole incident to be covered by esure, he would have needed to make a separate claim for this. But I've seen nothing to show Mr M asked esure to make a claim for this damage, or that he informed it this damage had happened and was why his car was at the garage.

So, since Mr M didn't notify esure of this damage, or submit a claim for it, I don't think it was unfair for esure to make a deduction from the claim due to the pre-existing damage caused by the pothole incident. And, if Mr M thinks that esure should have covered him under his policy for this damage, he will need to contact it directly to log a separate claim for this damage.

I also don't think it was unreasonable for esure to make a deduction from the total loss settlement to for poor quality repairs. I say this because I think these likely would have negatively impacted the cars market value, and in the absence of evidence to the contrary, I see no reason to doubt the independent engineer's finding that the repairs carried out to the car were below a commercially acceptable standard.

Although esure estimated the cost of repairing the pre-existing damage at over £24,000, it didn't deduct this full amount from the claim. Instead, it deducted £12,000, which was slightly less than half the amount. I haven't seen evidence showing esure made any error in its estimate of repair cost for the pre-existing damage, and by deducting half the repair cost rather than the full amount, I think esure acted in accordance with good industry practice. So, I don't find the £12,000 deduction unfair. And, because I don't find this deduction unfair, I don't think esure unfairly caused Mr M to have an outstanding balance to pay off on his finance agreement.

I've next considered if esure acted unfairly in how it handled Mr M's claim. esure received confirmation from the independent engineer on 20 June 2024 that the car was a total loss and on 21 June 2024 recalled the courtesy car from Mr M and provided him with a hire car.

esure's claim notes show on 28 June 2024 it identified from the independent engineer's report that the car was under a finance agreement. After this, esure wrote to Mr M on 5 July 2024 and 12 July 2024 to ask him to provide a settlement letter from his finance company, and it also discussed the requirement for a settlement letter with Mr M over the phone on 11 July 2024, 12 July 2024, 15 July 2024 and 17 July 2024.

esure has provided email correspondence which shows that Mr M provided a settlement figure on 7 July 2024, following which the finance company sent Mr M a copy of the settlement letter on 12 July 2024, with esure being copied into this. So, I think from this point esure were able to settle the claim as it had the independent engineer's report, and the settlement letter from the finance company. However, this payment wasn't issued until 19 July 2024. So, I think there was an unreasonable delay in sending the settlement payment to the finance company. I've considered the impact of this.

Mr M's policy had optional hire car cover, which he had taken out. This entitled him under the terms of the policy to a hire car for up to 21 days if the car is a total loss, with any extension beyond this at the expense of the insured and with the hire car benefit ending upon payment of the total loss.

Mr M says he paid for three additional days hire as the 21 day limited ended before esure had paid the claim settlement to the finance company. I think esure reasonably could have made this payment earlier, so I think - upon Mr M providing esure an invoice or receipt to show he paid this amount should it request this - it's reasonable for esure to reimburse him the £300 he was charged for the additional days hire which weren't covered by the policy. Interest should also be added to this payment to reflect that Mr M was without these funds.

Mr M says that he suffered lost earnings due to being without a car. But other than his comments that he lost income, he hasn't provided any further evidence to show how much he lost, when this happened, or if he took any steps to mitigate or avoid losing income. In addition to this, in line with the policy terms, Mr M was provided with a courtesy car when his own car was checked into the garage, and he was provided with a hire car once his car was deemed a total loss.

Ultimately, the policy terms required esure to pay the total loss settlement to the finance company. Once it did so, it would have then been for Mr M to organise new travel arrangements for himself. Based on these points, I don't find there's sufficient evidence to show esure should cover any lost earnings.

Lastly, I've considered if the £350 compensation esure offered was fair and reasonable. I think there were some delays on the claim which led Mr M to have to contact esure on several occasions for updates. I also think some upset was caused to Mr M because he wasn't initially told when esure had paid the total loss settlement to the finance company. Although the policy terms allowed esure to make this payment, it would have been reasonable for it to let Mr M have known at the time it had made the settlement payment.

But I think for the impact caused by these issues, £350 compensation is fair, reasonable and in line with our award levels. So, I don't intend to require esure to increase this."

esure replied accepting the provisional decision. Mr M replied saying that he is considering the option of pursuing a second claim, but still feels unreasonable deductions were made from the total loss settlement which have left him severely out of pocket and that the car hasn't yet been returned to him.

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 Mr M's response, but I've reached the same outcome as I did in my provisional decision and for the same reasons.

I acknowledge Mr M's comment that he was trying to do the right thing by not claiming for the pothole damage. Ultimately though, there were two distinct separate identifiable events which caused damage to Mr M's car – the initial damage caused by the incident with the pothole, and the subsequent malicious damage caused by parts being stolen from the car. As such, Mr M would have needed to make a claim for each separate event had he wanted esure to cover the damage from both incidents.

But Mr M didn't inform esure about the pothole incident or submit a claim for the damage it caused. He only informed esure of the malicious damage and only claimed for this. So, it was not unfair for esure to treat any damage which occurred prior to the malicious damage (including damage caused by the pothole and damage from the poor quality repairs) as pre-existing and to make a deduction from the total loss settlement for the effect this damage had on the value of the car.

Should Mr M decide he would now like to claim for the damage caused by the pothole, he will need to contact esure directly to make a claim for this.

I also acknowledge Mr M says that the car wasn't returned to him after the total loss settlement was paid.

When an insurer pays a total loss settlement, it does so based on the vehicle's pre-accident market value – essentially compensating the insured for the value of the car as it was before the damage occurred.

In return for this payment, ownership of the vehicle (the 'salvage') transfers to the insurer. The insurer is then entitled to dispose of the salvage – often by selling it – and can offset any proceeds against the cost of the claim. If the insured wishes to keep the salvage instead, it's reasonable for the insurer to deduct its value from the total settlement in the form of a retention fee.

So, had Mr M wanted to retain the car, he would have needed to pay a retention fee. In practice, because the total loss settlement was – in line with the policy terms – paid to the finance company, this would have meant esure would have deducted the retention fee from the total loss settlement it paid to the finance company resulting in a higher outstanding settlement balance Mr M would have owed to the finance company.

I asked esure to clarify the status of the car and its position on the salvage. It said it hadn't previously offered the option to Mr M to retain the salvage due to the ongoing dispute about the pre-existing damage. Although it acknowledged Mr M had expressed an interest in retaining the car in June 2024. It also confirmed that the car has been recorded as a category S salvage, meaning that the car has suffered structural damage and is repairable, but was deemed uneconomic to repair.

However, it says that the car is currently on a safeguard hold with its salvage agents, so there is still a possibility for Mr M to retain the car. But it does not think retention is likely to be a viable option given the high costs which would be involved for Mr M.

Specifically, it says for Mr M to retain the car, he would need to pay the outstanding balance to the finance company and pay a salvage retention fee which it estimates to be £6,218.55. In addition to this, to use the vehicle Mr M would need to pay to have it repaired to a roadworthy standard so that it would successfully pass an MOT, and he would need to reregister the vehicle with the DVLA.

I cannot comment on any arrangements Mr M would need to make with his finance company for the car to be released to him, as they're a separate business to esure. But I find the remaining comments esure has made about what would be involved for Mr M to retain and use the car to be reasonable.

I think esure should have explained the salvage retention process to Mr M when he initially enquired about it. However, I don't think he was likely to have been materially prejudiced by this omission. On balance, the significant costs involved in retaining and repairing the vehicle would likely have deterred him from pursuing that option.

I say this because to retain and use the vehicle, Mr M would have needed to pay a retention fee – estimated at £6,218.55 – in addition to paying to make the car roadworthy and pass an MOT. To put right the damage to the car, the independent engineer estimated the total cost would be £29,989.21. So, the combined costs involved to Mr M of retaining the car and making it roadworthy would have been roughly equivalent to the car's market value. But, crucially, even after paying all of this, Mr M would still have had to settle a shortfall on his finance agreement, which at the time the total loss settlement was paid was around £15,000.

In other words, he would have had to pay what the car was worth to retain it and repair it back to a roadworthy state and would then still be left with a substantial debt to pay to the

finance company. It's difficult to see how that would have been a viable or attractive option, even if it had been clearly explained at the time.

That said, esure has said that salvage retention is still a possibility. So, if Mr M would like to explore this further, he should contact esure directly to discuss his options.

Putting things right

I require esure to do the following:

- Pay an additional £1,043 to bring the total loss settlement in line with the highest valuation from the guides and add simple interest at a rate of eight percent per year to this amount calculated from the date the original total loss payment was made to the date of settlement.
- Subject to Mr M providing a receipt or invoice if requested, reimburse Mr M £300 for the additional hire he paid for and add simple interest at a rate of eight percent per year to this amount calculated from the date Mr M paid the hire charge to the date of settlement.
- If it has not already done so, pay Mr M £350 compensation.

If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint in part, and I require esure Insurance Limited to carry out what I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 July 2025.

Daniel Tinkler
Ombudsman