DRN-5762037

The complaint

Mr B complains about the settlement offer by esure Insurance Limited on his car insurance policy.

What happened

I'm sorry to hear that Mr B was involved in an accident in his car. He raised a claim with esure who accepted it. After validating the claim, esure said Mr B had misrepresented during his application. As a result, they offered to settle the claim proportionately. Mr B was unhappy and raised a complaint. esure didn't agree they'd done anything wrong and so brought the complaint to this service.

Our investigator didn't uphold Mr B's complaint. He thought that esure had fairly offered to settle the claim proportionately. Mr B appealed. He was unhappy that his car has since been sold and he wanted to retain it. He also still disagreed about his mileage declaration and that he'd been without a car all this time. As no agreement could be reached, the complaint has been passed to me to make a final decision.

Because I disagreed with our investigator's view, I issued a provisional decision in this case. This allowed both esure and Mr B a chance to provide further information or evidence and/or to comment on my thinking before I made my final decision.

What I provisionally decided – and why

I previously issued a provisional decision on this complaint as my findings were different from that of our investigator. In my provisional decision, I said:

"*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

Based on what I've seen so far, I intend to uphold Mr B's complaint.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether esure acted in line with these requirements when it declined to settle Mr B's claim.

At the outset I acknowledge that I've summarised his complaint in far less detail than Mr B has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

I'm very sorry to hear about Mr B's car.

When considering a misrepresentation, the relevant law is usually The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). However, in this case, the incorrect information is around a matter of opinion. This means there can't be a misrepresentation and CIDRA can't apply. As a service though, we still consider the principals of CIDRA when deciding if an insurer has acted fairly and reasonably.

esure thinks Mr B failed to take reasonable care when he answered the following question:

"Estimated annual milage"

As this was an insurance renewal, this appeared on Mr B's schedule. The question was answered 4,001-5,000.

Esure has provided me with Mr B's car's MOT records. These show the following:

- *July 2023 – mileage: 21,337*
- *June 2024 – mileage: 32,976*

This shows that Mr B did 11,639 miles in just less than 12 months. Mr B bought his car in July 2023 and his policy renewed in May 2024. At this point, Mr B had done a lot more than 5,000 miles in the car. Mr B has told us that he reduced his working days from 6 days to 3 days. However, we've received no evidence of this, and he's also increased his mileage on the policy in March 2025 to up to 7,000 miles.

Based on the question asked, the answer given and the MOT information available, I don't think Mr B acted reasonably when providing his estimate. I agree that Mr B provided an incorrect opinion on his mileage during his renewal. I think the question was clear in what it wanted to know.

esure have provided me with a statement from an underwriter and underwriting calculations. Based on what I've seen, esure would have still offered Mr B the policy, but would have done so at a higher premium. esure has offered to settle the claim proportionally. As esure would have charged Mr B a higher premium had a more reasonable estimate been provided, I don't think this is unfair or unreasonable.

esure initially valued the car at £22,620 but whilst the complaint has been with us, their engineers had increased the valuation to £22,761.50. Their claims team were unaware of this, but esure have agreed to pay the additional £141.50 without making a proportionate deduction to it.

esure has sent us their underwriting information. Based on what I've seen, I don't think the proportionate settlement has been calculated correctly. My understanding at present, is that Mr B has been offered a total settlement figure of £16,829.28. This was based on a pre-accident market value of £22,620, proportionate settlement deduction for the mileage of £4,840.72 and the excess deduction of £950.

esure's claim notes show that the proportionate settlement deduction percentage was recalculated in February and increased the proportionate settlement from 78.6% to 81.6%. Based on the underwriting information I've been provided, I think this is fair and reasonable. However, I can't see that it has been applied to Mr B's settlement.

So, based on a pre-accident market value of £22,761.50, I think the proportionate deduction should be £4,162.08 (esure has agreed to pay the additional pre-accident value of £141.50 without the deduction applying to it). Taking the excess into account, the total settlement figure should be £17,649.42.

Mr B has said that he's been without a car. As his car was written off, he wasn't entitled to a courtesy car under his policy. Mr B also informed esure that he didn't want to receive the settlement offer they'd made. Had he done so, this would have allowed him to purchase a replacement car.

Mr B also raised in response to our investigator's view that he was unhappy that the car has since been sold, is back on the road and he wanted to keep the car. As this is a new complaint point, esure hasn't had the opportunity to respond to it yet. If Mr B remains unhappy with this, he'll need to raise it as a new complaint with esure before we can investigate it. So, I'm not going to comment further on this point in this decision."

I set out what I intended to direct esure to do to put things right. And gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses to my provisional decision

esure responded to my provisional decision with nothing further to add.

Mr B initially confirmed he didn't agree with my provisional decision. He said it was unfair esure had sold his car without his consent before the claim was settled. Our investigator confirmed the reasons why this complaint point wasn't considered in this decision further and Mr B responded accepting my provisional decision. However, Mr B added that he'd been paying his car loan every month and not had use of the car for over eight months.

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 thought carefully about the responses to my provisional decision. Having done so, while I appreciate it will come as a disappointment to Mr B, as neither party has provided anything new my conclusions remain the same.

Whilst I appreciate Mr B has been paying his car loan and hasn't had access to a car, esure did make an offer to pay Mr B their initial offer which he turned down. Even if esure had offered Mr B the correct proportional settlement, as set out in my provisional decision, Mr B would still have turned down the payment. Mr B's car finance payments are owed until it's settled in full.

Putting things right

To put things right, esure should do the following:

- Pay Mr B £17,649.42 in settlement of his claim
- Pay 8% simple interest* on £829.14 from 6 February 2025 to the date the settlement is paid.

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

My final decision

For the reasons I’ve explained above, I uphold this complaint and direct esure insurance limited to put things right by doing as I’ve said above, if they haven’t already done so.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 25 September 2025.

Anthony Mullins
Ombudsman