DRN-5780472

The complaint

Mr P complains that, following a claim on his motor insurance policy, esure Insurance Limited unfairly decided his car was a total loss and then did not let him keep the car.

What happened

In July 2023 Mr P's car was damaged in a fire. He claimed on his policy. After it investigated the matter esure said Mr P's car was a total loss and paid his finance company the market value of the car. However, that sum didn't cover the full amount owing for the car and Mr P still owed the finance company the balance.

Mr P had a number of concerns with esure's service. He complained. He was dissatisfied with esure's reply and brought his complaint to the Financial Ombudsman Service. One of my Ombudsman colleagues upheld his complaint and instructed esure to put things right and pay Mr P compensation. The issues my colleague dealt with are not the subject of this complaint.

While my colleague was considering Mr P's earlier complaint he also complained that he thought esure had unreasonably decided that his car was a total loss and that it hadn't let him retain the salvage. He said there were a number of consequences of that including than he had defaulted on his finance agreement for the car. He put that complaint to esure. It issued responses to the complaint in October and November 2024. It didn't uphold the complaint.

Mr P referred that matter to this service. One of our Investigators looked into it. She thought it was reasonable for esure to decide his car was a total loss. But she didn't think it had dealt with the salvage retention fairly and said that esure should pay Mr P £250 compensation.

esure said that in order to resolve the complaint it would pay Mr P the £250. Mr P remained dissatisfied so his complaint's been passed to me to decide.

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.

In bringing this complaint and in replying to our Investigator's assessment of it Mr P has made a number of detailed points. I've considered everything on file. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key points at the heart of Mr P's complaint and the reasons for my decision. The rules governing our service allow me to do this as we are a free (to most consumers) dispute resolution service and our role is to resolve complaints with the minimum of formality. So if there's something I haven't mentioned it isn't because I've overlooked it. I haven't. Instead I'm satisfied I don't need to comment on every individual point raised to be able to come to a fair and reasonable decision.

I also need to make it clear that I will not be considering any points Mr P raised in his earlier complaint that my colleague considered, or any new points he has raised while we have been looking into this complaint. I will only make findings on the complaint points summarised under the heading 'The complaint' above, which esure issued its complaint responses to in October and November 2024.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the regulator's Principles for Businesses ('PRIN'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Was it fair for esure to declare the car a total loss?

Mr P is very unhappy that esure deemed his car a total loss. He thinks esure should have instead repaired it. And, had it done so, he wouldn't now be out of pocket for the costs associated with repaying the finance on the car and other costs including paying for a replacement vehicle.

Mr P's said that esure initially made a decision to deem the car a total loss without assessing it. That was because esure decided to take the car from a repairing garage to its salvage agents, which I'll refer to as C, very soon after he'd made the claim.

It seems that esure initially arranged for the car to be moved to a repairing garage (the garage). Mr P told us he's spoken with that garage recently. It told him that it didn't produce a repair estimate or make an assessment of his car. Instead esure told it to move the car to C to deal with as a total loss. I accept this is what the garage told Mr P. And I've seen no evidence on file that it ever produced an estimate for repairs. So I'm satisfied I don't need to make any further enquiries of the garage to establish that it didn't provide an estimate.

Further, what is on file is a record that Mr P himself rang esure and said the garage had told him that they could not repair the car. And esure noted that it would deal with the claim as a total loss. That seems an unusual way to go about things. That's because an insurer like esure would generally want one of its engineers to be satisfied that the car was a total loss before making that decision. As far as I'm aware esure wouldn't, generally, decide a car is a total loss based on second hand information passed on from a policyholder.

However, after C received the car one of its engineers assessed it. That engineer valued the car at £18,651 and estimated it would cost £14,914 to repair. As such he said it was not economical to repair so it was a total loss. But he referred the matter back to esure to investigate as the cause of the fire was unknown and the car also had a non-standard exterior wrapping.

A few days later Mr P rang esure and spoke with one of its engineers (the engineer). I've listened to a recording of that call. The engineer explained that he was not the "*inspecting engineer*" assigned to assess the car. But he looked at some images of it and said the car might be repairable. He said that, at that time, none of esure's engineers had made a decision that the car was a total loss. The engineer told Mr P he thought the matter needed looking into. He said he'd email his colleague who was responsible for assessing the car and that the decision on how to proceed would be up to his colleague.

The engineer emailed his colleague that day. He said he wasn't telling him what to do but that the car shouldn't have been sent to C. So, even if the initial decision to refer the car to C was somewhat unusual it didn't have a bearing on the eventual outcome.

esure's inspecting engineer then instructed an independent assessor (the assessor) to examine the car to see if he could establish the cause of the fire and also to assess whether or not it was repairable. And I don't agree, as Mr P has argued, that this referral was just a "formality". esure could, if it had wanted to, decided to deal with the matter as a total loss without instructing the assessor. So it's not the case that esure had already decided to deal with the claim as a total loss.

The assessor physically inspected the car and esure would not have known what his conclusions would be until he gave it his report. When he did so, while he couldn't establish the cause of the fire, he valued the car at £18,500 and estimated the total cost of repairs

would be £21,917. So he said it would be uneconomical to repair and as such recommended the claim be dealt with on a total loss basis.

Mr P said that:

- There are errors in the assessor's report.
- The repair work required was not as extensive as the assessor said.
- The assessor had not obtained an estimate for repairing the car.

So he doesn't think esure should have relied on the assessor's report.

Mr P's policy allows esure to decide how to settle a claim. So it may make a decision that Mr P disagrees with. But I would look to see that it's done so fairly and reasonably. In this case esure received two engineers' reports, from the assessor and C. And while the figures on those were different both considered the car to be beyond economic repair and therefore a total loss. And there's no evidence, beyond Mr P's comments that the car was economic to repair.

I note that Mr P disputes the extent of the work required. But as far as I'm aware he is not a qualified motor engineer or assessor. But the two engineers who've assessed the car are. And they both concluded that the car was a total loss. So I'm more persuaded by their expert opinions than by Mr P's remarks.

Mr P also believes that the assessor's report is flawed because, for example, he's said that the extent of the damage rendered the car immobile. But, Mr P said he drove the car after the fire and C's report refers to the car as drivable. So he doesn't think the assessor was correct to record the car as immobile. esure hasn't investigated why the assessor recorded that he believed the car was immobile. And there could be reasons why an engineer thinks a car shouldn't be driven even when it is capable of being so. That could be, for example, because it's been contaminated in a flood or a fire and could pose a health risk to someone driving it until decontaminated.

But even if the assessor made an error that would not mean that the rest of the report should be dismissed in its entirety. The assessor's report is clear why he believed the car was a total loss. And an error, if that's what it was, wouldn't necessarily invalidate that finding.

Also there's no requirement for esure to receive a fully costed repair estimate before it decides to deem a car a total loss. That's because the preparation of such an estimate could involve a considerable cost to it, especially if it involves stripping the car down. And, in any event, its apparent that both engineers provided their own estimates of the labour costs involved in repairs together with list of the parts that would require replacing. And while the assessor's list was far more comprehensive than C's, that was what esure was, in part, asking him to do. That is to establish whether or not he felt the car was repairable and why. That's what he did.

On the basis of the engineers' reports, esure's own in-house engineer decided the car was a total loss. That's a decision he was entitled to come to. And given the evidence before him I think he did so reasonably.

Further, Mr P thinks the total loss decision is at odds with the information esure's engineer gave him over the phone. But I don't think it is. That engineer explained that the decision on whether or not the car was repairable was not his to make. It's also not clear what images, or how many of those, he was looking at when he said the matter needed further investigation. Also, the engineer didn't say the car was repairable only that it needed further investigation. And that's what happened. That is the inspecting engineer instructed the assessor to investigate further before deciding on the next steps.

In addition the assessor appended 38 images of the car to his report in order to support his findings. C's report included 12 images. So the inspecting engineer would have had all that

detail, as well as the images that Mr P had supplied when he made his claim, to make an informed decision on. The assessor's report and images would not have been available at the time Mr P spoke with the engineer. And as the engineer explained, he wasn't making the decision, he just happened to answer the phone when Mr P rang and looked at the images on screen at that time.

I'll add that Mr P's established that the car has since been repaired and put back on the road. He believes this supports his argument that the car shouldn't have been declared a total loss. But I disagree.

It might help if I explain that when considering whether or not a car is repairable or a total loss as well as their own policies insurers, generally, follow, a code of practice produced by the ABI[1]. That code of practice sets out the various categories a car deemed to be a total loss might fall into, which are classified as categories, A, B, S and N. Cars deemed to be categories A and B are not safe to ever be returned to the road. However, Categories S and N are. And a category N cars are generally deemed a total loss on the basis that they are beyond economical repair. That was the case here, C's engineer and the assessor classified Mr P's car as category N. So the fact that it's been returned to the road does not mean that it was unfairly deemed a total loss. It only means someone has taken the time and trouble to repair it.

I'll add that usually a salvage agent like C will put cars deemed a total loss into an auction. Those are then bought for scrap, to be broken into parts, or to be repaired and put back onto the road. And it might be profitable for some companies or individuals to buy cars in a damaged state. They may well be able to repair the cars themselves at a fraction of the cost compared with the commercial rates an insurer would pay to a repairer. They may also use second hand or non-manufacturer approved parts in the repair in order to keep the costs down. And those repairs are unlikely to carry a five year guarantee as esure's repair work will.

It's apparent that's what's most likely happened in this case. That is someone has bought Mr P's car and repaired it either for themselves or to sell on for a profit. But the fact that someone's taken the trouble to do that does not mean that the decision to deem the car a total loss was wrong. Indeed Mr P himself said he wanted to buy the car back and repair it. And if the car couldn't ever have been returned to the road then there would have been no reason for him to do that.

It follows that I don't think esure acted unfairly in deciding to settle Mr P's claim on a total loss basis.

Mr P's request to keep the car

Mr P says that esure unfairly told him that, despite asking to do so, he couldn't keep the car after it was deemed a total loss.

There's evidence on file on both 28 & 31 July 2023 that Mr P told esure he was interested in keeping the car even if it was deemed a total loss. And when he spoke with the engineer, in early August 2023 he said he'd asked to buy the car back. So I'm satisfied that he was interested in keeping it.

Mr P's said that esure told him he couldn't buy the car back because there was finance outstanding on it. However, I haven't seen any evidence on esure's file of it telling him that. And, if it did, it would be quite unusual. That's because once an insurer settles a total loss claim the car becomes its property. Insurers do not have to sell the car back to a consumer. But it's usual that, as long as the car is either a category S or N, meaning it's allowed to go back on the road, that an insurer will allow the consumer to buy the salvage back for the same price its salvage agents would pay for it. That's the case regardless of whether or not there is finance on the car. So, if esure did tell Mr P he couldn't buy the car back because of

[1] Association of British Insurers

the finance that was a mistake. However, as I've already said I've seen no evidence beyond Mr P's comments that's what happened.

In this case, as esure was investigating the claim, there was a significant delay between the fire and esure settling it. And it appears that during that period it lost sight of the fact that Mr P was interested in retaining the salvage. So it didn't make that offer to him when it paid his finance company the market value of the car, less Mr P's excess. However, I've seen no evidence that Mr P raised that matter with esure at the time. That is, at the point in which it said it would settle the claim Mr P didn't ask esure if he could keep the car. Had he done so, I think it's more likely than not that esure would have given him a price to buy it back, even if it had previously given him incorrect information that he couldn't buy it.

That said, given that he had told esure at an early stage that he wanted to retain the car I think it could have been clearer with him, at the point it settled his claim about what his options were. But I think the £250 it has agreed to pay is reasonable compensation to address that lack of clarity. That's because, while Mr P is adamant now that he would have kept the car. He doesn't actually know how much he would have had to pay esure for it.

Further, he would have the had to get the car repaired and, while he could do that at his own pace the car was contaminated with soot and smoke. And esure's engineers have said that this was not something that a simple valet could remove. I know Mr P doesn't believe that's the case but for the reasons already given I prefer the evidence of esure's engineers. So, I'm not convinced that, when faced with having to buy a soot and smoke damaged car that would cost many thousands of pounds to repair, on top of paying his ongoing finance, Mr P would have actually gone ahead with the purchase.

Mr P's said that because esure didn't sell him the car he suffered financial hardship which led to him defaulting on the outstanding finance on the car. But I can't agree that's the case. esure didn't sell him the car but any decisions he made after that, including his choice not to make the required repayments to his finance company were his alone. That's the case, regardless of what motivated him to make those choices. So I don't think it would be fair and reasonable to hold esure responsible for any financial difficulties Mr P suffered following this.

My final decision

For the reasons set out above I require esure Insurance Limited to pay Mr P £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 November 2025.

Joe Scott
Ombudsman