

## **The complaint**

Mr D has complained about esure Insurance Limited's decision to record an incident under his car insurance policy as a fault claim.

## **What happened**

Mr D was involved in an incident with a third party vehicle (TPV). Mr D said he pulled over to allow an emergency vehicle to pass and as he did so, his car hit a parked TPV. The third party made a claim and esure decided to record the claim as a fault claim under Mr D's policy on a 'without prejudice' basis.

Mr D disagreed with esure's decision. He wanted esure to change the outcome to a non-fault claim and to reinstate his No Claims Bonus (NCB). He was unhappy with the impact the fault claim would have on his premium in future. Mr D said how the TPV was parked meant they should bear some responsibility for the incident.

One of our Investigators explained that we don't decide liability, but we can look at whether an insurer acted reasonably and in line with the policy.

The Investigator thought esure had reached its decision having considered the information available to it. So they didn't recommend the complaint should be upheld.

Mr D disagrees and wants an ombudsman to decide. In summary he says he provided photographs of the TPV and details of an independent witness. He says visibility was limited as the TPV's tailgate was extended and unattended in a public space. If esure didn't consider the photos and witness details, or pass this information to the TP insurer, it has failed to properly investigate the claim.

Mr D says his car is a SUV and it wasn't possible for him to see the low lying hazard until it was too late. Mr D wants the outcome of the claim decision to be overturned and compensation for the distress and inconvenience caused by esure's poor handling of the claim.

So the case has 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.

As the Investigator explained, we don't decide liability. We can look at whether an insurer properly investigated a claim and if it reached its decision in a reasonable way and in line with the policy. This is a subtle but significant distinction I need to make when reaching a decision.

esure has a very common term under Mr D's car insurance policy with it. This term says esure can take over the defence and settlement of a claim in Mr D's name. So it means esure can make a decision Mr D might not agree with, but the policy allows esure to do so.

We don't disagree with this term in principle provided an insurer can show it treated a customer fairly when applying it.

In the Investigator's view, they wrote:

*"When reviewing the file provided by esure to the third-party insurer we found that esure had attempted to dispute the liability on the grounds you had mentioned. However, they were unable to provide the supporting pictures as these had not been received. I note that the third-party insurer confirmed that their policyholder was not at fault given they were not present in the vehicle at the time of you colliding with the vehicle."*

In response, Mr D says he did provide esure with photos and is unhappy they were not included in their investigation. He is unhappy that esure didn't take into account details from a witness he provided who saw the incident.

I have not found that esure said it didn't receive the photos as the Investigator wrote. But it doesn't change the outcome. esure decided – irrespective of how the TPV was parked – the onus was on Mr D as the moving party to check it was safe to proceed. As Mr D hit the TPV, esure found him at fault.

esure's notes show it took into account Mr D's reasons why he thought the TPV's parking position failed to meet regulation or health and safety guidelines for the type of vehicle. And it took into account the case law examples Mr D cited. But esure said they were not relevant to the incident circumstances. For esure, the overriding factor was that Mr D hit a parked vehicle. It explained that if the matter was to go to court proceedings, esure believed the outcome would not be in Mr D's favour.

It is for esure to decide what weight to give to other available evidence such as photos, witness statements and relevant regulations that apply to the other vehicle. I haven't seen anything to show esure disputes the circumstances of the incident as Mr D described.

Mr D says esure should at least consider recording the claim as a partial fault claim with the TPV driver. A claim is recorded as 'fault' or 'non fault' depending on whether an insurer has been able to recover all of its claim costs. So even if esure had decided to negotiate a split liability outcome in this case, the recording of the claim would have been as 'fault' as esure would not have recovered all of its claim costs from a third party. This means the impact on Mr D's NCB and renewal premium would have been the same.

I appreciate Mr D doesn't agree with esure. But esure has shown that it properly investigated the claim and its reasoning for its decision. As esure settled the claim on a 'without prejudice' basis, Mr D can consider separate legal action against the third party. Mr D will need to seek legal advice about that.

### **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 D to accept or reject my decision before 16 January 2026.

Geraldine Newbold  
**Ombudsman**