

The complaint

Mr A complains about esure Insurance Limited (esure) assigning partial liability for a claim following an accident in which his vehicle was hit from behind by a third-party vehicle. Mr A says he provided a clear version of what happened, that he was not at fault for the accident, and the damage supports his case. He wants esure to record the claim as non-fault, reimburse any adverse impact on his premiums and cover all reasonable costs incurred.

References to esure in this decision include their agents.

What happened

In March 2025, Mr A was stationary in his vehicle, waiting to merge into traffic, when he was hit from behind by a third-party vehicle (TPV1). A second third-party vehicle (TPV2) then hit TPV1 from behind. The driver of TPV2 accepted responsibility for hitting TPV1. But the driver of TPV1 said Mr A was trying force a merger from a slip road into their lane (the inside lane of a two-lane carriageway) in which they were established, when the collision occurred. So, Mr A was responsible.

Mr A contacted esure to tell them about the accident. Initially, esure recorded the claim as non-fault on the part of Mr A but subsequently changed it to partial responsibility and made a payment on a 'without prejudice' basis to the insurer of TPV1, as they couldn't conclusively prove their (Mr A's) version of events. Mr A challenged esure's decision as unfair and unreasonable as his vehicle sustained rear-end damage and he said was stationary for 10 to 15 seconds before being hit in the rear.

esure said photographs of the accident scene provided by Mr A and the position of the vehicles didn't indicate Mr A's vehicle had been hit squarely in the rear, as the damage to his vehicle was on the offside rear corner. esure also had subrogated rights under the policy to determine liability for a claim (an accident) and should the matter go to court, they thought they would not succeed. Mr A was adamant his vehicle was stationary at the time of the collision, and it was the impact that caused the positioning of the vehicles. esure said they would have to prove Mr A's vehicle was not only stationary, but stationary for enough time for TPV1 to see Mr A, recognise a hazard and avoid a collision. And there wasn't any witness, CCTV or dashcam footage to prove the point.

Mr A didn't accept esure's position and decision, so he complained.

In their final response, issued in July 2025, esure didn't uphold the complaint, confirming they were considering claim liability to be partial. esure said they were being pursued for costs from another party and to prevent an escalation in their demands, had agreed to pay their invoice on a strictly conditional basis (a 'without prejudice' basis). This meant the liability decision wasn't a formal outcome and any acceptance could be withdrawn later should any further evidence come to light to change things (Mr A was pursuing a claim for personal injury through a law firm (ML) who hadn't established liability for the incident).

The reason for the decision was the fact esure had no conclusive evidence to prove their version of events. They had agreed to deal with frontal damage to TPV1 only, as TPV2 failed

to keep a safe distance behind TPV1. So, esure weren't responsible for the damage to the rear of TPV1 nor the damage to TPV2. Due to the area of damage, they maintained their view they couldn't argue it was a clear-cut hit in the rear of Mr A's vehicle, nor any conclusive evidence Mr A's vehicle was stationary for sufficient time to be deemed a reasonable hazard. As Mr A's vehicle was merging, it meant Mr A had a higher duty of care.

Mr A then complained to this Service, saying there was no basis to assign any fault to him, clearly the fault of TPV1, and esure hadn't acted in his best interests. He felt their decision was based on risk avoidance rather than the evidence about the circumstances of the accident. As a result of esure's decision, he was facing uncertain financial consequences, including future premiums and No Claims Bonus (NCB), and suffering from back pains affecting his wellbeing, made worse by the stress from the accident and his dispute with esure. He wanted esure to reverse their decision to assign partial fault and restore any impact on his future premiums and NCB and cover all reasonable associated claim costs.

Our investigator didn't uphold the complaint, concluding esure didn't need to take any action. He thought esure had shown they investigated the circumstances of the accident, including the representations and evidence provided by Mr A, as well as evidence they gathered (including an independent engineer's report on the damage to Mr A's vehicle). They also considered the evidence from the third party. esure concluded the evidence wasn't conclusive and this was fair and reasonable. It was also fair and reasonable for esure to make payment on a 'without prejudice' basis, so they could review their decision depending on the outcome of the separate personal injury claim being pursued by Mr A.

Mr A disagreed with the investigator's revised view and requested that an Ombudsman review the complaint. He reiterated he was stationary at the time of the collision and that rear-end collisions were usually held to be the responsibility of the driver hitting another vehicle. Damage being concentrated on one side of the rear of a vehicle wasn't unusual in rear-end collisions where vehicles weren't perfectly aligned. The engineer's opinion was also speculative. The driver of TPV2 admitting fault for colliding with the rear of TPV1 supported Mr A's version of events. And Mr A's photographic and factual evidence contradicted the version of events from the driver of TPV1. Mr A also disputed the view of the driver of TPV1 they were established in the inside lane when the collision occurred. And esure hadn't acted in his best interests, defaulting to a 50/50 split of liability without clear evidence against him.

As a result of esure's 'without prejudice' settlement and acceptance of partial liability, he'd had to pay a £450 policy excess, lost his NCB (resulting in higher premiums) and suffered ongoing stress and inconvenience. Mr A also noted liability was under consideration by ML pursuing his personal injury claim, so esure should have waited for the outcome of that claim before finalising liability. It was also unfair of esure to penalise him where there was no conclusive evidence he was at fault.

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.

My role here is to decide whether esure have acted fairly towards Mr A.

The key issue in the complaint is esure's decision to make a 'without prejudice' payment to the insurers of the first third-party vehicle and accept partial liability for the accident, leading to the loss of his NCB and potential increase in his premiums (as well as payment of the policy excess of £450). Mr A says the accident wasn't his fault and the claim should be treated as non-fault on his part. esure say the accident circumstances meant they wouldn't succeed in saying it was non-fault on the part of Mr A, in the absence of independent evidence from CCTV, dashcam or witnesses to support Mr A's version of events.

On the issue of liability for the accident, I recognise Mr A feels very strongly the accident wasn't his fault and disputes the version of events provided by the driver of TPV1 (in particular, that they were established in the inside lane of the carriageway and Mr A tried to force a merger). But it isn't the role of this Service to determine liability for an accident, but to conclude whether an insurer acted fairly and reasonably in reaching a liability decision.

The terms of Mr A's policy with esure, as they do in motor insurance policies generally, provide for esure to assess claims and determine liability ('subrogated rights'). The relevant wording is set out in the *How to make a claim* section of the policy, under a sub-heading *And what not to do*, as follows:

- × *...We have full discretion in the settlement of your claim or any legal proceedings which may arise and we may take over, defend or settle, or take up the claim in your name for our own benefit. You and anyone covered by the policy must provide all the information, documentation and help we need to do this."*

I've noted Mr A's version of events, including his statement to esure, together with the photographs he's provided of the damage to his vehicle and the aftermath of the accident, including the three vehicles involved and their location at the accident scene. There is some ambiguity in the statement, compared to later comments from Mr A, about the location of the accident and position of the vehicles at the point of collision, the statement refers to Mr A being in the inner lane of the dual carriageway and coming to a stop in his lane for 5 to 10 seconds. However, the photographs (and sketch of the point of impact) indicate the vehicles located at the end of a slip road leading onto the dual carriageway, not the carriageway itself. Although I note Mr A also refers in another document to being in the merging lane and postulates the first third-party driver drifted left and hit the rear of his vehicle.

I've then considered esure's decision and the rationale for deeming liability to be partial and making a payment to the insurer of TPV1 on a 'without prejudice' basis.

esure say they decided to make a 'without prejudice' payment to prevent an escalation in payment demands from the insurer. 'Without prejudice' means this isn't a formal liability decision and can be changed should future events cause them to revise the decision. This includes the outcome of the personal injury claim being pursued by Mr A through ML. I don't think this is unreasonable, as it seeks to minimise the potential costs of the claim but leaves open the possibility of a change, for example should the liability decision in the personal injury claim be in favour of Mr A. esure acknowledge the liability decision by ML would be likely to supersede their own decision on liability. In that scenario, I would expect esure to change their liability decision, to non-fault, and seek to recover the 'without prejudice' payment and any other costs of the claim and re-assess Mr A's premium and NCB entitlement.

esure also say their decision is based on there being no conclusive evidence to support Mr A's version of events. This would include Mr A maintaining he was stationary for a period before the collision (sufficient to be deemed a reasonable hazard, which the driver of TPV1 should have seen and taken action to avoid). esure also say Mr A was merging, meaning a higher duty of care, although I recognise Mr A's view that all three vehicles were merging from the slip road onto the main carriageway at the time of the collision, as shown by photographs of the scene. esure also maintain that should the issue of liability go to court, they would not be able to argue successfully they were fully without fault, given there was no independent evidence to support Mr A's version of events, such as CCTV, dashcam or witness evidence.

Part of any insurer's decision making on liability would involve assessing the chances of success should the issue go to court. Mr A says this means esure is prioritising risk avoidance rather than the evidence about the circumstances of the accident and his interests as a policyholder. I don't agree, as I would expect an insurer to consider the prospects of successfully maintaining a claim to be non-fault and the costs of so doing compared to the prospects of success.

As I said earlier, it's not our role to determine liability and who was at fault for an accident, but to consider whether esure acted fairly and reasonably in coming to their decision. esure's case notes also include a detailed assessment of the circumstances of the accident, including the respective versions of events from the drivers involved, including their statements, and the photographs of the accident scene. This also includes consideration of the different alternative explanation for the accident and who would be at fault.

Which leads me to conclude esure did assess and review all the evidence available (and the absence of other evidence that might have indicated a clear picture of what happened, such as CCTV and dashcam) when coming to their decision.

So, I've concluded it wasn't unfair or unreasonable for esure to have reached their decision to deem the claim to be partial fault – but leaving open the possibility of changing that decision should new evidence come to light, or the personal accident claim liability decision go in favour of Mr A.

Having concluded esure acted fairly and reasonably. I can't hold them responsible for any subsequent increases in Mr A's premiums (although even had the claim been determined to be non-fault, that would still be likely to have an impact on Mr A's premiums).

Taking all these points into account, I don't think esure have acted unfairly or unreasonably in the circumstances of this case, so I won't be asking them to do anything further.

My final decision

For the reasons set out above, it's my final decision not to uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 January 2026.

Paul King
Ombudsman