

The complaint

Mrs F complains about how esure Insurance Limited (“esure”) handled a claim and decided liability for a collision under her car insurance policy.

Mrs F was a passenger in the car which was being driven by a family member (Mr F) when the collision happened. But as she’s been the main point of contact throughout her claim, complaint and subsequent approach to this service, for ease I’ll refer to her throughout.

What happened

Mrs F had a car insurance policy with esure.

In December 2022 Mrs F was involved in a collision with a third party.

She contacted esure and told it about the collision. esure recorded the details of the collision as Mrs F approaching a roundabout, and being hit by a speeding vehicle that was driving around the roundabout. The road conditions were slushy.

Mrs F didn’t claim for any damage to her car as she said the damage (which was to her front offside) was slight and she’d sort out minor repairs without insurance as she suspected the damage would be below the excess. She said the third party was at fault for the collision and she took photos of the third-party vehicle’s front nearside.

esure had another conversation with Mrs F about four days after the collision when she clarified that she was already driving on the roundabout, and just about to exit it, when the collision occurred. A total of four family members were onboard her car at the time.

esure’s claims department told her it thought liability for the collision would be split between the two parties due to lack of evidence. It proceeded to deal with the claim on that basis.

Mrs F told esure she firmly believed the third party was wholly at fault. esure recorded that witness statements could be taken from Mrs S’s passengers as their use was valid in Scotland, where the collision happened. esure didn’t ask for witness statements.

esure asked Mrs F for more information about the collision and she supplied it with a diagram and statement of truth. esure confirmed it had received this from Mrs F, but later denied this had happened and couldn’t locate them.

The third party made a claim for the damage to their car and injury in late January 2023. esure decided it would deal with the claim on a 100% fault basis for Mrs F due to the original description it had recorded. When it wrote to Mrs F, it addressed her as a completely

different person. Mrs F disputed liability. esure settled the third party claim.

Mrs F was later taken to criminal court after an allegation was made against her by the third party. She incurred legal advice costs of over £600, plus loss of earnings and travel costs. She’s said the case against her was dismissed in court and thinks the third party was attempting to manipulate the legal system to improve their chances of a successful injury

claim against her.

Mrs F complained about esure's service and its decision. esure said it hadn't asked for or obtained evidence of damage. It said it didn't have photos of the third party vehicle, but Mrs F had already supplied esure with two images showing there was little or no apparent damage.

esure offered Mrs F compensation of £250 due to its service and delays during the claim and complaint.

Mrs F remained unhappy and brought her complaint to this service. She asks for additional compensation due to the distress and inconvenience she's had, and that esure refunds the money she's spent on legal help. She says her premiums have increased since the claim.

She asks that the claim is removed from insurance databases.

Our investigator looked into her complaint and thought that esure's service wasn't very good. She thought it should increase compensation to £400, and it should re-obtain Mrs F's statement of truth before approaching the third party with a liability defence. esure didn't agree with the view. It commented that it was satisfied the liability decision was correct and the claim couldn't be re-opened because it had been paid and closed. It asked that the complaint was passed to an ombudsman.

Mrs F replied to the view and asked several questions. She said she didn't agree that she would be liable for the collision at all, but she said a split decision would be agreeable given the lack of definitive evidence. She thought esure made her liable to save potential court costs.

Because both parties didn't agree with the view, this complaint has been passed to me to make a decision.

I issued a provisional decision intending to uphold Mrs F's complaint, but requiring esure to change the recorded outcome of the claim:

"I need to start by saying that this is a complex complaint with several important points being raised by Mrs F. For ease, I'll deal with the central parts of her complaint in turn.

Liability for the collision

This service isn't an expert on liability and it's not our role to made decisions about which party involved in a collision may be at fault. But what we can do is look at the way esure investigated the collision and look at whether its actions were fair and in line with the policy wording.

Under the wording, esure has the ability under the wording to handle claims as it wishes, even if Mrs F disagrees:

"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 the claim in your name for our own benefit."

But its actions must be reasonable, and our approach is that an insurer must consider all the available evidence before it makes a decision on how to settle a claim.

I don't think it acted fairly in failing to investigate Mrs F's situation. I can see it knew Mrs F

was established on the roundabout but the description on its system remains to say she was entering it – and it's that description which would likely mean she'd be found fully at fault.

Instead of updating the description, esure seems to have entrenched its position that Mrs F was responsible for the collision and dealt with the third party claim accordingly, settling it in full.

I can see esure initially investigated the collision, and damage. Mrs F sent it the information it asked for, including photos and other information. But then esure denied it had received any of it. When Mrs F then provided a receipt from esure, it said it no longer had the evidence. It didn't then ask Mrs F to re-supply it.

It also didn't ask for witness statements from the other passengers of the car, even though it was allowable in that jurisdiction.

And it accepted the third party's claim in full without asking for further evidence, even though Mrs F had already sent it photos of the third-party vehicle showing little or no damage. There's a note in the file that says the damage was "scratch on front left wing".

What this all means is that I don't think esure acted fairly in its investigation of the claim.

While esure has an obligation to deal with claims swiftly, in order to keep its costs low, it must ensure it's acting fairly. And I think esure's actions in failing to investigate this collision fall far below the standards I'd expect to see, and I think this led to detriment for Mrs F.

What I also need to say is that, even if esure had gathered the evidence mentioned above, then Mrs F may not have escaped liability for the collision. The evidence may not have been definitive, and with many collisions on roundabouts, liability is often shared in some proportion.

I've said above that it's not this service's role to decide liability for a collision, but I can deal with the impact of esure's failure to investigate the claim, and its decision on liability, on Mrs F.

So, I'm going to uphold this part of Mrs F's complaint and I'll deal with this below.

Impact on premiums & records of the claim

I can see from the file that Mrs F's car suffered some small amount of damage to the front offside corner and alloy wheel. I've mentioned above there was mention of damage to the third-party vehicle's front offside.

What this means is that Mrs F complied with the terms of her policy in reporting the collision. I can see she didn't then make a claim for her own damage, as she thought the repairs would be below the excess of £750.

esure, like other insurers, use a driver's record when assessing the level of premiums they're going to charge. I know Mrs F will say that she didn't make a claim herself, but the question usually asked of her is about incidents that may give rise to a claim. So, what this means is

that the collision would be taken into account when esure assessed her renewal premium. And other vehicles Mrs F was insured on would be similarly re-rated. I can't say esure acted unfairly here.

As part of its claims process, esure will have recorded the collision and subsequent third-

party claim on its own database and likely on a shared database used by other insurers. The facts seem to be that a collision happened and both parties suffered damage. I've said above that collisions like this on roundabouts often are shared liability – what this means is that even if Mrs F was in some small way found responsible for it, perhaps due to lack of definitive evidence, then she'd have a 'fault' claim on her records.

But, as I've said above, I don't think esure did anything to investigate the collision effectively. Its loss of Mrs F's Statement of Truth, not realising it had images of the third party vehicle, failure to obtain details of the third party damage, failure to interview Mrs F's passengers and its mis-recording of the details of the incident itself clearly demonstrate that to me.

Even though a more detailed investigation may have led to a split decision, the failure of esure to investigate evidence it had readily been supplied by Mrs F means it's not protected her. Taking everything into account, I think it's fair I say that esure's failure to investigate the collision has led to significant detriment to Mrs F.

I think the fair solution for Mrs F is that records of the collision are amended to show that it was a non-fault claim, with NCD allowed, on both esure's internal database and any external databases it's updated. It also needs to write to Mrs F and tell her it's done this.

Mrs F may find that she's able to contact her subsequent car insurers and ask if the changed details affect her premium, which may mean she's able to receive a refund.

Solicitor's costs and court case

Mrs F has explained that she engaged a solicitor for legal advice as she was being taken to court. I asked her to clarify the situation and she said he was taken for prosecution due to an allegation made by the third-party driver. I've said above that the case was dismissed.

Mrs F has asked that esure covers the cost of her solicitor, and she's talked about her loss of earnings and costs incurred due to the court case.

I need to make it clear that she was being prosecuted for an alleged crime that apparently took place after the collision, and that's not the responsibility of a motor insurance policy. I think it's fair I say that even if esure had investigated the collision effectively, there could still have been an allegation against her. So, I can't ask esure to pay for Mrs F's costs she incurred as the alleged act is completely separate to the civil case around damage and injury caused in the collision.

Service

I've considered esure's approach to Mrs F's claim. During part of it, esure wrote to her and used a different customer's name. While mistakes happen, I can see Mrs F was very disappointed at the lack of care from esure.

Taking everything into account, I think it's fair I say that esure's service throughout Mrs F's claim hasn't been very good. It's made mistakes, it has simply failed to deal with the information it had been told, and it's lost, or lost access to, the information Mrs F sent to it.

I don't think this is an acceptable situation for Mrs F to be in and I can see from her evidence that she's been inconvenienced over an extended period, and has suffered distress caused by esure's handling of her claim. I've considered this service's guidelines on compensation, and I think the appropriate level of compensation should be set at £400."

Responses to my provisional decision

esure responded and said it had nothing to add.

Mrs F responded and clarified some aspects of the collision. She said she felt she had to stay insured with esure as her premiums (and that of her family member who was driving) had increased a lot. She'd found other insurers were charging a lot for cover.

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 read Mrs F's responses to my provisional decision, in which she's talked about her disappointment that I can't consider parts of her complaint regarding the way the third party seems to have pursued her in court. Mrs F thinks it was an attempt to validate their claim against her for causing the collision. I can see she continues to be distressed by driving, especially when other vehicles are near her.

I've said above that I don't think esure acted fairly or reasonably when it investigated Mrs F's claim, and I can see it caused her considerable distress and some inconvenience. It's important I say that I'm only able to deal with the impact of esure's service on her, rather than the collision and the actions of the third party.

I can see there's been some further discussion about the exact nature of the court case. But I've explained above that the legal costs she incurred don't fall into this service's scope as they seem to relate to separate events after the collision, so I can't consider the matter further. Mrs F is, of course, free to take her own legal advice if she wishes to about both this and her continuing distress caused by the collision and subsequent events.

In my provisional decision I said esure needed to amend records of the collision to show Mrs F wasn't at fault for it, and her NCD would be unaffected. Mrs F has clarified that Mr F was the driver at the time, so I'm going to amend my final decision to show this. I can see esure had no comments on my provisional decision, and as Mrs F has specifically asked for this change I can see no reason why I need to issue a revised provisional decision. So I'm issuing this as a final decision with this change included.

Mr & Mrs F may now ask esure to apply this retrospectively to their policy, which may result in a premium adjustment. This may also apply to other policies Mr F is named on.

The part of my provisional decision relating to the £400 compensation will remain the same as I've not been provided with further information that would change my mind.

My final decision

It's my final decision that I uphold this complaint in part. I direct esure Insurance Limited to:

- Amend any internal and external databases to show the collision as non-fault with NCD unaffected and write to Mr & Mrs F to confirm this.
- Pay Mrs F a total of £400 compensation for the distress and inconvenience its poor claims handling caused her.

esure must pay the compensation within 28 days of the date on which we tell it Mrs F accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 14 November 2025.

Richard Sowden
Ombudsman