

## **complaint**

Miss M complains that esure Insurance Limited (esure) paid out a third party claim against her which she disputes.

## **background**

Miss M had a car insurance policy with esure. A third-party insurer (TPI) contacted esure and claimed that Miss M was driving a car on a petrol station forecourt and, whilst pulling away from the pump, Miss M collided with their client's car, causing damage.

esure contacted Miss M who gave her account about what had happened. She said that there had been no contact or collision between the two cars. So, esure disputed the claim to the TPI and asked for evidence of Miss M's involvement.

The TPI sent still CCTV images of the incident to esure and asked it to inspect the car Miss M had driven for damage.

esure sent an engineer to inspect the car Miss M had driven for damage. The engineer reported back to esure that there were several areas of impact damage on the car. So, esure decided to pay the third party claim and told Miss M its decision.

Miss M was unhappy as she said esure had settled the claim without reviewing enough evidence. esure agreed and cancelled the payment to the TPI. It asked for images of the damage to the third parties' car and an engineer's report on the damage.

esure asked its engineer to review the TPI's engineer's report. The engineer said they didn't believe all the damage being claimed for by the TPI could have been caused by Miss M's car. The engineer's advice was for esure to get a revised repair estimate based on his findings.

The TPI then said to esure it would no longer pursue Miss M for the claim, as it had a different registration mark recorded on their file. So, esure told Miss M that the file was closed.

However, several months later the TPI contacted esure again to say that Miss M was driving under a 'driving other cars' condition of her policy and therefore the claim was correct to be made against esure. So, esure settled the claim for the full amount of the damage the TPI had claimed for.

Miss M made a complaint to esure, as she was unhappy with its decision to settle the claim and she maintained there was no collision. In response, esure said that it had relied on its engineer's report to settle the claim as it saw fit. esure said it had exercised its judgement legitimately and fairly in Miss M's case and so they didn't uphold her complaint.

Miss M didn't agree and so brought her complaint to us, also saying that esure had contacted her during a period when she had asked them not to.

I sent Miss M and esure my provisional findings on 13 March 2020. In my provisional findings I said that esure hadn't conducted a reasonable investigation as it appeared that the third party's claim may have been exaggerated. Because of this I was minded to say esure should pay Miss M £200 for the distress and inconvenience that caused.

## **my provisional findings**

In my provisional findings I said;

*I appreciate that Miss M would like me to make a finding about her involvement in the collision. However, my role isn't to decide if the collision occurred or who was at fault but it's to decide if esure have handled the claim in a fair and reasonable way.*

*When Miss M disputed the claim esure passed on this dispute to the TPI and asked for evidence. The TPI initially sent over still CCTV images before later acknowledging that they didn't have the full CCTV video. esure didn't request the CCTV footage itself from the garage, as it said several weeks had passed since the collision, so it was unlikely that the CCTV was still available. I think it was reasonable for esure to initially think the TPI had the CCTV video, as they had already been sent still images from it. But having been told the TPI didn't have it, esure could have still made enquiries into whether the CCTV was still available before discounting it.*

*The CCTV images showed the car Miss M was driving to be in very close proximity to the TPI's car and so I think it was fair for esure to send out an engineer to check for damage on Miss M's car. The engineer noted damage on the car, however he did suggest an inspection of the TPI's car to see if there was any consistent damage between the two cars involved. But, Esure didn't ask for the TPI report and said they would settle the claim at that point.*

*Miss M's partner raised his concerns with esure, as Miss M didn't think a thorough investigation had taken place. esure acknowledged it hadn't asked for the TPI's report and cancelled the payment. Although esure acknowledged its error and corrected it before Miss M suffered any loss at that point, I can see why Miss M lost some trust in esure.*

*When esure received the TPI's report of the other car's damage they sent it to an engineer for their opinion. The engineer concluded that some of the damage was consistent with the collision, but some wasn't. They suggested that esure ask for a revised estimate from the TPI with only the consistent damage on. But esure didn't do this.*

*Instead, the TPI told esure that they would stop pursuing Miss M for this claim, as they had a different registration number for the car involved. But Miss M had told esure the registration of the car she was driving, so it wouldn't have been unreasonable for esure to check this with her and go back to the TPI. This meant that once the TPI realised its mistake four months later, the TPI continued their claim against Miss M. Miss M is unhappy that she was told by esure that the claim was closed, only for it to then be settled several months later. I can see why this upset Miss M and could have been avoided. And I don't think esure had a choice in re-opening the case, as Miss M had already acknowledged her presence at the scene of the collision.*

*But esure didn't act on their engineer's opinion that the TP claim was possibly exaggerated – in that the TP was claiming for some damage which wasn't consistent with the collision. esure have said that there wasn't any suggestion that the TP was being fraudulent. And the areas of damage claimed for may have come from an estimator not realising that all the damage was part of the claim. Although this may be the case, esure didn't act in Miss M's best interests - In that it didn't investigate whether or not this was a fraudulent claim.*

*As esure didn't properly investigate whether this was a fraudulent claim at the time, it makes it difficult to now know if this would have had any impact on the outcome of the claim. Had esure investigated the exaggeration and proved it to be fraudulent, then it may have led to a nil payment 'bonus allowed' (non-fault) claim recorded on the claims and underwriting exchange (CUE).*

*But, esure settled the claim for all of the damage and recorded the total value of the claim on CUE, noting it was 'bonus disallowed' (fault). I won't speculate whether the TP's claim was fraudulent, and I appreciate it may have been difficult for esure to prove. But because esure didn't investigate this important aspect of the claim I can understand why Miss M felt that esure hadn't done all it could to dispute the claim.*

*Regardless of what the potential outcome of fraud investigation could have been, esure have acknowledged they should have settled the claim for less than they did. As it didn't take its engineer's advice and only settle the part of the claim consistent with the collision.*

*esure must record on CUE the amount it has paid to settle a claim – regardless of whether it paid what it should have done. esure have said that this figure isn't a rating factor for them when deciding premiums, but this may not be the case for every insurer. Miss M has clearly been caused considerable distress by esure not properly investigating her claim and then the claim being recorded on CUE with a higher settlement figure than it should have. Especially, as Miss M has strongly denied colliding with the TP's car throughout the claim and bearing in mind the TP claim may have been exaggerated.*

*Miss M hasn't been able to evidence any direct financial loss due to the amount recorded on CUE, but I think a reasonable outcome for this complaint is for esure to compensate Miss M for the distress it has caused her by not properly investigating the TP claim. Therefore, I think esure should pay Miss M £200 to reflect the distress it has caused.*

*Miss M has also said that esure contacted her after she had told them she was unavailable. I've reviewed esure's contact notes. These show that Miss M emailed esure in September to say that she wasn't available until mid-October. There aren't any further notes of contact until Miss M called esure in mid-October. The notes seem to document all other contact made with Miss M, so I'm not persuaded that esure contacted Miss M during the period she asked them not to.*

## **responses to my provisional findings**

esure haven't provided any further comments for me to consider.

Miss M has provided a further account in relation to the contact esure made with her when she'd asked them not to. Miss M says that, in early September she became aware of the third parties claim from her partner's insurer. So, she contacted esure to let them know that a claim was likely to be made against her. Miss M says that she made a further phone call to esure in late September to inform them that she was going out of the country, and asked esure not to contact her until she was due to return. Miss M says that esure said they would make a note of this. However, esure then contacted Miss M several times whilst she was abroad. Miss M has provided a copy of an email she sent esure on 3 October 2017 telling them she was still abroad and would contact them on her return.

## **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also re-considered my provisional findings.

Miss M has provided a further account of why she believes esure contacted her when she'd asked them not to. I haven't seen any records from either esure or Miss M that confirm Miss M contacted esure in late September to tell them that she was going abroad. However, the email Miss M sent in early October references that she called esure the previous week and informed them she was going abroad. It also informs esure that Miss M wasn't contactable about the claim, confirms the date of her return to the UK, and that she was happy to discuss the matter then.

I think this email shows it's likely that Miss M did contact esure in late September, asking them not to contact her whilst she was abroad. As the email was written near to the time of the call and is consistent with Miss M's account.

esure's contact records show that they contacted Miss M a few times during this period, calling her twice and leaving voice messages, as well as sending two text messages. This led to Miss M having to email esure to remind them that she wasn't available to discuss the claim. I can appreciate that sending an email, when she'd already said she wasn't available was an added inconvenience. But overall, I don't think this significantly changed the level of inconvenience Miss M suffered. I'll explain why.

Miss M already expected esure to be contacted by the third party to make a claim against her. So, I don't think it would have been a surprise to Miss M when esure informed her that the claim had been made. And esure's level of contact was minimal; this was through two voicemails and two text messages. Esure also wrote to Miss M but she wouldn't have received that until she got home, so I don't think that made a difference. In the end, all Miss M did was send a short email to esure which wouldn't have taken much time. And given that, I don't think this oversight increased the level of inconvenience that Miss M suffered to the extent that I think it's fair to increase the award I've already suggested.

Neither esure nor Miss M made any further comments on the rest of my provisional decision. So, I see no reason to depart from the findings I've already reached in regards to esure's handling of the claim. Therefore, my decision remains the same and esure should pay Miss M £200 to reflect the distress and inconvenience it has caused.

## **my final decision**

For the reasons I've explained and those set out in my provisional decision. I partly uphold the complaint. I direct esure Insurance Limited to pay Miss M;

- £200 for the distress and inconvenience caused by its failure to investigate the third party claim properly and contacting Miss M when asked not to.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 June 2020.

Tim Wilkes  
**ombudsman**