

complaint

Mr K has complained about how esure Insurance Limited settled a claim he made under his motor insurance policy.

background

Mr K was involved in an accident and he said he had reversed out of a parking bay and while his car was stationary as he was about to drive away, another car reversed into his car. He said that the other driver had apologised and had told his own insurer that it was his fault. esure said that based on the incident as Mr K described it, it would be recorded as a 'no fault' claim and his policy excess would be refunded to him in full when it received its full costs back from the other driver's insurer.

However, when esure contacted the other driver's insurer, they said the other driver said both cars were reversing at the time of the collision. So the other driver wasn't admitting full responsibility for the accident. When esure told Mr K this, he was very upset and sent photos to support his view that his car wasn't moving when the other driver reversed into his car. However, after investigating it, esure decided to settle his claim on a 50/50 basis.

Mr K didn't agree and complained. Although esure spoke to Mr K a number of times, esure didn't reply to his complaint and so Mr K brought his complaint to us. esure then acknowledged that it hadn't dealt with Mr K's complaint and had failed to update him during its investigation into his claim. It paid Mr K £150 compensation for its poor service to him. It said that it had taken into account the information Mr K had given it, but felt it had correctly decided to settle his claim on a 50/50 basis because there wasn't strong enough evidence to show that the other driver reversed into his car while Mr K was stationary.

Mr K didn't agree. He didn't think esure had given enough consideration to the information he had provided to show he hadn't caused the accident. He had also been contacted by a claims management company immediately after the accident and believes esure had passed his information to a third party without his permission. He didn't think he should pay 50% of his excess and was unhappy that his future premium will be higher because esure didn't settle his claim on a 'no fault' basis.

The adjudicator who investigated his complaint didn't recommend it should be upheld. She was of the view that esure had properly taken into account all of the information before it decided to settle his claim on the 50/50 basis. She thought that it had been reasonable in paying Mr K £150 to compensate him for the trouble and upset its poor service had caused him. In relation to being contacted by a claims management company, esure's fraud team investigated this issue at the time but its investigation had proved inconclusive.

Mr K doesn't agree. He doesn't think his complaint has been addressed properly. So the matter has been referred to me to decide.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. For ease, I've set out Mr K's complaint under headings below.

the decision to settle Mr K's claim on a 50/50 basis

We don't decide who is at fault for an accident, as this is the role of the courts. Instead, we look at whether the insurer acted fairly and reasonably in making its decision, and in line with its policy.

Under Mr K's policy esure has the right to take over the defence or settlement of any claim. And it can make its own decision about whether it's reasonable to contest a third party's claim or better to settle it. This might mean that esure makes a decision Mr K doesn't agree with, but the policy allows esure to do this. This is a common term in all motor insurance policies and I don't find it unusual.

esure did consider Mr K's information including the photos he provided, and it was in regular contact with the other insurer about his claim. Unfortunately there were no independent witnesses and esure didn't agree that the photos proved that Mr K was stationary when the other driver reversed into his car. As both drivers disagreed about who caused the accident, ultimately it decided it was best to settle Mr K's claim on a 50/50 basis.

I know that Mr K doesn't think esure has investigated his claim properly, and I can understand that he is upset about its decision. But esure is entitled to take a view that it was better to settle his claim rather than contest it with the risk of having to pay significant costs if it went to court. So I think esure properly took into account all the information and was reasonable in reaching its decision. And this means that half of Mr K's excess is correctly due under the terms of his policy.

As esure settled his claim "without prejudice" Mr K may be able to take legal action against the other driver himself. But he'll need to seek his own legal advice about that.

the handling of Mr K's complaint

It was clear that Mr K formally complained to esure in August. However, esure didn't answer a number of queries Mr K raised in July and August, and then simply failed to respond to his complaint at all. I think its service to Mr K was poor in failing to reply to his queries and his complaint.

When it did write to Mr K and addressed his complaint, it paid him £150 compensation for the trouble and upset its poor service had caused him. I think this was a reasonable amount and is in line with compensation awards we make which are available on our website.

Mr K being contacted by a claims management company

Mr K says that he believes that esure passed his information to a claims management company who called him the day after the accident and tried to make him make a false claim. He says that although he reported this to the relevant authorities including esure and CIFAS at the time, he was worried that somebody could make a false claim or attempt to steal his identity. Because of the stress and worry this caused him, he says he had to take out Protective CIFAS registration as a precaution and report the incident to the National Crime Agency and Action Fraud. He doesn't feel that this part of his complaint has been addressed.

I understand such contact by a third party has caused Mr K some upset. However esure did investigate the matter through its fraud team at the time, but unfortunately its investigation was inconclusive. So I haven't seen anything to show that esure actually passed Mr K's details to a third party without his permission. So I don't hold it responsible for the upset caused to Mr K by being contacted by a claims management company, or for the trouble Mr K went to, to further protect himself.

my final decision

For the reasons I've discussed above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 22 July 2015.

Geraldine Newbold
ombudsman