

complaint

Mr A complains that esure Insurance Limited settled a third party's claim against his motor insurance policy.

background

In January 2015, a third party made a claim against Mr A's policy. The third party said that Mr A had damaged her car. She had a statement from a witness. The witness said he looked out of the window of his ground floor flat and saw a woman trying to park a long silver car in a parking space. He said that the silver car hit the car in the next parking bay. He thought the driver of the silver car was responsible for the accident.

Mr A said he wasn't involved in the alleged incident, he has never driven or parked where the incident is said to have taken place and a woman has never driven his car. He says that the damage to the passenger side front bumper of his car was pre existing and that he has photos showing that.

Esure asked an engineer to provide a report on Mr A's car and it got a consistency report. The consistency report said that the damage to both cars was consistent with both a light glancing impact and the witness' statement. The engineer didn't inspect the cars but he said that having reviewed the reports and images for both cars, his opinion was that the damage to the third party's car is at a similar height range to Mr A's damaged bumper. Esure agreed to settle the third party's claim.

Mr A complains that esure accepted a flawed witness statement and investigation report, the conclusions of which he believes to be invalid.

The adjudicator said that we investigate whether an insurer's decision to settle a claim was fair and reasonable. He said that Mr A's policy gives esure the right to settle any claims but he didn't think that esure acted reasonably here.

The adjudicator said that the witness evidence was critical to the investigation but was flawed in several respects. Esure didn't try to clarify certain matters until several months later. The adjudicator thought it should have done that sooner. He said that esure should have got an independent claims investigation. Whilst it may not have changed the outcome, the option wasn't explored.

The adjudicator recommended that esure pay Mr A compensation of £100 in relation to his distress and inconvenience, record the incident as non-fault and reinstate any no claims bonus.

Mr A didn't think that the compensation was enough. He wants compensation for the anxiety, time and cost of defending himself. He said he's spent £32 on photos, £21.29 on phone calls and spent considerable time dealing with this matter. Mr A had also found the experience frustrating and troubling.

Mr A made some detailed comments on the adjudicator's view, including that he told esure that the damage to the passenger side wing of his car happened before July 2011 and that he had a photo to show that.

Esure agreed to pay a total of £121.29, which included Mr A's phone costs. Esure said that it

should record this as a fault claim.

my provisional decision

In February 2016, I sent esure and Mr A a provisional decision. I said that I thought esure hadn't treated Mr A fairly in relation to its investigation of the third party's claim. I said that if it had done so, it's highly likely that it would have altered the outcome here.

I said it was several months before esure took Mr A's comments about the witness statement seriously and tested the witness' recollection. It became apparent that the witness didn't see the impact or the car's registration. It was when the third party approached the witness later in the day that he recalled that he'd seen a woman driver attempt to park next to the third party's car then drive away. The third party and the witness then saw Mr A's car parked nearby, noted damage to its bumper and thought that was the car that had caused the damage.

I said that the consistency report says that the damage to the third party's car is at a similar height range to the damage to Mr A's car. However, Mr A says that the damage to his car happened before July 2011. He's provided photos that show the damage. One of the photos shows damage to the front passenger side of his car and the tax disk dated 2012. I noted what esure said about photo evidence but I had no reason to doubt the authenticity of that photo. So, I thought that Mr A had shown that the damage to his car, which led the witness and the third party to believe that his car was involved in the accident, was damage from a previous incident.

I thought that it was highly likely that if esure had investigated and considered the claim further, it wouldn't have decided to settle the third party's claim. Esure has a wide discretion to deal with claims as it sees fit and we wouldn't usually interfere with that, as long as it exercises that discretion fairly. I didn't think it had done that here. I thought that if esure had investigated the matter further, it would have concluded that it wasn't Mr A's car that caused the damage to the third party's car.

I said that esure should pay Mr A his reasonable costs in dealing with this matter, namely £32 for photos and £21.29 for phone calls. I thought that Mr A has found this troubling and upsetting. The adjudicator has already provided Mr A with information about how we usually deal with compensation. I said that reasonable compensation here is £200. I also said that Esure should record this as a non-fault incident and reinstate any no claims bonus that it disallowed. It should write to Mr A confirming those two things so that he has a written record to show to other insurers.

responses to my provisional decision

Mr A accepted my provisional decision. He provided further comments on esure's consistency report. He is concerned that esure was prepared to accept the report without questioning the data and photographs, despite him pointing out its inconsistencies.

Esure said that Mr A had initially said that he was where the collision is said to have occurred around the time the witness said it happened. It said that during its initial phone calls with Mr A, he said that he went into the area to reverse his car so that he could park opposite his house. He later said that he couldn't remember for sure but then said that he saw a white van going into where the third party's car was parked. It doesn't agree that Mr A has never driven or parked where the incident is said to have taken place.

Esure said that in December 2011, Mr A reported an incident that happened in July 2011. It didn't deal with the claim. It said that it didn't know if Mr A's car required repairs following that incident but there would be damage from 2011.

Esure said that it has some information from Mr A that he was where the incident occurred at the approximate time it happened. The description of the car and the independent witness' version of events seemed to match what Mr A first said about his movements on the day. In addition, it had a report that identified consistent damage. So, it made the decision to settle the claim.

Esure said that the witness was independent. If it had questioned if it was a male or female driver, it could have prejudiced the situation, as Mr A is male. It accepted the witness' description as female. It said that in the witness statement, the witness said he saw a collision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I remain of the view that esure didn't treat Mr A fairly in relation to its investigation of the third party's claim. I'll now explain why.

I note Mr A's comments about esure's consistency report but I don't think they alter the outcome here.

Esure doesn't agree that Mr A has never driven or parked where the incident is said to have taken place. I didn't base my provisional findings on whether Mr A had done so. I included that in the background to the case – that is what Mr A says.

I think that there's been some confusion about where the alleged incident took place. From the information in the witness statement, Mr A worked out that the alleged collision occurred in the private parking bays next to flats opposite his house and not on the road where esure first told him the collision had occurred. Mr A doesn't dispute that he was on the road esure mentioned but he does dispute that he drove on the areas belonging to the flats. I accept that.

I appreciate that the witness said in his written statement that a car hit the third party's car. I remain of the view that esure didn't test the witness' recollection for some time. When it did so, it became apparent in a phone call between esure and the witness that the witness hadn't seen the impact or the car's registration.

I don't see the relevance of esure's comment that if it had questioned if it was a male or female driver, it could have prejudiced the situation. As the witness said he saw a woman driver, he didn't see Mr A driving the car. Mr A says a woman doesn't drive his car.

In summary, there's convincing evidence that Mr A's car had relevant pre existing damage. The witness didn't see the collision and didn't identify Mr A or his car by its registration. I don't think that esure treated Mr A fairly in relation to its investigation of the third party's claim. If it had done so, it's highly likely that it would have altered the outcome here.

my final decision

For the reasons set out above, my final decision is that I uphold this complaint. I now require esure Insurance Limited to:

1. Reimburse Mr A his costs of £32 and £21.29.
2. Pay simple interest on the amounts at 1. above at the rate of 8% per year, from the dates Mr A incurred those costs, to the date of payment.
3. Pay Mr A compensation of £200.
4. Record this as a non-fault claim on both internal and external databases.
5. Reinstate any no claims bonus disallowed following this claim.
6. Provide Mr A with written confirmation of 4. and 5. above, which he can show to other insurers.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 April 2016.

Louise Povey
ombudsman