

complaint

Mr C has complained about esure Insurance Limited's handling of his car insurance policy.

background

Mr C's car was insured with esure. In July 2018, he had an accident and his car was damaged. His car was stationary in the outer lane of a two lane road at traffic lights. A coach in the inside lane turned left causing its rear right hand side to swing out and hit Mr C's car. The accident was recorded on Mr C's dash cam.

Mr C said the driver of the coach admitted being at fault. Mr C said the coach's insurer also twice accepted liability over the phone before changing their position and saying Mr C was to blame. In August 2018, the other insurer contacted esure and claimed against Mr C's policy.

esure paid the other driver's claim and said Mr C was to blame for the accident because he failed to give the coach enough space as is required by Rule 221 of the Highway Code. Mr C complained about esure's liability decision as well as various aspects of their service. Esure said their decision that Mr C was to blame for the accident was correct. But they said because of some delays they would pay him £200 compensation.

Mr C brought his complaint to our service. One of our adjudicators felt Mr C and the coach driver were equally to blame for the accident. But later one of our investigator's looked at the matter again. She felt that esure had dealt with Mr C fairly and their decision to hold him at fault for the accident was reasonable. As Mr C didn't agree with our investigator, the complaint was passed to me to decide.

My provisional decision was issued on 17 April 2020. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I intend to uphold this complaint in part. I'll explain why.

liability decision

Under the policy, esure have the discretion to settle claims as they feel appropriate without the need to get Mr C's agreement. But I expect them to exercise that discretion in a fair and reasonable way. Especially given a decision to accept liability has serious consequences for Mr C for years to come.

esure said had the dispute over liability gone to court, Mr C would have been found at fault for the accident. That's because he didn't allow the coach extra space knowing it was going to turn left, which is what he was required to do in line with the Highway Code. esure later asked their solicitor to view the dash cam footage and to provide their opinion, which they did. The solicitor said:

As the traffic begins to move [Mr C] moves up alongside the bus. As the bus makes its manoeuvre the rear end swings out and collides with [Mr C's] vehicle. The highway code clearly states at Rule 221: "Large vehicles. These may need extra road space to turn or to deal with a hazard that you are not able to see. If you are following a large vehicle, such as a bus or articulated

lorry, be aware that the driver may not be able to see you in the mirrors. Be prepared to stop and wait if it needs room or time to turn."

[Mr C] can clearly see that the bus is indicating to turn left and should have been aware that it may need extra space to turn. [Mr C] should have been prepared to stop and wait to allow it room to turn. [My emphasis]

As such we would not have litigated the claim as [Mr C] has put [himself] in a hazardous position and was ultimately the author of [his] own misfortune. A Judge would be very unlikely to attribute negligence to the bus driver as they are simply carrying out a left hand turn. The onus is on other road users to allow large vehicles time and space to do so.

The road on which the coach and Mr C were driving had two lanes. It's correct that the coach initially had its left indicator on but I don't think at that stage Mr C could have known whether the coach was going to park on the side of the road or turn left. Mr C was initially behind the bus but in the footage I've been provided he was in the outer lane. But Mr C accepted that he was initially in the inner lane behind the bus. But he said he had to move over to the outer lane as the inner lane had a sign indicating left turn only. I've seen photos of the road which corroborates this. So Mr C was complying with the road markings by moving into the outer lane. But Mr C stopped at a red light at the junction before the coach turned left. And it's clear from the photos Mr C provided that he left a large gap between his car and the coach. And Mr C's car was completely stationary before the coach started its turn.

I therefore think both esure and their solicitor based their views on incorrect facts. Mr C was stationary in a separate lane to the one the coach was in. I therefore think it was inaccurate for the solicitor to say he "should have been prepared to stop and wait" because he had stopped. Rule 221 of the Highway Code makes specific mention of "following" a large vehicle and that the driver (of the large vehicle) might not be able to see the vehicle behind. And the illustrative picture provided for that rule shows a lorry on a single lane road trying to turn left while a car is directly behind it. But the circumstances in this case were different. Mr C wasn't behind the coach on a single lane road. He was stationary and adjacent to it on a two lane road. And importantly Mr C was visible to the coach driver.

Mr C said the coach driver misjudged the turn and that there was a white car that restricted the coach's turn. The white car Mr C mentioned is seen in the footage. It was travelling in the opposite direction on the road the coach was turning into. And it's clear that the white car overshot the traffic lights by more than two car lengths which meant it was obstructing a section of the road which the coach would have ordinarily used to give it sufficient space to complete the turn. In fact a second car can also be seen in the footage which also overshot the traffic lights but as the coach was completing the turn that other car can be seen reversing to get out of its way. And I think both those cars reduced the space available to the coach to complete its turn, which I think caused the coach to make a sharper turn than its driver had intended and which Mr C couldn't have anticipated, which is why I think its rear swung out into Mr C's car. The footage shows the coach's rear left hand wheel partially mounts the curb which I think supports Mr C's belief that the coach driver misjudged the turn. I also note the account given by the independent witness. He said he spoke to the coach driver immediately after the accident. He said the coach driver wasn't aware that his coach had struck Mr C's car. As I've mentioned above, Mr C's car was adjacent to the coach and from the footage I think if the coach driver checked his wing mirror he would have seen Mr C's car. And Mr C has made the

point that the coach driver, being familiar with his vehicle, should have known how much the rear of his coach would have swung out when completing the turn. So, had he looked to see Mr C's car and realised he couldn't make the turn without hitting Mr C's car then he shouldn't have turned. The Highway Code requires drivers to check their mirrors "frequently", look around where necessary and to be aware of other road users.

Mr C provided me with a copy of the Driver & Vehicle Standards Agency – National Standards for Driving Buses and Coaches. That document details the standards expected of coach drivers. It explains in detail what precautions coach drivers should take. They include: assessing the amount of space needed to complete a turn; the possible blind spots and how to check them; what clearances are necessary for the vehicle during different manoeuvres and activities; how to select a suitable position on the road; how to turn left and right safely and responsibly; positioning the vehicle correctly; and being aware of and predicting the likely actions of other road users.

I've seen no convincing evidence that esure, in reaching their decision, took into account the coach driver's actions, namely that he: misjudged his turn; was careless; failed to adhere to the Highway Code; and didn't comply with the National Standards for Driving Buses and Coaches. So, I don't think esure have considered all the information relevant to reach a liability decision fairly. I therefore think esure's decision to hold Mr C responsible for the accident wasn't reasonable and I intend to uphold this part of the complaint.

I intend to require esure to amend the fault claim to non-fault on all internal and external databases, including the Claims and Underwriting Exchange (CUE). esure should also reinstate Mr C's no claims bonus (NCB) by awarding him a NCB year, provided he had no other open or fault claims during that policy year. If Mr C renewed his policy with esure in the subsequent policy years, esure should recalculate those premiums on the basis that Mr C had a non-fault claim and with his NCB reinstated. If after that recalculation a refund is due, esure should pay that together with simple interest at 8% a year from the date Mr C paid his premium(s) until the refund is made. If Mr C didn't renew his policy with esure and went elsewhere, esure should provide him with a letter confirming the accident has been amended to non-fault and his NCB reinstated. Mr C can then show that letter to his new insurer(s) and ask them to recalculate his premiums accordingly.

settling Mr C's claim

Initially Mr C wanted to use his own garage to have his car repaired. But later he said he wanted esure to pay him the car's market value and to take the car off his hands because he had lost out on selling it. esure said they wouldn't do that as the car was repairable. Under the policy esure are entitled to settle Mr C's claim as they feel is appropriate. An insurer will usually only pay a car's market value if the car is a total loss or is uneconomical to repair. But in this case Mr C's car is repairable at a cost that is economical. So I wouldn't expect esure to pay its market value. I therefore think esure's decision to not pay Mr C the car's market value is reasonable.

Mr C obtained quotes of £2,146.07 and £2,207.32 from two garages for the repair of his car. But esure found those quotes to be excessive. esure said they negotiated the price down to £1,411.44 with the garage that gave the higher quote. esure offered to pay that, after deducting the policy excess, to Mr C to settle his claim. That figure

doesn't include VAT. esure told Mr C that if he accepts the cash settlement and gets his car repaired by a VAT registered garage, they will pay the VAT Mr C is charged provided he shows them a VAT receipt. I think that's reasonable because not all garages charge VAT. So, esure want to avoid a situation where they pay Mr C the VAT amount where he isn't charged VAT. Mr C has referred to decisions made by other ombudsman on previous complaints where our service asked the insurer to pay the consumer the VAT on the estimate before the repair work was carried out. I have considered those decisions. But I should say that previous decisions don't set precedent which later decisions must follow. Each complaint is considered on its own merits and circumstances. And having considered all the circumstances of Mr C's complaint, I'm not intending to ask esure to pay the VAT amount on the £1,411.44 until Mr C satisfies them that he has had the repair work done and paid VAT.

Mr C said esure's behaviour was unreasonable and they should have agreed to pay the original quoted amount. He said because of esure's behaviour the two garages were now refusing to do the work. But I think it's reasonable for esure, like all insurers, to want to keep costs down. So they are entitled to question quotes and to negotiate the price given by a garage if they think the quote is excessive. And that is something that is explained in Mr C's policy. It says if Mr C wants to use his own repairer he must provide a detailed estimate and that esure will "only pay for reasonable and necessary repairs and we reserve the right to say no to an estimate." Under the policy esure are obliged to cover the costs of repair. But that doesn't mean they have to pay any cost without questioning it.

Mr C has referred to a 2013 Court of Appeal decision which related to a third party's claim for repair costs. Mr C said even though he isn't a third party the case was still applicable to his circumstances. Mr C quoted the following from a summary of that decision: "The reasonable cost of repair was the cost the claimant could have obtained on the open market: it did not matter that his insurer might have been able to obtain a better rate through its industry connections." Mr C relies on this in saying esure should have agreed to the original estimate he got from his own garage without negotiating the price down. But I don't agree. The case Mr C has referred to also said the amount being claimed had to be the "reasonable cost of repair". In other words, the cost of repair claimed has to be reasonable and can be challenged if it isn't. In Mr C's case, esure have said the amount he has claimed, namely the amount detailed in the first estimate he obtained, was excessive and therefore not reasonable.

Another alternative available to Mr C, which esure offered, is to have one of esure's approved repairers (AR) repair his car. That has a number of advantages: Mr C won't have to get an estimate; he will be provided with a courtesy car to keep him mobile while his car is being repaired; and esure will guarantee the repair work for five years. If Mr C uses his own repairer esure, like most insurers, won't guarantee the repair work. But Mr C doesn't have to agree to one of esure's ARs to repair the car if he doesn't want to. But that just leaves the alternative which esure have offered, namely paying Mr C a cash in lieu sum for his own repairer to do the work.

One other dispute between Mr C and esure is to do with what Mr C described as "emergency repairs" to his car. He said that his front left wheel was scrapping against the damaged wing which he had to repair to be able to drive the car. He said he replaced the wing. Mr C later sent esure an invoice dated 1 August 2018, for the amount of £247.20. esure raised a number of concerns with that. The first was that Mr C had this work done without telling them. And esure referred to the policy terms

that said "We'll only be liable for the repair costs once we have agreed on the estimate." In other words, Mr C should have first got esure's authorisation before replacing the car's wing. Mr C said he didn't tell esure about the accident or seek authorisation because the coach driver and his insurer admitted liability and agreed to pay for the repair of his car. And given Mr C has never had an accident or claim in almost 40 years driving, he didn't really know what to do. But his policy says he should have reported the accident to esure. And if he had any doubts he could have contacted esure for advice.

Another issue esure had was that Mr C initially said he wasn't claiming for the emergency repairs but he later did. And he initially told esure he didn't have the wing replaced by a garage and that he did the work himself. But he later changed his position and said he did have it done at a garage. esure also said they had concerns because the invoice Mr C provided included an element of VAT but the invoice didn't have the garage's VAT registration number. Mr C said the VAT registration number wasn't on the copy he sent esure because of the format it was sent in and that he has subsequently provided esure with a copy that does have the garage's VAT registration number. esure said they spoke with the garage named on the invoice and they confirmed that Mr C had brought them parts and they carried out work on the car which I understand involved fitting the new wing and painting it. I have listened to the calls and Mr C did say he had the wing changed and he clearly said he didn't have the work done at a garage but "I told you that I've done that myself." Mr C later denied saying that but it's clear from the call that he did say that. It's not clear to me why if he had the work done at a garage he said he had done the work himself.

Another issue esure had was the necessity of having the wing changed when it was. Mr C said it was necessary as the wheel was rubbing against the wing. esure's engineer having viewed the photos said the damage wouldn't have caused the wheel to rub against the wing so it wasn't necessary for Mr C to replace the wing at that stage.

But it's clear from the photos that the wing would have had to have been replaced as part of the repairs because it was damaged during the accident. And both the estimates obtained by Mr C confirmed the wing needed replacing. Mr C said the first estimate he obtained was the day after the accident in July 2018. But the second estimate is dated 9 November 2018. The invoice Mr C provided dated 1 August 018 was for the wing replacement. So it's not clear to me why the estimate dated 9 November 2018 also itemised the wing replacement as being needed if it had already been replaced.

But in the interests of resolving matters, I intend to require esure to do one of the following:

(1) Pay Mr C £1,411.44 (minus £500 for the policy excesses) as previously proposed. That is the repair cost esure have deemed reasonable to repair the accident related damage to Mr C's car. And if Mr C has his car repaired and is charged VAT, on providing evidence to esure and allowing esure a reasonable opportunity to confirm that Mr C has paid the VAT, esure should reimburse the VAT amount to Mr C. But the maximum VAT esure must pay will not exceed the VAT chargeable on £1,411.44. What I mean by that is even if Mr C has the car repaired at a pre-VAT cost which is over £1,411.44, esure only have to pay the VAT on £1,411.44. As the £1,411.44 includes the cost of a new wing and ancillary work, such as painting it, I'm not

intending to ask esure to pay Mr C the £247.20 he said it cost him to replace the wing. If I did, esure would be paying for the same work twice.

(2) Have one of their own ARs repair the car. If that happens esure should pay Mr C the cost of the new wing. The cost of the new wing should be the revised amount included in the £1,411.44 estimate and not the £247.20 Mr C said he paid. That's because Mr C didn't get esure's authorisation before having that work done and it's higher than what esure said was reasonable for the work.

the policy excess

Under the policy, Mr C must pay a compulsory excess of £50 and a voluntary excess of £250 in the event he makes a claim. That's a total of £300. There is also an additional excess of £200 in the event Mr C uses his own repairer.

Mr C said it was unfair to charge him an additional excess to use his own repairer. But I don't agree with him. That was a condition of the policy and Mr C agreed to it. And if it wasn't something he was happy with he didn't have to take out the policy and he could have looked for another policy with a different insurer that didn't have such a condition.

So, if Mr C uses one of esure's ARs he will have to pay an excess of £300. If he uses his own repairer esure can deduct the total of £500 which is comprised of the claim excess of £300 and the additional excess of £200 for using his own repairer.

fraud suggestion

Mr C said esure insinuated that he committed fraud when they questioned his version of events surrounding the emergency repairs and the VAT registration number not being on the invoice for those repairs.

I agree that esure questioned Mr C's version of events and it does seem to me that they had concerns about the accuracy of what Mr C had told them. In October 2018, Mr C told esure that his garage had pulled out his car's wing (which had been pushed in during the accident) to enable him to drive it. And in November 2018, Mr C said he had replaced the wing. But it wasn't until December 2018, that Mr C provided esure the receipt for the emergency repairs which was dated 1 August 2018. I think it's understandable that esure would question why Mr C, having replaced the wing in August 2018, didn't mention it in October 2018 when he told them his garage had pulled out the wing. In October Mr C knew his wing had been replaced so esure found it strange that he mentioned his garage had pulled out the wing but made no mention that it was replaced.

During the calls I've listened to, Mr C told esure that he had replaced the wing himself and that it wasn't done by a garage. But later Mr C said a garage had replaced the wing and provided an invoice. So, I can understand why that raised esure's suspicions. esure later spoke with the garage who confirmed Mr C brought them parts which they fitted and painted. So, it's not clear why Mr C said he had done the work himself.

Similarly, esure questioned why the invoice Mr C provided didn't have a VAT registration number despite VAT being claimed. Mr C later explained that the number had somehow not been included on the copy he gave to esure but he said he later

provided a version with the VAT number on it. But I think esure were reasonable in questioning the absence of the VAT number.

I can understand that it must have been unpleasant for Mr C to feel that he has been accused of fraud. But, for the reasons given above, I think esure were reasonable in questioning Mr C's account. And I should say that esure haven't accused Mr C of committing fraud otherwise I think they would have taken different action if they had. So, I'm not intending to uphold this part of the complaint.

service and compensation

Mr C was unhappy with esure's service. He complained of unreasonable delays; poor communication; he had to keep chasing esure; and that they failed to keep to telephone appointments. I can see that Mr C had to provide the dash cam footage several times because there was a problem at esure's end. esure accepted their service could have been better which is why they paid Mr C £200 compensation.

But I agree with Mr C that the amount paid by esure didn't go far enough to address his distress and inconvenience. Given I intend to uphold Mr C's complaint about esure's liability decision being unreasonable, I also intend to increase the compensation by £200 to a total of £400. This whole matter has been a source of distress and inconvenience and Mr C has spent a lot of time and effort dealing with esure and our service."

The parties were invited to comment on my findings. esure didn't provide any comments. Mr C said the following:

- The two quotes he got for the repair of his car only related to the bodywork damage. Mechanical or hidden damage wasn't taken into account at the time of those quotes. He is now concerned that the car might have mechanical problems resulting from the accident. He feels the steering rack is damaged and he has been told it would cost over £2,000 to repair that.
- His car is now worth less due to depreciation and the new Ultra Low Emissions Zone (ULEZ) rules relating to diesel cars.
- It is uneconomical to repair his car so it should be deemed a total loss. The total cost of repairing the body work and any mechanical problems would be much higher than the car's market value.
- The replacement wing fitted to his car during the temporary repair was a temporary scrap wing. That is why the two full estimates included a new wing.
- He should not have to pay the standard £300 excess because the accident wasn't his fault. esure should recover that from the coach driver's insurer. The additional £200 excess for using his own repairer is unfair.
- esure's poor treatment was stemmed from racism towards him.
- £400 compensation doesn't go far enough to address the impact of the treatment he has received. He has spent almost 15 days' worth of time just writing letters and at the minimum wage that would equate to £1,200. The compensation should be in four figures and should be in addition to the time he spent dealing with this matter.

my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my decision remains the

same. But I would like to respond to Mr C's comments. Mr C has made a number of detailed points most of which re-emphasise his original position. So I'm only responding to the points I feel are relevant to decide this complaint.

- Mr C had the option of using one of esure's approved repairers. But he chose not to do that. He said he has done his research and feels esure's AR wouldn't have done a good job. I can't see how Mr C can know that. As I've mentioned in my provisional decision, the work done by esure's approved repairers is guaranteed. But it is Mr C's choice if he doesn't wish to use the AR. And under the policy, provided the terms and conditions are met, he is entitled to use his own repairer. As is usual practice esure asked Mr C to obtain a quote from his repairer. esure acted on the estimates obtained and provided by Mr C. At that time the estimates didn't identify any mechanical problems with the car arising from the accident. I would have expected the garages Mr C used to have assessed the full extent of the damage to his car that was caused by the accident. And despite Mr C saying that the steering rack was damaged which will cost over £2,000 to repair, I haven't been provided with any engineering evidence to support that. I'm therefore not asking esure to cover anything outside of the initial repair work they deemed necessary.
- I understand why Mr C feels his car is now worth less given the passage of time and the introduction of the ULEZ system. But esure aren't responsible for the changes in how diesel cars are to be treated and any associated depreciation. There was an initial delay in the process because Mr C didn't report the accident to esure as he should have as required under his policy. He has explained why he didn't report the accident. He said the coach driver's insurer had agreed to deal with his claim but they later went back on that. That may be the case but esure aren't responsible for the actions of the other insurer. And while it's correct that there has been a passage of time from Mr C raising his complaint to my decision, I think esure's offer to pay to have the car repaired was reasonable. And I've not upheld that aspect of Mr C's complaint. So, given they haven't done anything wrong in that regard they can't be held responsible for any depreciation in the car's value. The liability issue for the accident was a separate matter which could have been looked into after the car was repaired.
- On the basis of the assessment esure made at the time of the claim and the reasonable cost of repair of the car, esure decided it was economical to repair the car. And under the policy esure don't have to pay for the total loss of the car where it can be repaired. Mr C may feel that now, almost two years on from the accident, it's no longer economical to repair the car due to its current value. But that isn't how the process works. esure agreed to pay an amount, which I think was reasonable, to repair the car soon after the claim. Had Mr C accepted that offer I think his car would have been repaired soon after that. But it was Mr C's decision to not accept esure's offer so I don't think esure is to blame if Mr C's car has depreciated since then.
- I said in my provisional decision that esure don't have to pay for the replacement wing identified in the estimates Mr C obtained because he had already got the wing replaced when he carried out the temporary repair. Mr C has now told us that the replacement wing was a temporary scrap one which was always going to need replacing with a new one. But that has never been mentioned before and I've seen no engineering evidence to confirm that is the case. And I've not been provided with any evidence to say the wing fitted to the car isn't adequate and needs replacing.
- The policy says that if Mr C makes a claim he has to pay an excess of £300. Even if the other driver is at fault Mr C must pay that excess. The excess isn't something Mr C is insured against so it's not something esure would have to cover under the policy. And it's not something esure have to recover from the other insurer. That

excess is what is known as an uninsured loss to Mr C and he can take steps to claim that from the coach driver's insurer separately. And as I've explained in my provisional decision, the policy said if Mr C used his own repairer he would have to pay an additional £200 excess. Mr C agreed to that when taking out the policy so it's reasonable for esure to ask Mr C to pay that.

- I've not come across any evidence whatsoever that esure's treatment of Mr C was in any way a result of racism towards him.
- Mr C feels £400 compensation doesn't go far enough. But that amount is in line with other awards our service has made in complaints of similar seriousness so I'm satisfied it's reasonable in the circumstances.

my final decision

For the reasons set out above, I uphold this complaint in part and require esure Insurance Limited to:

- To amend the fault claim to non-fault on all internal and external databases, including the Claims and Underwriting Exchange (CUE).
- Reinstate Mr C's NCB by awarding him a NCB year, provided he had no other open or fault claims during the policy year in which the claim was made.
- If Mr C said he renewed his policy with esure in the two subsequent policy years in 2018 and 2019, esure should recalculate those premiums on the basis that Mr C had a non-fault claim and with his NCB reinstated. If after that recalculation a premium refund is due, esure should pay that together with simple interest at 8% a year from the date(s) Mr C paid his premium(s) until the refund is made.¹
- Pay Mr C £200 compensation for the distress and inconvenience he experienced. This is in addition to the £200 they have already paid him. This should be paid within 28 days of us telling them that Mr C has accepted my final decision. If they pay later than this they must also pay interest on that amount from the date of my final decision to the date of payment at a rate of 8% a year simple.
- EITHER: (1) pay Mr C £1,411.44 (minus £500 for the policy excesses). That is the repair cost esure have deemed reasonable to repair the accident related damage to Mr C's car. And if Mr C has his car repaired and is charged VAT, on providing evidence that he has paid the VAT, esure should reimburse the VAT amount to Mr C. But the maximum VAT esure must pay will not exceed the VAT chargeable on £1,411.44; OR (2) if Mr C agrees, have one of their own ARs repair the car. If that happens esure should pay Mr C the cost of the new wing. The cost of the new wing should be the amount included in the £1,411.44 revised estimate.

Mehmet Osman
ombudsman

¹ If esure consider that they are required by HM Revenue & Customs to take off income tax from that interest, they should tell Mr C how much they have taken off. They should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HMRC if appropriate.