

The complaint

Mr A complains about how esure Insurance Limited settled his car insurance claim following an accident.

What happened

Mr A was involved in an accident. He was turning right at a four-way junction with temporary lights. He proceeded on a green light, but the lights weren't working in their usual sequence and the cars on the road he was turning into also had a green light. He collided with a motorbike and both vehicles were damaged.

Mr A logged a claim with esure and provided video evidence of the incorrect light sequence. esure settled the claim on the basis Mr A was 100% liable for the accident. Mr A didn't think this was fair. He felt the blame lay with the company responsible for the faulty lights and thought esure should pursue that company for costs - particularly given he'd paid extra for motor legal protection cover. So, he complained, but esure didn't uphold this.

esure said that under the policy terms it was allowed to settle the claim how it wanted providing this was based on the evidence. It said it had sought advice from in-house lawyers who said that they were unlikely to be able to successfully defend the claim.

esure later told Mr A that it accepted liability because he was turning right and had a greater duty of care. It said Mr A had a responsibility to make sure it was safe to proceed regardless of whether the light was green. esure also said motor legal protection couldn't be used for disputing liability.

So, Mr A brought his complaint to our service. He told us esure had given him conflicting information about his claim. He said he was originally told he wasn't at fault, but this later changed. He also said esure told him it had relied on the highway code when settling his claim but changed this when he asked what section.

Our investigator partially upheld his complaint. They found esure had acted reasonably in settling his claim but suggested it pay Mr A £100 compensation for giving him conflicting information. Both esure and Mr A disagreed, so the matter's been passed to me to decide.

After reviewing the evidence, I felt it was likely I'd reach a different decision than the investigator. So, I shared my provisional findings with esure and Mr A so both had the opportunity to make any comments or provide further evidence. My provisional findings were:

What I provisionally 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 can understand why Mr A feels the company responsible for the faulty lights is to blame here. But my job isn't to decide who's at fault, but to look at whether esure has

acted reasonably in relation to this claim. And although this will come as a disappointment to Mr A, I think esure has – I'll explain why.

According to the policy summary, esure had the right to settle the claim. But I would expect it to reach a decision based on the relevant facts and evidence.

I can see esure originally told Mr A it would settle the claim without having reviewed the evidence he provided. And this clearly isn't fair. But I've noted that when he brought this to its attention, esure apologised and reviewed the decision in light of this. So, I'm satisfied it took account of the relevant evidence.

Mr A has told us the faulty lights are ultimately responsible. But esure has made the point that Mr A still had a duty of care here regardless of whether the light was green. And I think this is a fair point to make, as all drivers have a responsibility to take reasonable care.

But the key reason that esure settled the claim is because it felt Mr A had a greater duty of care because he was turning right. I can see that in reaching this decision, esure sought advice from its internal legal team and asked about the possibility of a partial settlement. But it was advised it had little chance of success in defending this claim. And I've seen no evidence to suggest otherwise here.

Given this, I'm satisfied esure took appropriate steps to consider the options available and this evidence suggests the settlement was reasonable in the circumstances.

Mr A felt esure should have pursued the business responsible for the lights, particularly given he'd paid for legal protection cover. But having reviewed Mr A's legal expenses cover, I'm satisfied this doesn't apply in these particular circumstances. Whilst there are a number of different things that are insured, the one most appropriate to Mr A's circumstances relates to recovering losses not covered by the car insurance policy. But this can only be done when another party is partially or wholly at fault. But Mr A was found to be entirely at fault here. And for the reasons I've given above, I don't think this was unreasonable. So, I'm satisfied esure's decision not to pursue the business responsible for the lights was reasonable.

I've then looked at Mr A's concerns about conflicting information. Mr A said esure initially told him he was not at fault. But then esure said he was at fault because of the highway code. Mr A was also concerned that when he asked what part of the highway code, esure emailed and changed what it told him - saying he was at fault because he had a greater duty of care.

esure said that when Mr A first reported the incident, it advised him that based on the information given, it wasn't placing anyone at fault until it had investigated. But when Mr A provided further detail about the incident in a later call, it then said it would likely be a fault claim. This is largely in line with what Mr A said happened, but Mr A thought esure had been more definite. I think it's unlikely an insurer would have provided a definite decision on a claim in the early stages without the relevant evidence. Given this, I think esure gave Mr A probable outcomes based on the information available at the time. And whilst I appreciate its assessment changed, I don't think this is unreasonable as it was based on further information. So, I don't think esure did anything wrong here.

esure has also agreed it made reference to the highway code when trying to explain its decision to Mr A. The person who spoke with Mr A said they'd explained there's still a duty to proceed with caution even if the light is green. The highway code notes '*GREEN means you may go on if the way is clear. Take special care if you intend to turn left or right and give way to pedestrians who are crossing*'. I'm satisfied this is relevant to Mr A's claim

and so it was appropriate for esure to refer to this. And having reviewed esure's later email to Mr A where it refers to a greater duty of care, I don't think it changed its reasoning as Mr A has suggested. The email states *'not every circumstance can be covered under the highway code, but as you were turning right you have a higher duty of care to make sure your path is clear.'* This is a clear reference to the same rationale and the highway code but noting that the code doesn't cover the exact circumstances Mr A was faced with. So, although it will come as a disappointment to Mr A, I don't think esure provided conflicting information here and I don't think it did anything wrong.

Response to my provisional findings

esure didn't have anything else to add. Mr A told our investigator he disagreed. Mr A said he did look when he turned right but by the time he did, it was too late - the motorcycle came out of nowhere. Mr A noted the highway code doesn't make him liable for the accident.

So, 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.

I acknowledge that Mr A says he did look when turning right. And as I've said above, I fully appreciate why he doesn't think he was at fault here. But as outlined in my provisional findings, it's not my job to decide who's at fault. And I'm satisfied esure didn't base their decision on whether Mr A looked when turning right, but on the greater duty of care he had because he was turning right.

It's clear the highway code doesn't cover the specific scenario Mr A unfortunately found himself in. But the highway code does place responsibility on any driver turning right to take 'special care'. And so, I don't think it's unreasonable for esure to take this into consideration when considering the claim. As explained above, I'm satisfied esure sought legal advice and considered other options. Mr A hasn't provided any evidence which persuades me that esure did have a reasonable chance of defending his claim. Given this, I'm not persuaded esure have done anything wrong here.

Overall, I've not seen any further evidence that leads me to change my findings.

My final decision

For the reasons I've given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 June 2020.

Jade Cunningham
Ombudsman