

The complaint

Mr S complained about how esure Insurance Limited dealt with his claim under his motor insurance policy.

What happened

Mr S's car was damaged in an incident and esure decided that it was uneconomical to repair. So esure assessed its market value and paid Mr S a settlement amount less deductions they made for his policy excess, pre-accident damage, and for damage which Mr S said had happened after the accident (- I'll call this the extra damage).

Mr S thought that esure were responsible for the extra damage and so shouldn't have made any deductions for that. Mr S wanted his car back to have it repaired himself, so esure agreed to return it to him. But they also deducted an amount for its value as salvage. Mr S thought they deducted too much for that.

Esure accepted that the extra damage wasn't caused in the accident, but they said they weren't responsible for that extra damage. They said they were entitled to retain for salvage because the car was their property when they paid him the settlement. But they did agree that their staff member gave him unclear information and didn't progress his issue as quickly as they should have. Esure apologised for that, said that they would give their staff feedback and offered Mr S compensation of £100 for that.

The investigator thought esure hadn't acted unreasonably in deciding that they were not responsible for his car's extra damage, and that it was reasonable for them to deduct for salvage. But she thought that esure hadn't acted in line with our guidance as regards their deduction for non-accident related damage repair costs. So she recommended that the complaint be partly upheld, and that esure should make Mr S a refund, plus interest. Neither Mr S nor esure agreed with this and so I've been asked to decide.

What I've 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.

As the investigator advised Mr S, if he has since disagreed with the pre-accident market value esure placed on his car before making the deductions, that's a separate matter of complaint which he may wish to raise with esure, but I don't deal with that here.

Responsibility and deductions for the extra damage

We don't decide how or by whom a car has been damaged. Our role in these complaints is to determine if the insurer has considered all the available evidence and whether they can justify their decision that the damage was not caused by them or by anyone for whom they are responsible.

After Mr S's car had the accident, the police recovered it and took it to a storage facility. From there it was later collected by esure's recovery agents and taken to esure's approved repairer (esure's garage) for inspection to enable esure to decide if the car was economical to repair. When his car arrived at esure's garage they noticed that it had damage which didn't appear to have been caused in the incident, because it was on the other side of the car.

Mr S accepted that his car had some slight pre-accident damage on the other side of his car. But he said there was extra damage there too, which wasn't there before the accident and also wasn't caused by the accident. He said it must have happened after the accident. Mr S thought that esure or their recovery agents were to blame for that extra damage and so esure shouldn't have made any deductions for that. He said that because esure hadn't shown him that the extra damage was already there when their recovery agents collected it from the place where the police had it stored, esure should take responsibility for it. He said that he felt "ripped off" and wanted esure to compensate him for the extra damage.

But esure said their recovery agents who took his car from the police-arranged storage to esure's garage denied having damaged it, and so the extra damage must have happened before then.

However Mr S's recovery agents couldn't provide a checklist or paperwork to prove that the extra damage was already there when they picked it up, so Mr S felt esure should be deemed responsible for that. Mr S thinks if the agents had done a condition checklist on collection, then it would have been known at an earlier stage and he might have been able to narrow down where the damage happened. As that was harder to do without a checklist, esure should still be responsible. But I don't think that's reasonable. Failure to document the car's condition on collection isn't enough to make esure liable for that extra damage, and recovery agents couldn't be expected to suspect that post accident damage had occurred or to know what damage was caused when.

I've looked at the sequence of events. On 16 July Mr S reported that his car had been damaged in an incident when it rolled into a wall while parked, and that the police had taken his car into storage to inspect it. Esure's file notes show that Mr S asked them esure to go ahead with his claim on about 29 July, but his car remained at the police-arranged storage until esure's recovery agents collected it and took it to esure's garage where esure's engineer then inspected on 11 August. Esure accepted there'd been a short delay between them instructing their agents to collect the car and that happening, but esure apologised for that, and I don't think that's an unreasonable time period.

Between the incident and esure's garage inspecting it there were several weeks when the car wasn't under esure's control. So I don't think it would be fair to make esure responsible for that. What we expect of an insurer is that they reasonably investigate and that they can justify their conclusion on the evidence. Looking at all the evidence esure had, I don't think it was unfair of them to decide that they were not responsible for the extra damage.

Because esure treated the extra damage as not accident-related, they made a deduction from their total loss settlement for that. Mr S didn't think that was fair. He accepted that before the accident there was a minor "ding" to his car on the other side from the incident damage, but he thought that esure shouldn't have made any deduction for the extra damage.

But esure only have to pay for accident-related repairs, not pre-accident damage or damage occurring after the incident for which they haven't been shown to be responsible. And as I've said above, that hasn't been shown. I think it's very unfortunate for Mr S that the extra damage happened, but I'm satisfied that esure are entitled to deduct the cost of those other

repairs.

However our approach is that it is fair to deduct only 50% of the repair costs. In this case esure's engineer quoted repair costs of £741 for the non-accident related damage but esure decided to only deduct £514. However that's still more than 50% of £741 (£370.50) so esure still charged more for that than we would have expected in these circumstances. So I think that esure should refund Mr S the difference between the £514 and £370.50, which is 143.50, plus interest.

Salvage deduction

Mr S thought that esure had deducted too much for his car's salvage value. He thought that as esure had declared his car a write off, it should have scrap value only, and that should be only a few hundred pounds.

I've looked at his policy and it said on Page 7 "If we settle your claim as a total loss, the car will become our property."

As the investigator explained to Mr S, when an insurer decides that a car is a total loss, and offers its market value, they retain the damaged car (the salvage) and can keep whatever money they receive for disposing of it. So if a consumer wants to keep the damaged car (retain the salvage) the insurer is entitled to deduct from what they pay the consumer, what they would have received as salvage value from a salvage dealer. Because that's a commercial arrangement, what such a dealer pays may be worth more than the car's open market salvage value.

However just because an insurer decides that a car is not economical to repair doesn't mean that the car is scrap. Esure's engineer's report in their file shows that their engineer designated the car a "Category N" write off, which means that it was not structurally damaged and so was repairable. So that confirms that Mr S's car wasn't merely scrap but could be roadworthy again once repaired. The investigator checked that the car had been later MOT'd and so it was back on the road.

According to esure's file notes, esure deducted £1,665 for salvage. The investigator asked both esure and their salvage agent for evidence that's what esure's salvage agent would have paid esure for his car at the time if esure had sold it to the salvage agent at the time. However the time that had passed meant that esure could no longer access that figure in their agreement with the salvage agent, and the salvage agent was unable to confirm an amount as they no longer held the relevant record. I think that is unfortunate, and also that esure could have been better at explaining to Mr S why they made the deductions they made. I can see that he has found the situation frustrating. However the car was a Category N repairable vehicle as above, not scrap, and it was repaired and was on the road again, and we normally wouldn't consider a salvage deduction unreasonable unless it were more than about 40% of the pre-accident market value. The pre-accident value here was £4,500 (before esure made another deduction for proportionality reasons which are not part of this complaint). As esure's salvage deduction wasn't more than 40% of that, I can't say that it was an unreasonable amount.

Esure did offer Mr S compensation of £100 for their staff member giving Mr S unclear information and not progressing his issue quickly. I think that does reflect the inconvenience that would have been created and so I think it's fair, and esure should pay Mr S this if they haven't already done so.

My final decision

For the reasons given above, my final decision is that I partly uphold the complaint and I require esure Insurance Limited to do the following:

- Pay Mr S £143.50, plus interest at 8% simple interest from the date esure paid him the claim settlement amount to Mr S, to the date of the refund.
- Pay Mr S £100 in compensation if they have not already done so.

Esure must pay the compensation within 28 days of the date on which we tell them Mr S accepts my final decision. If they pay later than this, they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple

If esure consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr S how much they've taken off. They should also give Mr S a tax deduction certificate if Mr S asks for one, so Mr S can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 April 2024.



Rosslyn Scott
Ombudsman