

The complaint

Miss S is complaining about the way esure Insurance Limited has handled a claim she made on her car insurance policy after she was involved in what she says was a non-fault accident.

What happened

In May 2022 Miss S was involved in an accident involving a lorry where she says the lorry hit the side of her car and knocked her into the hard shoulder. She contacted esure to claim for the damage to her car through her car insurance policy. She also said she wasn't at fault for the accident and provided some witness statements to support this.

esure said it would settle the claim by paying Miss S the car's market value less her excess. However, Miss S said she would like to keep the car, so esure also deducted the car's salvage value from the settlement.

Miss S later raised a complaint with esure as she was unhappy the claim was still open and impacting her insurance premium. She also said her car had failed the MOT due to issues with the suspension and chassis. She says she was told there wasn't any structural damage from the accident and she wouldn't have bought the car back had esure told her there was. Finally, she said she did a subject access request to understand what had happened, but she says esure didn't send her anything.

esure acknowledged it hadn't pursued the third party's insurer (TPI) as pro-actively as it should have done and paid her £200 in compensation for this. It also said it would start litigation proceedings against the TPI. However, it said Miss S bought the car back knowing it was a total loss and it paid the market value less the salvage value. So it said it wasn't required to cover the cost of repairs.

Our investigator partially upheld this complaint. She thought esure had caused significant delays in pursuing the TPI and she thought this had caused Miss S a lot of upset. She didn't think £200 was enough compensation and she thought esure should increase this to £350. However, she didn't think Miss S had suffered a loss as a result of the damage as she said Miss S had said she'd sold the car to her ex-partner who did the repairs. Finally, she could see esure had processed the subject access request but didn't think Miss S had received it. So she suggested esure send it in a different format.

esure acknowledged it had caused delays, but thought £200 compensation was fair. It also said the damage Miss S has referred to was down to corrosion, so not a result of the accident. As it didn't agree it should have to pay further compensation, it asked for an ombudsman to review the complaint.

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.

I've come to the same conclusion as the investigator for largely the same reasons. I'll now explain why.

Pursuit of the TPI

Miss S first reported the incident to esure in May 2022. In June 2022, esure sent its allegations to the TPI. It then contact the insurer again in July 2022, this time sending the witness statements Miss S provided. It seems esure then tried to call the TPI, but couldn't get through. It sent a further email on 1 August 2022 chasing a response, but the TPI didn't respond. However, it seems nothing then happened on the claim until esure responded to Miss S's complaint in October 2023 – over 14 months later.

esure has accepted it handled the claim poorly. I think esure handled the pursuit fairly in the first instance. The early delays are clearly down to the TPI not responding, which was outside of esure's control. But it's disappointing to see nothing happened on the claim at all for 14 months. And I think esure should have started to explore litigation options around a year beforehand.

While it's of course not possible to know for certain what the TPI would have done in response to litigation proceedings, it is important to note Miss S did have two witnesses to support her version of events. So, it's possible – and in fact likely – it could have resolved the claim significantly sooner than it did.

But, irrespective of this, I'm satisfied it's inevitably added at least a further 14 months to the claim journey, with Miss S's premium being significantly impacted during this time. So I agree with the investigator that I don't think £200 is sufficient compensation for the significant delays that have arisen in this case. And I think £350 is fairer compensation.

I recognise Miss S is unhappy esure has recorded a claim as a "fault" claim even though she maintains she wasn't at fault for the accident. While a term "fault" or "non-fault" is often colloquially used to describe a claim, in actual fact they're categorised as "NCD allowed" or "NCD disallowed". Whether someone is at fault for an incident isn't the deciding factor. An insurer will classify a claim as "NCD disallowed" where it pays money on a claim and doesn't get a full recovery of that outlay from another party – e.g. from an insurer of a third party who caused the damage.

In this case, esure has settled Miss S's claim for the damage to her car and, until such time as it recovers it's outlay from the third party's insurer, it's entitled to treat the claim as "NCD disallowed". It doesn't mean it considers Miss S at fault for the accident. It simply reflects the fact it's settled her claim and hasn't been able to recover its outlay yet.

Damage to Miss S's car

I agree with the investigator also that I haven't seen anything to show Miss S has suffered a loss regarding the damage to the car as she didn't pay to fix it. But, even if this wasn't the case, I'm not persuaded the damage in question was attributable to the accident. Miss S has said the car failed MOTs because of damage to the chassis and suspension. But I've seen the MOT reports and these show the damage was attributable to corrosion. And naturally, corrosion isn't accident related. So, I'm not persuaded I've seen anything to show it was unreasonable for esure to have told Miss S there wasn't structural damage to the car from the accident as there's nothing to support there was. And, ultimately, Miss S bought the car back from esure in knowledge it was a total loss. So I can't reasonably say esure has treated her unreasonably in this regard.

Subject access request

Miss S has said esure didn't provide her subject access request. But I can see it followed its usual process. When Miss S said she didn't receive the documents, it's shown it resubmitted it. While I can understand how this would have been frustrating and upsetting for Miss S, I'm not persuaded esure has acted unreasonably here. It sends the documents in a secured format and it's not unreasonable it does. If she's still not received the documents and requires them, she should let esure know and I would expect esure to work with Miss S to find a way to resolve this.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require esure Insurance Limited to pay Miss S a further £150 in compensation (£350 in total). It should pay this to Miss S directly if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 23 October 2024.

Guy Mitchell

Ombudsman