

The complaint

Mr C complains about delays in esure Insurance Limited deciding whether a car insurance claim he made is a fault or non-fault claim.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr C has car insurance underwritten by esure. He made a claim in January 2023 when his car was damaged in an accident.

Mr C tells us he was sitting in his parked car when a neighbour ran into it when trying to park his car next to it.

The claim was accepted and esure carried out the repairs in a timely manner. Mr C also asked them at this point to refund his excess. And esure explained that he would have to recover that from the third party. They referred him to the insurer of the car that had collided with Mr C's.

It turned out that the insurer in question insured the car but not the driver who'd been involved in the accident.

In the meantime, Mr C's policy was renewed – in May 2023. The premiums had risen by over £800 compared to the previous year. This appears to be at least in part because esure hadn't yet been able to recover the costs of Mr C's claim from the third party – and because the claim therefore remained recorded as a "fault" claim at the point of renewal.

Mr C complained to esure. He was unhappy his premiums had gone up as a result of delays in the recovery of the costs from the third party. He thought esure should have been quicker to seek recovery from the third party and/or his actual insurer. And he was unhappy he hadn't been able to recover his excess from the insurer esure had suggested.

In their final response to Mr C – in September 2023 - esure said that if and when the claim was finally resolved as a non-fault claim, they'd review Mr C's premiums for the year beginning in May 2023. That would include factoring in the no claims discount Mr C might otherwise have had.

They also refunded Mr C's excess, as a gesture of good will. And they paid Mr C a further £100 in compensation. This was to reflect the fact there had been, in their own words, a lack of progress after they found out that the supposed third party insurer didn't in fact insure the third party driver.

Mr C wasn't happy with this outcome and asked us to look into his complaint. Our investigator did so and thought esure had acted fairly and reasonably in resolving Mr C's complaint to them in the way they did.

Mr C disagreed and asked for a final decision from an ombudsman. It appears he remains unhappy because he wants esure to tell him whether the third party driver is insured – and if so, by whom.

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.

Mr C complained to esure about the delays in their attempts to recover the costs of the claim from the third party, the effect of that on his premium when his policy renewed and the fact they appeared to have misled him about who insured the third party.

Unfortunately, it will on occasion take some time for an insurer to recover costs from a third party. And until they do so, they are entitled to record the claim as a "fault" claim. That doesn't mean their policyholder is regarded as being to blame for the accident. It means only that they haven't been able to recover their costs.

It appears esure have been actively trying to recover their costs. They admitted a lack of progress after April 2023 – for which they compensated Mr C, for the poor service. But they've also said that even if they had acted immediately at that point, it would not have resulted in the costs being recovered by September 2023, when they issued their final response to Mr C's complaint.

They have also reassured Mr C that if and when they do recover the costs, they will re-assess his premiums for the year and refund him the difference, taking into account any no claims discount he might otherwise have had.

So, I can't reasonably say that esure have acted in any way unfairly or unreasonably towards Mr C in that respect. I appreciate that Mr C has been disadvantaged by the actions of the third party, but I can't hold esure responsible for that.

I'm satisfied the compensation offered to Mr C for esure's inaction after April 2023 is fair and reasonable. Particularly since it is, as they said, unlikely that if they had chased the third party sooner they would have recovered their costs any sooner. Again, I can understand this has been a stressful and frustrating experience for Mr C, but I can't conclude that esure's actions or omissions have prolonged this.

I don't think it was wrong for esure to tell Mr C to raise the issue of recovery of his excess with the insurer they assumed insured the third party. That wasn't an unreasonable assumption, given the information esure had at the time. And they are right to say it was for Mr C to recover his excess.

In any case, they've refunded the excess as a gesture of good will. So, Mr C hasn't been disadvantaged by the confusion over the third party insurer, he's had his excess payment refunded.

Mr C now wants esure to tell him whether the third party is insured - and if so, by whom. Given that Mr C no longer has to seek to recover his costs (the excess), I'm not sure what purpose that might actually serve.

However, in any case, that's not something we can look into now. Mr C didn't complain to esure about that particular issue, nor did he raise it with us when he brought his complaint to our service originally.

That being the case, the Financial Conduct Authority rules which govern the way we operate – the dispute resolution (or DISP) rules – say that we can't look into it. Those rules say we can't look into matters that the financial business concerned hasn't yet had a chance to investigate and resolve themselves.

If Mr C wishes to complain about esure not telling him who the third party's insurer is (if indeed he is insured) or about any delays or poor service after they issued their final response to his existing complaint, then he'll need to make another complaint to esure. And if he's not happy with the outcome, he can bring that complaint to our service.

My final decision

For the reasons set out above, I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 March 2024.

Neil Marshall
Ombudsman