

## The complaint

Mr S complains that esure Insurance Limited (esure) didn't inform him about a claim made by a third-party following an accident. This meant he unfairly lost his no-claims discount (NCD) and it increased the cost of his premiums, under his motor insurance policy.

## What happened

In November 2022 Mr S was involved in a collision when driving. He says he wasn't at fault for the collision. He reported it to esure. The matter was then closed as a notification only incident.

In February 2023 Mr S received an email from esure with a link asking him to upload his "media". Mr S says he'd been told if a claim was made esure would contact him to let him know. As the email didn't mention a claim he didn't respond.

In August Mr S noticed his renewal premium was much higher. At this point he became aware a claim had been made and this has been settled with a 50/50 split liability outcome decision.

In its final complaint response from October 2023 esure says it emailed and texted Mr S on 23 and 26 February with a link to upload dashcam footage. It says he opened the link on 26 February but didn't upload anything. esure says the matter was subsequently decided by arbitration. Based on the available evidence a 50/50 split liability outcome was reached.

Mr S didn't think esure had treated him fairly. He says the dashcam footage proves he wasn't at fault, and he says he wasn't aware a claim had been made. As he wasn't satisfied with this outcome he referred the matter to our service. Our investigator upheld his complaint. He says the emails esure sent don't mention a claim, or request dashcam footage. He says esure also failed to inform Mr S that the matter was going to arbitration, although its process requires this.

Our investigator reviewed Mr S's dashcam footage. He says if seen, this evidence would've likely changed the liability outcome. To put this right, he says esure should record the claim from the November 2022 accident as non-fault and allow Mr S's NCD. It should also recalculate his premium and refund any overpayment. In addition, our investigator says esure should write to Mr S to confirm the non-fault decision. And pay him £150 compensation for the upset it caused.

esure didn't accept this outcome and asked for an ombudsman to consider the complaint.

It has been passed to me 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.

Having done so I'm upholding Mr S's complaint. Let me explain.

Mr S's policy terms under the heading "Claims Procedure" say:

*"We have full discretion in the settlement of your claim or any legal proceedings which may arise and we may take over, defend or settle the claim in your name for our own benefit. You and anyone covered by the policy must provide all the information, documentation and help we need to do this."*

This effectively means it's for esure to decide how to settle any claim made against Mr S's policy. This is a common term used in the insurance industry. An insurer is responsible for paying the cost of a claim, so we don't think this is unreasonable. This doesn't mean esure can do anything it wants. It must still treat Mr S fairly. By the same token Mr S must act reasonably to provide information to support any claim esure investigates.

I can see that esure wrote to Mr S on 28 November 2022 shortly after his accident. The letter says:

*"Notification Only*

*The case has now been closed as Notification Only and therefore Esure will have no further dealings with the claim. Your Policy will not be affected, and you will not be liable to pay an excess. If a Third Party was involved and we receive communication from them, we will contact you to discuss this. Alternatively, if you decide you would like to proceed, then please contact the number below to enable us to progress your claim."*

Mr S says he understood from this letter that esure would contact him if the third-party made a claim. I think this was reasonable. Mr S didn't want to make a claim for his damages. His understanding was the matter was closed as a notification only incident.

Three months later esure sent Mr S an email dated 23 February 2023. It says:

*"Please follow the link below to update your media to us."*

Another email was sent on 26 February that says:

*"Just a quick reminder to upload your media to us."*

esure says the email was sent from its claims team, and its records show Mr S opened the link, following the reminder, but didn't send the dashcam footage.

I've thought carefully about the contact esure made with Mr S.

esure didn't ask Mr S for his dashcam footage. Both emails it sent refer to media. The subject line says, "Request for evidence". But there is no reference in either email to the accident Mr S was involved in. The emails don't say the third party has made a claim. The address these emails were sent from include the words "yourclaim" within a string of around 30 other alphanumeric characters. I acknowledge esure's point that this showed the email was from its claims team. But I don't think this was particularly clear.

Having considered this, I think the purpose of esure's emails could have been made far clearer. Mr S understood the matter was closed in November 2022. He was told contact would be made to discuss any communication from the third-party. But this didn't happen. He was asked to provide his media with no confirmation a claim had been made and no clear request for dashcam footage.

I acknowledge esure's view that Mr S should have understood it was asking him for

dashcam footage relating to his accident in November 2022. But I disagree. It's for esure to communicate clearly. I didn't here. A clear message should've been sent to Mr S telling him a claim had been made against his policy. It should've told him to provide any evidence he had to show he wasn't at fault. And by not doing so he risked being held liable for the accident. The business shouldn't rely on Mr S interpreting what it needed from him - based on the very limited information contained in its emails.

I can see from esure's claim records that a pre-arbitration notification wasn't sent to Mr S. This should have been sent. I haven't seen the content of this letter. But presumably this notification would've informed Mr S there was a claim in progress that was due to be settled at arbitration. Had he been told, I think Mr S would've acted sooner to provide his dashcam footage. It's apparent that he contacted esure to provide this information when he became aware a claim had been made. So, I have no reason to doubt he would've provided this earlier had this requirement been communicated clearly.

I've looked at the dashcam footage. Mr S can be seen driving onto a small roundabout. Another car then enters the roundabout. The third-party doesn't give way to Mr S who is already on the roundabout. A collision then occurs. It's not my role to determine fault. But this evidence would've played a key role in determining who was at fault. I think it's likely the other driver would be considered to blame as he didn't give way. But the arbitration didn't have chance to consider this evidence.

The dashcam footage clearly supports Mr S's version of events. I don't see why he'd decline to provide this information. Unless he wasn't aware it was being requested.

Having considered all of this I don't think esure treated Mr S fairly in how it communicated with him. This resulted in an arbitration that didn't consider his dashcam footage. To put this right, it should amend the records from all internal and external data bases to show the claim as non-fault with Mr S's NCD unaffected. esure should recalculate Mr S's premium and refund any due amount. It should also write to him confirming the claim has been recorded as non-fault.

I've also considered the impact on Mr S as a result of the unfair handling of his claim. This has clearly caused him frustration and some inconvenience. To put this right, I agree with our investigator that it should pay him £150 compensation.

### **My final decision**

My final decision is that I uphold this complaint. esure Insurance Limited should:

- amend any internal and external databases to show the accident as non-fault with Mr S's NCD unaffected;
- recalculate Mr S's premium and refund any overcharges;
- write to Mr S confirming the claim was non-fault; and
- pay Mr S £150 compensation for the frustration and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 April 2024.

Mike Waldron  
**Ombudsman**