

## The complaint

Mrs W complains about how her insurer, esure Insurance Limited (esure), held a claim under her motor insurance policy was a fault claim.

References to esure in this decision include their agents.

## What happened

Mrs W had a motor insurance policy with esure, at renewal in November 2020 the basic premium was £326.05 after deduction of a 50% discount for the number of years No Claims Discount (NCD) Mrs W had earned. Mrs W also had NCD Protection cover (£20.91) and Motoring Legal Protection cover (£31.00) making a total premium of £377.96.

In August 2021 Mrs W was asleep late at night when she was woken by a loud crash in the road outside her property. A stolen third-party vehicle had crashed into her parked vehicle, in turn shunting it into a neighbour's vehicle. The police attended and provided an incident number. The driver of the stolen vehicle left the scene but another person in the car was later arrested by the police and subsequently released.

Mrs W's vehicle was badly damaged. So she contacted esure to tell them about the incident and make a claim. esure appointed an approved repairer (K) to repair the damage to Mrs W's vehicle. She was provided with a courtesy vehicle whilst her vehicle was repaired.

The circumstances of the incident meant esure initially told Mrs W they deemed the claim to be 'non-fault' and they would attempt to recover the cost of the claim from the third party. esure contacted the police to request a police report, if available, and details of the driver of the stolen vehicle. After paying the appropriate fee for the report, esure received a response in January 2022, saying there wasn't a police report under their current force procedures. But they did provide details of the third-party vehicle, its insurer, and the owner of the vehicle, but the driver at the time of the accident was 'not known'.

esure contacted the third-party insurer to seek reimbursement of their claim costs but weren't successful. The other insurer said the vehicle was stolen by an unknown party and wasn't being driven by their insured at the time of the incident. In those circumstances a claim against the insurer of a stolen vehicle that causes damage wouldn't succeed, because the driver at the time was unknown.

Given these circumstances, esure told Mrs W they would not be able to pursue a claim against the third party or their insurer and had to record the claim as a fault claim because they weren't able to recover the full cost of the claim. But because her No Claims Discount (NCD) was protected, it wouldn't be affected. Despite this, Mrs W said her premium subsequently doubled.

Mrs W was very unhappy with the claim being recorded as a fault claim and the increase in her premium when she was in no way responsible for the incident and the damage caused to her vehicle. She contacted her MP, who raised the issues with esure. She wanted the claim to be changed to non-fault.

esure responded initially to say the claim would remain closed as an unrecoverable claim, as the third-party vehicle was stolen, and the thief (driver) wasn't identified. So, they were unable to pursue any cost directly from the owner or insurer of the third-party vehicle. esure also said a stolen vehicle didn't meet the criteria for a claim with the Motor Insurance Bureau (MIB) uninsured driver or untraced driver agreements, so they weren't able to pursue a claim to recover costs from the MIB.

esure subsequently issued a final response, which didn't uphold the complaint. They referred to the policy booklet definition of a fault claim as one where they hadn't been able to recover all, or part of the payments made from a third party. Because esure didn't have any other party from which to recover their costs, they felt the claim had been correctly recorded as a fault claim against Mrs W.

On the increase in premium, esure considered the claim meant a change in the risk presented by Mrs W, which together with a range of other factors, reflected in the increased premium. While acknowledging the increase in premium, esure said if Mrs W felt the policy no longer met her needs, they would waive the cancellation fee should she decide to seek cover elsewhere.

Mrs W then complained to this Service, saying it was unfair for esure to deem the claim to be a fault claim when she was in no way responsible for the incident and damage to her vehicle. She was also unhappy at the subsequent doubling of her policy premium.

Our investigator didn't uphold the complaint, concluding esure didn't need to take any further action. He noted the circumstances of the case and that esure hadn't been able to recover the costs of the claim from a third party or third-party insurer. Under industry practice and the policy terms, this meant the claim would be recorded as a fault claim, but this didn't mean the incident was the fault of Mrs W. As such, he thought esure had correctly recorded the claim on the Claims Underwriting Exchange (CUE) database.

On the increase in Mrs W's premium, the investigator said many factors went into an insurer's assessment of risk and consequent calculation of a policy premium. One would be an individual's claims history, including claims made in a previous year, irrespective of whether they were recorded as fault or non-fault.

Mrs W disagreed with the investigator's view and asked an ombudsman to review the complaint. She said she was the victim of a criminal act and didn't think she should be penalised through an increased premium for someone else's actions. She also provided information from the police which named an individual charged with a criminal offence (of handling stolen goods).

### **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.

The first issue in Mrs W's complaint is esure classifying the claim as a fault claim. Mrs W says she was blameless for the incident, so esure should record the claim as non-fault. esure say they recorded the claim as fault because a fault claim would be recorded where they weren't able to recover all or part of the costs of the claim. The circumstances of the claim mean they weren't able to recover those costs, as the third-party vehicle was stolen, and the driver not known.

On this issue, esure refer in their final response to the policy definition of a fault claim, which under a section headed *Meaning of words and terms* includes the following:

***“fault claim – A claim made under your policy which we have paid for on your behalf and have been unable to recover all or part of these payments from a Third Party.”***

I've looked at this definition in the context of the sequence of events. esure approached the police to request any report or other evidence relating to the incident. This is what I would have expected in the circumstances. In their request, esure say they believe the third-party driver was arrested and request their details and confirmation of their prosecution. The police response states there was no report. While they confirm details of the third-party vehicle, insurer and owner, they state the name of the driver to be 'not known'.

Given this, esure weren't able to pursue the third party for costs they incurred in settling Mrs W's claim. And, as the third-party vehicle was stolen, they wouldn't have been able to reclaim costs from the third party insurer. While this may seem unfair to Mrs W, it is standard practice in insurance cases. So, Mrs W hasn't been treated any differently from any other policyholder would have been in the circumstances.

I recognise Mrs W feels it's unfair for the claim to be recorded as a fault claim when she was in no way responsible for the incident or the damage to her vehicle. But recording the claim as a 'fault' claim doesn't mean Mrs W was at 'fault' for the claim. Rather, it means the cost related to the claim weren't recoverable and her insurer had to pay them themselves.

The second issue is the increase in Mrs W's premium following the incident and the recording of the claim as a fault claim. She says it's unfair that her premium has increased because of the claim being recorded as fault. esure say the claim means a change in the risk presented by Mrs W, which is reflected in the increased premium. More broadly, esure say there are a range of factors affecting the premium..

Turning to the second issue, the increase in Mrs W's premium as a consequence of the claim. I asked esure for information about the increase in Mrs W's premium. While they haven't provided an exact breakdown of the increase in premium, they gave several reasons for the increase in Mrs W's premium:

- the claim made by Mrs W was a factor (as esure stated in their final response the claim represented a change in risk for their underwriters).
- A different view of the risk presented by Mrs W, including that for her as a customer, her address and vehicle, which was previously in an area with a more favourable risk position.
- The general increase in motor insurance premiums in recent times.
- Mrs W's age increased, moving her into a higher age bracket, which attracts a higher premium.
- Mrs W had benefited from a 10% underwriter discount in the previous policy year, to secure renewal at that time, but there was no equivalent discount for the following year, which was automatically removed as part of esure's standard practice.

Looking at the range of factors, while not exact, I don't think they're unreasonable. Insurers periodically review the incidence of claims, including the areas in which claims are made. If the number and value of claims in an area increase, this will affect the risk rating of an area.

While Mrs W's claim was recorded as a fault claim, it's generally the case that making a claim, either fault or non-fault, is likely to increase premiums.

Mrs W's policy included protection of her NCD. However, that doesn't mean the premium wouldn't have increased due to the factors set out above. They would have meant the premium increased before the application of the relevant NCD discount. So while that discount would still apply, it would apply to a basic premium figure.

Taking these points together, I can't conclude esure acted unfairly or unreasonably towards Mrs W and they would have treated other customers the same way in similar circumstances.

### **My final decision**

For the reasons set out above, it's my final decision not to uphold Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 August 2024.

Paul King  
**Ombudsman**