

The complaint

Mr L complains about esure Insurance Limited's handling of and decision on his motor insurance claim.

What happened

The following is intended only as a brief summary of events. Mr L has a motor insurance policy underwritten by esure. After being involved in an accident, esure dealt with Mr L's claim. He is unhappy that esure accepted full liability for the accident on his behalf.

Esure said that it was unable to conclude the third party drove into Mr L's vehicle deliberately. And that as Mr L's vehicle was changing lanes he had a greater duty of care to ensure the lane was clear prior to changing. Esure felt that if liability was disputed, this would likely have to be conceded as the third party was likely to issue court proceedings in which it would have a greater chance of being successful. Esure did offer Mr L £100 compensation for issues in relation to the customer experience Mr L had received.

Mr L brought his complaint. Our Investigator recommended it be upheld. He thought that whilst it was accepted that a party changing lanes had a greater duty of care, it was not reasonable for esure to have reached and maintained its decision on liability based solely on Mr L's initial brief description of the event. And that esure should obtain a full account of the accident from both Mr L and the third party before reviewing the liability decision. The Investigator thought that the liability should be recorded as 50/50 pending that review.

Esure did not agree with this outcome and the complaint was passed to me for a decision. Having carried out an initial review, I contacted both parties to say that I largely agreed with the Investigator's conclusions. But that I thought the compensation should be increased to £400 to reflect the ongoing frustration and inconvenience Mr L had experienced.

I also thought that esure had already had enough time to investigate the claim, and it wasn't appropriate to leave this open ended – so the claim should be recorded as 50/50 liability. I explained that if esure reached a new liability decision on the claim, this would then constitute a new claim event which it would be open to Mr L to dispute.

Esure did not agree with this. It maintained its position on liability, saying that the third party was fully established in its lane, and that Mr L had moved into this. So, but for Mr L's manoeuvre, the accident would not have occurred.

Esure has since confirmed that images have now been received from the third party's insurer. Esure has said, "We've responded to accept liability with them, as their next course of action was to issue proceedings."

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 this complaint.

Mr L's policy sets out that esure, as his insurer, has full discretion on how a claim is settled. This means that it can choose to settle a claim on the basis that a policyholder is fully liable, even where that policyholder disputes liability.

In essence, there is nothing wrong with this. I would not expect an insurer to defend a claim where there is no reasonable chance of it being successful. Additionally, it is appropriate for an insurer to think about the costs involved with defending a claim in comparison with the size of the claim.

However, an insurer's decision does need to be reasonable. As well as a number of high-level obligations that insurers need to take into account, they have an obligation to handle claims promptly and fairly. This fairness requirement means that insurers shouldn't accept claims on a full liability basis without carrying out a certain level of investigation into the claim circumstances.

My understanding of the claim process in this case is that Mr L made a brief statement about the circumstances of the claim. He said that he was changing lanes, and that the other vehicle impacted the rear drivers-side door. Mr L had also said that there was space for him to move into and that vehicle speeds were less than five miles per hour. And that the third party had lurched forward into him.

Seemingly solely on the basis of this, esure concluded that the third-party vehicle was "correctly proceeding in their lane". Whilst it might be reasonable to assume that the third party was established in a lane that Mr L moved into, I am unable to agree that this information alone confirms that the third party was correctly proceeding. Mr L has said in this brief summary that the third party lurched forward. After the claim was declined, Mr L said the third party had seen him and then deliberately driven into him.

Given these comments, I would expect the minimum for an insurer to do would be to ask its policyholder for a full account, and to try to obtain an account from the third party. Esure does not seem to have done either of these.

I do not consider it would be fair to automatically conclude that a driver is liable for any accident where they are changing lanes, regardless of the circumstances. There are plenty of circumstances where a driver could perform such a manoeuvre safely, and then have a third party cause an accident. So, it is necessary for an insurer to at least try to establish the actual circumstances before making a decision on liability. And esure did not do this.

It follows that I do not consider that in making the decision it did, without having attempted to establish the full circumstances, that esure acted appropriately. I do not think this was handling Mr L's claim fairly.

This has caused Mr L many months frustration and inconvenience, as he has attempted to resolve this issue. And I consider this ought reasonably to have been avoided.

I understand that esure has now received further information from the third-party insurer. And, having considered this, esure has confirmed its decision to accept full liability on Mr L's behalf. I consider this to be a new action in relation to this claim though. So, I have not considered whether esure's new action is fair and reasonable. I have limited my findings to whether esure took the appropriate action in the circumstances that led to this complaint. Prior to making this new decision, esure ought to have – at worst – recorded Mr L's liability on a 50/50 basis.

Putting things right

esure Insurance Limited should pay Mr L £400 compensation if it has not already done so. If any compensation has been paid to Mr L, this can be deducted from this total amount.

esure Insurance Limited ought to have treated Mr L's claim on a 50/50 liability basis. It has now made, what I consider to be, a new decision to treat the claim as Mr L being fully liable. esure Insurance Limited should explain its decision to Mr L and provide him with the evidence for its decision. Should Mr L wish to complain about this new decision, esure Insurance Limited will need to deal with this as a new complaint.

My final decision

My final decision is that I uphold this complaint. esure Insurance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 July 2024.

Sam Thomas
Ombudsman