

## The complaint

Miss S has complained about the service she received from esure Insurance Limited under her motor policy, following an accident.

## What happened

Miss S said she was driving down a country lane with her terminally ill father taking him out for a drive in her parents' car. She said a boy on a bicycle cycling on the pavement hit something on the pavement and then fell into the road on his bicycle damaging the car.

Miss S paid for the repairs to her father's car in the sum of around £300. She also reported the incident to esure. And she explained there was a witness with dashcam footage which showed Miss S didn't cause the accident to occur or that she hit the cyclist. Rather the cyclist careered off the pavement hitting her car.

Miss S said no one from esure spoke to her about any aspect of the accident but yet recorded she had two 'fault' claims on her policy which meant her nine years No Claims Discount (NCD) was reduced and her renewal premium increased. When she complained, esure provided a final response letter with referral rights to this service saying it apologised it hadn't looked into her complaint.

So, Miss S brought her complaint to us. We asked esure to provide its file but got no response. However, esure sent another letter (not headed a final response letter, according to Miss S) offering Miss S £100 compensation for its failures in communication, which Miss S didn't accept. Esure didn't appear to send a copy of that letter to us.

On that basis, the investigator didn't know if any claim had been made against Miss S' policy or not. And he had no information about how esure might have considered liability or not as the case may be, if any such claim had been made. So, he upheld Miss S' complaint and said esure should request the dashcam footage from the witness and make a decision on liability as he wasn't satisfied any investigation had been carried out. Once the investigation was carried out, he said that esure should then make any amendments to Miss S' insurance record if necessary. And given this had obviously caused Miss S distress and upset, it should also pay her £150 compensation.

Miss S didn't think this went far enough given the complete lack of any information or contact from esure plus more importantly that as her NCD reduced and her renewal premium had increased. She couldn't understand why we couldn't make esure provide its file to us and cover off the rest of her complaint. Namely there was no claim from her for the damage to her father's car. She paid that herself. And she did need to know what claim the cyclist might have made. And nothing in the investigator's view covered her substantial premium increase of around £400.

Then in April 2024, about a month after esure would have received the investigator's view and whilst Miss S' complaint was waiting to be allocated to an ombudsman, esure responded. It provided its system notes. It said, given the circumstances of the accident and

that it was likely Miss S was driving too close to the cyclist, there was nothing really to investigate. However, no claim had been made by the cyclist to esure. It explained it had to keep the claim 'open' for six months at least given there was a potential injury to a vulnerable road user. So, it would agree to the £150 compensation as they didn't follow the correct process with Miss S. It also said the claim will now be closed as 'non-fault' and the NCD allowed. But it said it was important for Miss S to note that the cyclist has three years from the date of the accident to make a claim against her policy for personal injury, possibly more depending on the age of the cyclist. And given it was aware Miss S wanted an ombudsman's decision, it now awaited that decision.

Around the same time in April 2024, Miss S made a subject access request to esure and received its file on this incident. She said its file confirmed nothing had been done. It also showed that her insurance record was showing two 'fault' claims. Miss S couldn't understand why there was two claims as she made no claim to esure for the repairs to her father's car. Plus, there was no other claim she had made to esure about anything along with no claim having been received from the cyclist.

So, on this basis Miss S' complaint was passed to me to decide.

I issued a provisional decision on 28 June 2024, and I said the following:

*'Having done so, I'm intending to uphold this complaint for further reasons than that of the investigator. I'll now explain why.'*

*The information provided by esure system's file doesn't appear to have captured the events of this incident correctly from Miss S' detailed account to us. At times its system notes say it is only providing third party cover to her, given I assume, because she was driving her parents' car. At other times it says, a vehicle which could be the car Miss S was driving or indeed possibly the bicycle (that's completely unclear) was a total loss. Certainly, on Miss S' testimony, the car she was driving was not a total loss and neither was it subject to a claim on this motor policy or any other motor policy. Miss S is clear she repaired that herself, at her cost. Obviously, cyclists and child cyclists don't have mandatory liability insurance (like a motorist must have), against which Miss S or her parents could have claimed for the costs of the damage to the car. Further Miss S said the cost of the repair was about £300 so around the same more or less than any excess might be, if a claim was made to her parents' insurers of the car.*

*On the basis from Miss S' testimony, she has two 'fault' claims listed against her from this incident, clearly one of them if not both are wrong and erroneous. Most importantly, it's very clear the cyclist has not made any claim yet to esure, either for any personal injury or damage to his bicycle. So, although it's correct the claim should remain as an 'open' claim on Miss S' policy record, I consider it isn't fully yet a 'fault' claim either. This is because esure has shown me it made no investigations into liability for it to come to any reasonable decision on liability. As just because a cyclist flies off a pavement into a car, which is driving coherently on the highway, does not in turn make the car driver liable, simply because they are the driver of a car as esure is presently assuming. More so, when in Miss S' case she said a witness had dashcam showing this. Which sadly esure never bothered to obtain.*

*There is no evidence whatsoever available that Miss S was 'probably driving too close to the cyclist' as esure presently assumes either. That is unnecessary conjecture in my view.*

*According to Miss S, the child on the bicycle was cycling on the footpath (probably illegally unless it was also a cycle lane in my view) sadly his bicycle hit something on the pavement, careered off the pavement straight into Miss S' car.*

*Therefore, I consider the more reasonable notification which should have been put on Miss S' insurance record was an 'open' claim. That can increase renewal premiums too or increase the premium if Miss S went elsewhere for her motor policy, but it can be rated differently than a straight 'fault' or 'non-fault' claim, also. That would depend on how each insurer decided to rate those issues.*

*For Miss S' benefit insurers are entitled to register a claim as a 'fault' claim if it has paid a claim either from its policyholder or paid another driver's claim or like here a cyclist's claim and couldn't reclaim its outlay from any other party. So, a 'fault' claim doesn't always mean the policyholder is at 'fault' for causing the incident at all. However, a 'fault' claim does have to indicate the insurer paid something to someone, either the policyholder or another party to the incident, which is also not the case here either. Esure has not paid anything to anyone concerning this incident. It's also unclear whether this more properly 'open' or rather 'for information only' claim would have knocked all of Miss S' unprotected NCD back in the manner esure decided, from anything esure has shown me to date.*

*Nevertheless, esure has now said that all of Miss S' NCD will now be allowed again with the claim closed as 'non-fault'. However, I consider as no claim has been made yet, Miss S' insurance record should note the incident 'for information purposes only'. It's not appropriate or reasonable to record it as an actual 'non-fault claim' at this stage in my opinion either, as esure has not demonstrated to me it investigated liability properly or at all and more so, no actual claim has been made yet.*

*That then should decrease the premium Miss S paid for her renewal. I consider esure should provide the relevant information to Miss S to show how much refund the correction of her insurance record plus the correct recording of this incident generates and refund her the difference it charged her, with interest. Miss S showed us her renewal invitation for 21 August 2023 which stated her premium rose from £276.21 to £606.20, obviously the majority of the increase being as result of the NCD being disallowed and two erroneous 'fault' claims being put on her insurance record. The incident appears to have happened in July 2023.*

*All this caused Miss S significant trouble and upset. First esure didn't respond to her at all. Secondly, she had to pay extra premium. Thirdly she discovered from her subject access request esure had done nothing anyway except appeared to have put two 'fault' claims on her insurance record. And lastly this has gone on for a considerable amount of time since the incident in July 2023.*

*Given our stance on compensation, (available on our website) when the distress caused by something the business has done wrong has carried on for a long time as it has for Miss S, for the better part of a year too, then that length of time is considered. So, on that basis I consider esure should pay Miss S £500 compensation. It's clear to me from what Miss S has said to us that this matter was extremely distressing for her too. All of which wouldn't have occurred, had esure responded to her and indeed then to us, and had it recorded the incidence for 'information purposes' only once the six-month time period had passed. Plus, had it also not put two 'fault' claims on her record and disallowed her NCD the premium increase on an 'notification only' basis might not have caused such a renewal premium increase, which was also distressing for Miss S.*

*Miss S should be aware that the law states, anyone who has suffered a personal injury from someone else's negligence has three years from the date of that accident to issue legal proceedings for that injury. When that person is a child, as I believe the cyclist was, they can have three years from their 18<sup>th</sup> birthday to issue legal proceedings too. Esure has told me that it will always keep a claim 'open' for at least six months in relation to an incident like this too to see if any claim is made. I consider that's appropriate too. So, Miss S should note the matter will have to be re-opened in the now very unlikely event any claim from the cyclist is made.'*

Miss S responded saying she accepted my provisional decision.

Esure said it asked Miss S to provide the dashcam footage from the witness in its letter of 15 July 2023. It also confirmed there is only one possible claim against Miss S' policy. It agreed it didn't investigate the claim in the matter it should have done. It confirmed the claim is closed as 'non-fault' and the NCD has been allowed. That means the premium for the policy is now £533.40. It confirmed the claim will now be closed as 'notification only' and any over payment to Miss S will be refunded. It felt the compensation amount of £500 was excessive and proposed £250 instead.

### **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 again, I'm not minded to depart from the reasoning and outcome as detailed in my provisional decision. I haven't received any explanation from esure why its file appeared to have showed two fault claims for Miss S arising out of this incident. I understand Miss S told esure how to obtain the dashcam footage from the witness but esure never contacted that witness. And the premium refund now payable to Miss S must have interest added to it also.

Turning to the compensation amount, given esure didn't respond to Miss S' concerns and didn't respond to her complaint coherently, this meant the matter affected and distressed Miss S for a considerable amount of time. Our stance on this is fully available on our website too. Therefore, I remain of the view that £500 compensation is appropriate and reasonable here.

### **My final decision**

So, for these reasons, it's my final decision that I uphold this complaint.

I now require esure Insurance Limited to do the following:

- Remove both of these 'fault' claims on Miss S' insurance from this incident, and instead substitute a record showing this incident is recorded for 'information purposes only'.
- Reinstate her NCD.
- Then recalculate Miss S' premium for her renewal from 21 August 2023. Assuming that produces a refund, pay that refund to Miss S, adding 8% simple interest per year from the date she paid it to the date it refunds her. If income tax is to be deducted from the interest, appropriate documentation should be provided to Miss S for HMRC purposes.

- Pay Miss S the sum of £500 compensation for the distress it caused her due to the delay and significant lack of communication.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 6 August 2024.

Rona Doyle  
**Ombudsman**