

The complaint

Mr and Mrs J have complained that esure Insurance Limited recorded an incident as a fault claim. Mrs J made a claim as a named driver under Mr J's car insurance policy.

What happened

In January 2024 Mrs J reported an incident involving another car to esure. She said the third party accepted fault at the scene and confirmed they had a dashcam on their car.

esure said it would record the claim as a fault claim, which Mrs J didn't agree with. But esure maintained its decision.

Mr and Mrs J were unhappy about esure's decision. They asked esure to provide an estimate of the repair costs, but it didn't do this. They asked esure if it had contacted the third party but it didn't reply. They were unhappy with the delay. They said esure had incorrectly recorded Mrs J's version of events. They said the damage to their car was repairable. So they were unhappy esure decided to settle their claim as a total loss. Mr and Mrs J said a salvage agent contacted them to collect their car even though they had made it clear to esure they were unhappy with their decision not to repair it and were awaiting a reply to their complaint.

esure didn't uphold their complaint. So Mr and Mrs J asked us to look at their complaint.

Our Investigator thought esure had acted reasonably and so didn't recommend the complaint should be upheld.

Mr and Mrs J didn't agree and wanted an ombudsman to decide.

Since the case has been passed to me, I asked esure for further information. I asked for the call recordings(s) when the incident was reported. I asked for evidence esure had requested the dashcam footage from the third party insurer (TPI). And, given Mrs J's version of events, I wanted to understand how esure had reached its decision to hold Mrs J at fault for the incident. I asked for evidence of its communication with the TPI. And I asked for a copy of its engineer's report showing the estimate for repairs with photos of Mr J's car - to show how it reached a decision to settle the claim as a total loss.

I asked esure why it hadn't provided Mr J with a response to his request for information on the estimated repairs – and why the salvage agent had contacted Mr J to collect his car while Mr and Mrs J disputed the way the claim was being handled.

In response, esure says it didn't deal with the third party insurer, but the third party directly. It hasn't provided us with any evidence of its communication with the third party. esure has provided a copy of two engineer 'total loss' reports for the third party vehicle, not for Mr J's car. One of the reports show the area of damage to the TPV is to the front nearside of their car.

esure didn't provide further comments on its liability decision or evidence it requested a copy of the dashcam footage. It said the salvage agent was automatically instructed once esure decided to settle the claim as a total loss. esure said it contacted the salvage agent after this to let them know Mr J didn't want his car collected.

I issued a provisional decision on 13 November 2024. I intended to uphold the complaint. I didn't find that esure had properly investigated the claim before deciding on liability. I intended to ask esure to do the following:

- Provide Mr and Mrs J with a letter confirming it recorded the claim as a fault claim in error and update the impact on the No Claims Discount on the basis that the claim was a non fault claim.
- Pay Mr and Mrs J compensation of £650 for the distress and inconvenience caused.
- If it hasn't already done so, update any internal and external databases to show the claim as a non fault claim and the correct reflection on the NCD.

Both parties replied and accepted my provisional decision. So my final decision is along the same lines.

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.

My provisional findings were as set out below:

“For ease, I've set out the complaints under headings below. While I haven't addressed every point made, this doesn't mean I haven't considered everything. But I have focused on the salient points.

esure's decision not to repair the car was unfair and it provided a poor service in it handling and settlement of the claim. esure failed to provide an estimate of repairs.

Under the Insurer's Code of Business Sourcebook ICOBS 8.1.1 it says;

“An insurer must:

(1) handle claims promptly and fairly;

2) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;

*(3) not unreasonably reject a claim (including by terminating or avoiding a policy);
and*

(4) settle claims promptly once settlement terms are agreed.”

I've taken this into account along with what is fair and reasonable.

esure told us it doesn't have any images of Mr and Mrs J's car. It says due to the low value and the description of the damage, it would have decided to settle the claim as a total loss.

In an email dated 25 January 2024 from esure to Mrs J, it asked for clarity of the circumstances of the incident. esure said its records showed Mrs J had reversed out of a parking bay. From listening to the calls, looking at the diagram and emails sent by Mr and Mrs J, I cannot see that they ever mentioned that Mrs J was reversing. So I don't think esure correctly recorded the information Mrs J gave about the incident.

In the same email, esure said it would request the dashcam footage from the third party. But I've seen no evidence esure did this.

On 8 February 2024 Mr J emailed esure to repeat the circumstances of the incident as he disagreed with esure's recording of it. He didn't receive a reply, and so he emailed esure again on 14 February 2024. He complained about not receiving a response from it.

On 20 February 2024 Mr J complained again to esure as he still hadn't heard from it.

On 29 February 2024 Mr J complained again by email.

On 5 March 2024 esure emailed Mr J to say they would be in touch with him the next day to discuss his complaint. But Mr J says esure didn't contact him.

On 11 March 2024 Mr J emailed esure to say he hadn't heard from it. And he was unhappy that a salvage agent had contacted him to arrange collection of his car. Mr J said he had made it clear that there was a dispute about the way his claim was being handled.

Mr J wrote;

"Unconnected to the above, if you are determined to right off my car you can make an offer and I will consider it but will not allow you to take it away until a mutually agreed transaction is concluded, the car is fully roadworthy and would pass an MOT today if one were due."

This suggests that at this stage esure hadn't progressed the claim to provide a total loss settlement. It's not clear why. From its claim notes, the first entry relating to a decision as to how to settle the claim was made on 11 March 2024. So I think esure caused an unreasonable delay here in progressing the claim.

In Mr J's complaint to esure dated 13 March 2024 he referred to a phone call he had with an agent. He said he asked for an estimate of the repairs to understand why esure had decided it wasn't economical to repair his car. But the agent couldn't tell him what the estimated repair costs were. Mr J believed his car was in 'perfect mechanical condition' and believed it would pass an MOT as it was roadworthy.

He asked esure if it had received a response from the third party, but esure didn't answer this when it replied to the complaint. Mr J said it had been seven weeks since the incident happened and he hadn't received any updates to show esure had progressed the claim.

From the information available to me, I think esure failed to promptly deal and settle the claim. esure hasn't provided any reasonable evidence to show its decision not to repair Mr and Mrs J's car and settle the claim as a total loss was reasonable.

In its response to the complaint dated 18 March 2024, esure wrote:

Regarding your vehicle being deemed a total loss, this is assessed by; The age of the vehicle, the damage sustained, and the estimated market value of the vehicle in comparison to the estimated repair costs. If you wish to have our Engineers review this decision, please email myself with images of your vehicle damage"

While I think the offer to review the decision on receipt of images of the car is reasonable, I think esure caused an avoidable delay up to this point.

So I find esure's handling of the claim to be poor. I've set out what I think is a fair compensation award later in my decision.

esure's decision to record the claim as a fault claim was unreasonable

We don't decide liability. This is a role for the courts. But we can look at whether an insurer properly investigated before deciding how to settle a claim.

esure, like most – if not all – insurers, has a term which says it can take over the control and defence of a claim.

We don't disagree with this term in principle, provided an insurer has shown it has treated a customer fairly when applying it.

Mrs J reported the incident on the day it happened. I've listened to the call recordings from that day.

In summary, Mrs J explained that she had pulled out of a parking space and was travelling on her side of the road. A car travelling on the opposite side of the road turned their right (so Mrs J's left in front of her) and collided into their car. Mrs J said the other driver had a dashcam, which esure said it would ask for a copy of.

In the first call to esure, Mrs J said the other car had turned left. But she called back later that day to correct her statement. She said the other car turned (their) right in front of her. She explained that she was shook up by the incident which was why she made an error here.

The agent updated the information Mrs J provided.

Mrs J provided a diagram to esure to support her account. This shows her car travelling on the left hand side of the road – and the third party car travelling on the opposite side of the road, where the impact happened as the third party car turned right across Mrs J's path.

esure decided to hold Mrs J at fault for the incident.

esure told us it requested the dashcam footage on 21 January 2024 – two days after the incident.

In response to the complaint dated 18 March 2024, esure wrote:

“On our call we discussed the following,

- Your wife, Mrs (J) got into the parked vehicle, then full checks took place to make sure the road was clear to join*
- The third party, who was already on main part of the road in opposite direction, has cut across your wife by turning right*
- We have no CCTV, dashcam or any witness details*
- The journey has started by joining the main road from a parked position, the third party who was already established on the main road in the opposite direction, had the right of way*

We have no evidence otherwise to contest the liability with these circumstances, meaning we will have to concede liability.”

From its claim notes, there is an entry from the complaint handler dated 13 March 2024. The note reads;

“Outbound call to ph complaint unresolved- ph advised that his wife was parked then got in car pulled out on to main road no cars in either direction however tp (third party) appeared in opposite direction and then cut ph wife off as tp turned right”

This seems consistent with impact in line with the diagram and the circumstances described in the previous call(s) from Mrs J to esure.

It's not clear to me from the information provided by esure as to how it reached its decision that the third party had right of way, given their position and that they were carrying out a manoeuvre to turn right.

From the exchanges by call and email between Mr J and esure, it seems esure has focused on Mrs J carrying out a manoeuvre to pull out from a parking space – and therefore being at fault for the incident.

But from the call recordings provided, the diagram and the email exchanges, Mrs J had pulled away from a parked position, but was established on the road at the time of the third party's manoeuvre.

esure hasn't provided evidence to show it requested a copy of the dashcam footage from the third party.

So I find esure hasn't provided sufficient evidence to show it properly investigated liability before reaching its decision.

As I explained, it isn't for us to decide liability. But as esure hasn't shown it properly investigated liability or reached its decision in a reasonable way, I can't say it has fairly recorded the claim as a fault claim. So I intend to ask esure to provide a letter to Mr and Mrs J confirming it has recorded the claim as a fault claim in error. Mr and Mrs J can provide a copy of this letter to their current and future insurer, so that the correct recording of the claim is taken into account when setting the premium and any No Claims Discount (NCD) that may have been affected.

It's clear that the recording of the incident as a fault claim has caused Mr and Mrs J considerable distress and inconvenience. I can understand their frustration at not receiving a response to reasonable enquiries about the claim handling, and the estimated costs of repairs. I think esure caused avoidable delay in the handling of their claim – and the handling of the claim was poor.

So I intend to ask esure to pay compensation of £650 to Mr and Mrs J for the distress and inconvenience caused. This is a holistic sum to take into account any impact on premium as a result of esure's failings.

I understand Mr and Mrs J are unhappy about having to pay an excess. Where a claim is met, the excess is due irrespective of whether the claim is a fault or non-fault claim. Sometimes an insurer can decide not to ask for the excess if it is a clear non fault claim from the outset."

As both parties accepted my provisional decision, my final decision recommends the same remedy as set out below.

My final decision

My final decision is that I uphold this complaint. I require esure Insurance Limited to do the following:

- Provide Mr and Mrs J with a letter confirming it recorded the claim as a fault claim in error and update the impact on the No Claims Discount on the basis that the claim was a non fault claim.
- Pay Mr and Mrs J compensation of £650 for the distress and inconvenience caused.
- If it hasn't already done so, update any internal and external databases to show the claim as a non fault claim and the correct reflection on the NCD.

esure Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs J accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If esure Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr and Mrs J how much it's taken off. It should also give Mr and Mrs J a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 17 December 2024.

Geraldine Newbold

Ombudsman