

complaint

Ms K and Mr M complain that esure Insurance Limited (esure) have blamed Mr M for an accident he says wasn't his fault and settled a claim under Ms K's car insurance policy.

background

Mr M is a named driver under Ms K's policy. A motorcyclist made a claim against him for damage to his motorcycle on the basis Mr M changed lanes without warning and caused him to take evasive action.

Mr M denies this. He says he was in the left hand lane of three and the traffic was busy in both directions. He says the lights were green and he followed other vehicles across the yellow box junction and two lanes became one resulting in vehicles beginning to queue. Mr M says as he neared a pedestrian crossing the junction, he became aware of a motorcyclist who collided into the metal fence. He says he was stationary when the impact occurred and the loud bang made him check his rear view mirror. He says he got out to see if the rider was injured. The rider asked for his details and they exchanged these. Mr M explained the incident had nothing to do with him and that the motorcyclist was responsible because he collided into the railings. He says he only gave the motorcyclist his details because he didn't want him to think he (Mr M) was in the wrong.

esure appointed a third party claims investigator to look into things and then made a decision and accepted liability.

Ms K and Mr M disagreed with their outcome and challenged it on the grounds that esure had reached their decision without investigating the case thoroughly. Because of this, they complained to us.

Our investigator didn't think Ms K and Mr M's complaint should be upheld because she felt esure acted reasonably when dealing with the claim.

Ms K and Mr M disagreed so the case has come to me for a final decision.

my findings

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've reached the same overall conclusions as the investigator, for broadly the same reasons.

When reviewing this complaint, I have had to consider whether esure have handled the claim in line with the policy terms and have acted reasonably.

The policy terms give esure the right to deal with claims against the policy as they feel is appropriate and provided they act reasonably when doing this it's not appropriate for me to interfere.

esure appointed a third party claims investigator to help them look into Ms K and Mr M's claim.

And they've have taken into account what he said and what they were told by Mr M. They also considered the allegations from the third party solicitors that the motorcyclist had fallen from his bike and injured himself whilst taking action to avoid a collision with Mr M who changed lanes without warning. esure felt Mr M was liable for the incident and settled the claim and I think this was reasonable in the circumstances.

I appreciate Mr M is adamant he wasn't at fault. But esure had to think about what would of happened if the case came to court. This is because the solicitors representing the motorcyclist may well have taken legal action if esure had refused his claim. And, bearing in mind the court's view of these types of situation and the fact it's very unusual for a motorcyclist to swerve for no apparent reason, I can see why esure felt a court may well have found in the motorcyclist's favour. And – even if it didn't – esure probably felt the best it could have hoped for was a 50/50 settlement. And this would have gone down as a fault claim against Mr M anyway. This would have meant esure paying out 50% of the motorcyclist's loss and at least 50% of the costs, so it wouldn't have made much sense for them to go into court with this being the best prospect. Therefore, I'm satisfied esure's decision was reasonable in the circumstances.

I appreciate that Ms K and Mr M will be disappointed with my decision but I can see no reasonable basis for concluding that esure have acted incorrectly in the way they handled the claim so I won't be asking them to do anymore.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K and Mr M to accept or reject my decision before 4 September 2017.

Maria Drury
ombudsman