

## **The complaint**

Mr J has complained about his car insurer esure Insurance Limited (Esure) because it has refused to cover his claim for accident damage and losses due to his injury because, it says, he was drunk driving.

## **What happened**

Mr J had an accident in September 2021, no other vehicles or people were involved. He made a claim to Esure, advising he recalled nothing of driving his car that night or the accident itself. Esure, having obtained a copy of the police report, noted Mr J had given a breath test, showing positive for alcohol. Esure declined the claim for his losses based on the policy wording, which limits its liability, in the circumstances of drunk driving, to being liable as the Road Traffic Act insurer only.

Mr J said Esure was being unfair and that it was lying about him being tested at the scene. Mr J said he was unconscious following the accident, later taken to hospital and so was not breathalysed by the police. He said his car was never checked to see what had been wrong with it which might have caused the crash and there was no evidence of wrong-doing on his part. So he felt Esure's decline was unfair and unreasonable. He also felt it had taken too long to determine this. When it wouldn't change its view, Mr J complained to the Financial Ombudsman Service.

Our Investigator, noting the content of the police report and the policy terms, felt Esure's decline of the claim was fair and reasonable. She also felt it had acted in a reasonably timely manner. So she didn't uphold the complaint.

Mr J said he was going to liaise with the police – that they have no evidence that a breath test was taken. Regarding Esure, he asked for an Ombudsman's consideration as he believes Esure should not have relied upon the report without evidence in support of it. He said he wants to know where his car is.

## **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.

Mr J's policy with Esure does say that if an incident occurs where he is found to be beyond the legal limit for driving, his injuries and damage to his car will not be covered. This is common to most insurance policies.

I understand Mr J thinks Esure should look behind the content of the police report, to see if the police can support their findings. But that isn't something I'd necessarily expect an insurer to do. If there was contradictory detail in the report, then I'd probably expect that to be considered. Here I note that there wasn't anything contradictory in the police report – it recorded, for example, that Mr J had a head injury, but not that he was unconscious or even taken to hospital. And there is a box on the form which can be selected to say a test wasn't given due to medical reasons. But Esure did take into account that Mr J contested being

breathalysed. I see it tried to make further enquiries with the police but the police weren't minded to provide comment. Esure then considered the content of the police report, alongside other detail it had – such as Mr J agreeing he had had two pints of lager earlier in the evening and that he had no memory of the evening since before getting in his car to drive home, during which journey the accident occurred, and until he awoke in hospital. I think, on the balance of the evidence available, Esure's decline of the claim was fair and reasonable.

I note its decline followed receipt of confirmation from the police that they weren't prepared to comment. So that did mean the claim was not declined straight away and Esure couldn't control how long the police took to respond. I think the decision to decline was made in a reasonably timely manner.

I appreciate that this is a very difficult situation for Mr J to be in. I accept that he clearly believes that he was unconscious at the scene and did not provide a breath test to the police. So I can see why its report – that a positive breath test was taken, is frustrating for him, along with Esure's reliance on that. If Mr J should get further evidence from the police which supports his view that the report from the date of the incident is flawed, he can present that to Esure and I'd expect it to reconsider his claim. However, I think its action, at this time, to decline the claim based on Mr J having provided a positive breath test, is fair and reasonable, as well as in line with the policy terms. If Mr J wants to know more about what has happened to his car, he should speak to Esure.

### **My final decision**

I don't uphold this complaint. I don't make any award against esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 August 2023.

Fiona Robinson  
**Ombudsman**