

## The complaint

Mr D had a motor insurance policy with esure Insurance Limited. He says it provided poor service when he contacted it after his car broke down.

## What happened

Mr D called esure on 3 October 2022 to get his car recovered, relying on the breakdown policy he thought he'd bought with the motor policy. He said it needed recovery due to a breakdown. esure arranged the recovery, but later that day it said Mr D didn't have breakdown cover, and that it had made an error in assisting him. Mr D said he asked about car hire during this call and was told he had cover for it. He didn't accept that he had no breakdown cover, so he complained formally to esure on 6 October 2022. He said esure hadn't sent him the policy documents and he was unable to access its online portal. He asked for urgent advice about hire and about what would now happen to the car.

esure didn't reply to Mr D until 22 December 2022, when it issued its final response letter. It said he'd selected breakdown cover on the comparison website he'd used initially, but that he didn't check that his request had carried over to esure's website. It agreed to cover the cost of the breakdown anyway, but it said electrical and mechanical faults weren't covered by the policy, so Mr D would have to pay for any other costs relating to the car. Meanwhile, Mr D had continued to pay his premiums and road tax and had also paid for car hire.

One of our investigators reviewed Mr D's complaint. She asked esure for information, including call recordings, but it didn't reply. So she had to base her opinion on the limited information available. She noted that esure had paid the recovery costs, and that Mr D wasn't entitled to car hire under the policy. She said he was obliged to pay for his car to be taxed and insured unless it was off the road or disposed of and the policy was cancelled. But she thought esure had provided poor service by not telling him promptly that he didn't have a valid claim. Due to that delay, she thought it should pay Mr D £300 compensation.

Mr D said esure should have made an instant decision and that had he been told the claim wasn't valid at the start he'd have cancelled the policy and scrapped the car then. So he would have avoided running up costs. He didn't think £300 compensation was enough. As the investigator's view didn't change, the complaint was passed to me for review.

I issued a provisional decision along the following lines:

- I said the poor service Mr D told us about that happened *after* esure had issued its final response letter would have to be raised by him with esure as a separate complaint. I said if he wasn't happy with its response, he could then complain to us.
- My view was that Mr D should have checked that all the correct details carried over to esure's website. But I said esure had a chance to put things right three days later, when he made a formal complaint. I thought its failure to respond was due to human error, not a deliberate ploy by esure to avoid losing his custom, as he'd suggested.
- I said that without the call recordings, I had no reason to doubt that Mr D told esure at

the start the car had broken down (so he should have been told then he didn't have a valid claim) or that he was told he had cover for hire. I noted that he'd asked for urgent advice on 6 October 2022 about hire and about the car, but he had to wait two and a half months for a reply. In the meantime he'd run up costs in the mistaken belief he had a valid claim, having emailed esure in November 2022 to alert it to the hire costs he'd run up, but not having got a reply.

- I said I thought it likely that Mr D would have cancelled the policy and scrapped the car at the start had he been given the right advice. So I thought esure should pay him compensation for the delay in telling him he didn't have a valid claim. I noted that Mr D was told initially he had hire cover – but not that was only in limited circumstances, that didn't apply at the time. As esure didn't clarify the facts I said I thought it would be fair for it to refund the cost of hire until 22 December 2022.
- Once Mr D had esure's final response letter, I said I thought it should have been clear to him that he didn't have a valid claim. I said he could have contacted esure if he wasn't sure. He could then have cancelled the policy and scrapped the car in December 2022 and put its scrap value towards a replacement vehicle. His premiums would have stopped, and he could have applied for a road tax refund, whilst not hiring any further cars or running up any further costs.
- Mr D told us he didn't contact esure as he didn't have possession of the car and he thought the recovery agent still had to be paid. He also said he thought he might have lost all his rights (including the right to complain to us) had he cancelled the policy. I noted that he didn't query any of these assumptions at the time. He told us he'd continue to hire cars until he got a payment from esure for his car. I pointed out that he wasn't going to get a payment from it, as he never had a valid claim on the policy. I also said that although I thought esure should pay him compensation, Mr D had a duty to minimise his outgoings / losses, including the cost of hire.
- I said I didn't think it was reasonable for Mr D not to contact esure after he got its final response letter for any clarification he thought was necessary on the points above. Instead, he allowed the situation to continue and carried on hiring cars - without checking whether that was acceptable when there wasn't a valid claim. So I didn't think esure should be held responsible for the cost of hire after 22 December 2022.
- My view was that a refund of Mr D's premiums wasn't appropriate, as the car had continued to be insured for perils such as fire, vandalism, or theft of parts - all of which I thought could have reduced its scrap value. But I thought Mr D had faced a lot of upset and inconvenience due to esure's poor service. I thought its failure to provide documents by post as requested – plus its unhelpful response to his queries about online access to them - contributed to his confusion, as he couldn't look at the policy wording. I said I thought the poor service had impacted on Mr D (a disabled person, to whom a car was essential) more than it might otherwise have done. So I said I was minded to conclude that esure should pay him £600 compensation, plus the hire costs he incurred up to 22 December 2022.

I asked the parties to comment on my provisional view, but neither party did so.

### **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.

As neither party made any comment on my provisional findings, there's no reason to depart

from them. For the reasons set out above, I'm upholding this complaint and raising the compensation for distress and inconvenience to £600. I think that esure should also refund Mr D's car hire charges up to 22 December 2022, plus interest.

### **My final decision**

My final decision is that I uphold this complaint. I require esure Insurance Limited to pay £600 compensation to Mr D for distress and inconvenience. Subject to receipts, it should also refund his car hire up to 22 December 2022. It should add interest to each payment, at the simple yearly rate of 8%, from the date of the payment to the date of settlement.

If esure thinks it's required by HMRC to deduct tax from the interest it should tell Mr D how much it has deducted, so he can claim it back if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 September 2023.

Susan Ewins  
**Ombudsman**