

## **The complaint**

Miss M complains about esure Insurance Limited (“EIL”) and their refusal to provide her with a refund of her policy premium, after her car was deemed a total loss following a road traffic accident.

Miss M has been represented by a representative, Mr D, during the complaint process. For ease of reference, I will refer to any comments made, or actions taken, by either Miss M or Mr D as “Miss M” throughout the decision.

## **What happened**

In June 2022, Miss M took out a motor insurance policy, underwritten by EIL. Unfortunately, in late July, Miss M was involved in a road traffic accident. At the time of the accident, Miss M felt the third-party had admitted liability and so, she contacted EIL and asked them to process the claim on a non-fault basis, recovering their costs from the third-party insurer (“TPI”).

Miss M’s car was inspected and, due to the extent of the damage, was deemed a total loss. So, EIL paid Miss M the value of her car. And they paused Miss M’s insurance policy, to allow her time to purchase a new car and add it onto the same policy she already held.

But Miss M bought another car that came with insurance. So, she didn’t add her new car to the existing policy she held with EIL. Because of this, her policy was cancelled. But Miss M was unhappy that EIL didn’t provide her with a pro-rata refund for the period of time left on the policy that she hadn’t been able to use. So, she raised a complaint.

Miss M didn’t think it was fair for EIL to retain her full policy premium, when she had only benefited from around 65 days of cover. So, she wanted EIL to refund her the remaining premium amount, which she calculated to be around £405.

EIL responded to the complaint and didn’t uphold it. They explained that, where a policy has been cancelled mid-term, but a claim has been made, the premium must be paid in full and no refund would be due. But they did explain this would change if they were able to recover all of their costs paid for the claim. At the time of their response, the TPI hadn’t accepted liability or paid EIL’s costs. So, EIL didn’t think they had done anything wrong. Miss M remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They explained that, as EIL’s costs remained outstanding and unrecovered, Miss M’s claim wasn’t yet classified as a non-fault. And where a claim has been made on a policy, that hasn’t been deemed non-fault, then we wouldn’t expect an insurer to refund any premiums. So, while our investigator recognised Miss M’s frustration, they didn’t think EIL had done anything wrong or needed to do anything more.

Miss M didn’t agree. She didn’t think it was fair that she would’ve been able to continue making use of the policy, had she added her replacement car to it. And she reiterated her belief that it was unfair, based on no legal reason, as to why she should be forced to wait

until EIL recover their costs for her refund to be processed.

Our investigator considered these comments, but their position remained the same. And Miss M responded again with further comments expressing her unhappiness. These included, and are not limited to, her belief that it was EIL's own internal decision to pay her costs and then seek reimbursement from the TPI. So, she didn't think she should be disadvantaged by the delay in recovering these. And she didn't think the terms and conditions of the policy were fair, believing they favoured EIL. As Miss M didn't agree, the complaint has been passed to me for a decision.

### **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, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Miss M. I don't dispute Miss M's testimony regarding the circumstances of the accident, and that at the time the third-party admitted liability. So, I can understand why Miss M feels the claim she made is non-fault. And because of this, I can understand why Miss M feels it's unfair for her to have paid a premium for a full year's cover, been prevented from utilising this due to the actions of a third-party and then not receive a refund from EIL.

But for me to say EIL should do something differently, such as refund Miss M's remaining pro-rata premium now, I first need to be satisfied EIL have done something wrong. So, I need to be satisfied they failed to act in line with the terms and conditions of the policy Miss M held when refusing to refund the remaining premium amount. Or, if I think they did act within these, that they acted unfairly in some other way. And in this situation, I don't think that's the case.

I've seen the terms and conditions of the policy Miss M held. And these explain under EIL's rights to cancel the policy that *"If we cancel your policy and you have made a claim or been involved in an incident you will still have to pay the full premium...If you have not made a claim, or been involved in an incident you will have to pay the premium for the period of cover you have used"*.

In this situation, I think Miss M has made a claim on her insurance policy. While I recognise Miss M feels the costs EIL occurred should be recovered from the TPI, at the time Miss M raised her complaint, this recovery hadn't been successful. So, at the time EIL refused to refund Miss M's premiums, EIL had paid Miss M the value of her car as well as the costs of the hire car she received while the claim was processed.

Because of this, in line with the terms and conditions I've quoted above, I think it's made reasonably clear that Miss M would be required to pay the full premium cost for the entire year of cover. And as she paid this up front, I wouldn't expect a refund to be provided by EIL. So, I don't think I can say they've acted outside of the terms and conditions or that they've acted unfairly in some other way.

I've seen in EIL's final response to Miss M's complaint, they confirmed they would consider a pro-rata refund if their costs can be recovered successfully. And this is the approach I'd expect them to take, which falls in line with the terms and conditions, as if the costs are

recovered, they wouldn't have incurred a financial loss. So, it is at this point I think Miss M's would be officially classed as non-fault and so, that no claim has been made against the policy EIL provided. I wouldn't expect a refund to be provided until this point.

I recognise Miss M won't agree with this. And I want to reassure Miss M I've considered all the points she's made, including her belief that it was EIL's own internal decision to settle her claim first, and then recover it from the TPI. But this approach falls in line with standard industry guidelines and is what I'd have expected EIL to do, as it ensured Miss M received a hire car and the valuation for her car within a reasonable amount of time.

EIL are also unable to control the actions of the TPI, and the TPI's failure to reimburse their costs. So, while I do recognise Miss M's unhappiness at being without a refund of her premiums, I don't think this is because of anything EIL have done wrong. And so, I don't think EIL need to do anything more on this occasion.

I do think it's also worth pointing out that Miss M did have the choice of adding a new car to her existing policy and if she had, she would've been able to utilise the cover she had already paid for. It was Miss M's own decision to purchase a new car that included separate insurance and so, her choice not to add a new car to the existing policy. I don't think it would be fair to say EIL have done anything wrong here because of this, and I'd expect them to continue to cancel the policy in line with the terms and conditions, which I think they have.

### **My final decision**

For the reasons outlined above, I don't uphold Miss M's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 31 July 2023.

Josh Haskey  
**Ombudsman**