

The complaint

Miss O and Mr C complain about esure Insurance Limited (“esure”) and their decision to settle a motor insurance claim on a fault basis.

What happened

Miss O held a motor insurance policy, underwritten by esure. Mr C was a named driver. Unfortunately, in January 2023, Mr C was involved in an accident when a third-party vehicle collided with the open door of their car. A claim was made to esure by Miss O and by the third party.

Mr C’s version of events described the door as already being open when the third-party driver hit it as they passed by. esure told Miss O they thought they’d have to settle the claim on a fault basis. Miss O strongly disagreed. She provided evidence to support her and Mr C’s version of events, which included photos of the damage and evidence of the third party admitting liability and admitting to certain hearing and visual impairments.

esure took the decision to settle the claim instead of defending it. They said they did so because the evidence of the damage to the third-party vehicle suggested Mr C had opened the door as the other vehicle was passing by, rather than the door already being open.

Miss O didn’t agree and raised a complaint. She reiterated Mr C’s version of events and said esure weren’t taking her evidence into account, particularly the evidence of the other driver admitting liability. She wanted esure to defend the claim.

esure rejected her complaint. They said they’d looked at all the evidence provided by her, Mr C and the other driver, and that this had been assessed by several experts within their liability team. They said if the claim went to court, they couldn’t successfully defend it because of the nature of the damage to the other vehicle. Unhappy with this, Miss O and Mr C referred their complaint to the Financial Ombudsman.

Our investigator looked into the matter and didn’t uphold it. She said esure were allowed to settle the claim as they saw fit and didn’t think they’d acted unfairly based on the available evidence. So, she didn’t think esure should do anything further.

Miss O didn’t agree. She said she couldn’t understand how esure weren’t willing to defend the claim with the information she’d given them, especially the evidence about the third-party driver. She said he was a danger to other road users, and esure have a duty to represent her as their customer.

Because Miss O disagreed, the complaint has been passed to me to decide.

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 our 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 O and Mr C. I understand they feel strongly about the accident circumstances and who they feel was responsible. So, I can understand why they feel unfairly treated when the claim was settled on a fault basis, especially when they realised the impact that this would have on their insurance premiums. I'm also sorry to hear about the anxiety Mr C now has following the accident. I know this complaint is important to them both.

It's not my role or the role of this service to decide who was responsible for the accident. I've needed to consider the actions of esure and to decide whether they were fair and reasonable and in line with the policy's terms and conditions.

I've seen the terms and conditions of Miss O's policy. In the 'claims procedure' section, the terms say that esure have, "full discretion in the settlement of your claim or any legal proceedings which may arise and we may take over, defend or settle the claim in your name for our own benefit." Similar provisions are found in most motor insurance policies, so I don't find this unusual.

Based on this, I think esure were entitled to settle the claim as they saw fit and that they could take this decision without the agreement of Miss O. So, I don't think I can say esure acted outside of these terms when deciding to settle the claim as they did.

Even so, I would expect esure to have given Miss O and Mr C the opportunity to support their position. And I would expect any evidence provided to have been considered by esure when they decided to settle the claim on a fault basis. And I think esure did so here.

I can see from the claim notes that esure told Miss O early on that they thought they would have to settle the claim on a fault basis. I appreciate why Miss O felt that esure had made a decision before seeing all the evidence. But, when Miss O challenged esure's position, they recorded her concerns. They then asked her to provide any further evidence she wished for them to consider. Miss O and Mr C both spoke to esure and their testimonies were noted. Further evidence was provided to esure – specifically a recording of a conversation between Mr C and the third-party driver. I can also see that esure received important testimony from the third party.

esure considered the evidence they were given, and, from this, took the decision to settle the claim on a fault basis – as they saw the photos of the damage to the third-party vehicle as the most persuasive piece of evidence – and esure thought this didn't support Mr C's version of events.

As I've already explained, I won't be speculating on the liability of the claim, and how I think it should've been settled. But, having considered the evidence available to esure at the time, I think their decision for accepting fault was reasonable.

First, there was no CCTV or independent witness testimony to support Miss O and Mr C's version of events. While I understand there was a witness mentioned, esure have said they didn't pursue this as the witness only said they believed the third party may have been intoxicated, which esure say they wouldn't be able to rely on in court.

Second, in the opinion of esure's liability team, the evidence of the damage to the third-party vehicle indicated that the car door was opened as the third-party vehicle was passing by. I

appreciate Miss O has a different interpretation of the evidence, but I'm satisfied the evidence and Miss O's comments were considered by esure's liability team, and that their conclusions were reasonable.

Third, I appreciate Miss O and Mr C provided a recording of the third party saying he would admit liability and mentioning certain impairments. I've listened to this carefully. I know Miss O and Mr C feel the recording should've resolved things in their favour. esure have said that they can't use this recording to determine liability. As an insurer, esure will have experience of how evidence is likely to be seen by a court, and I'm satisfied they considered the recording but didn't think it was enough to defend the claim. I don't think this was an unreasonable position for esure to take.

I understand this isn't the outcome Miss O and Mr C were hoping for. And I want to reassure Miss O that I've considered the points she's made about esure protecting other road users and their responsibility to represent her as a customer. But I think esure acted fairly in reaching the claim decision that they did, in line with the terms and conditions of Miss O's policy. So, I won't be asking esure to do anything further.

My final decision

For the reasons outlined above, I don't uphold Miss O and Mr C's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss O to accept or reject my decision before 15 January 2024.

Chris Woolaway
Ombudsman