

The complaint

Mr L has complained that esure Insurance Limited unreasonably cancelled his motor policy as if it never existed because it said he misrepresented who was the owner and registered keeper of his car.

What happened

Mr L runs his own business and insured a vehicle for that business. He then bought a car which he insured with esure on 28 February 2023.

Esure said on his application for this car, Mr L said he was the registered keeper and owner of the car. When Mr L was involved in an accident with this car, esure on validating his claim saw that his business was in fact the registered keeper and owner of this car. It said if it had known his business not Mr L himself was the registered keeper and owner of his car, it wouldn't have offered him the policy.

Esure felt on the evidence Mr L had been careless in giving it the correct information on the application form. So, it didn't think he had non-disclosed deliberately or fraudulently. On that basis it cancelled his policy as if it had never existed and refunded Mr L the premium he had paid. That also meant esure wouldn't deal with any claim Mr L had as regards the damage to his car or provide him with any indemnity.

Mr L felt it was unfair that he would have to declare on any other insurance claim that this policy had been cancelled. He was willing to repay the premium, not make any claim for the damage to his car from the accident, if esure could simply remove the cancellation from his insurance record. He had also ensured the DVSA now had this car registered in his name and had backdated that registered keeper and owner issue, back to the date he had bought the car.

Esure maintained it cancelled Mr L's policy within all its legal rights to do so, as it would have never offered Mr L this policy for his car had it known he wasn't the registered keeper and owner of the car.

Dissatisfied Mr L brought his complaint to us. The investigator was of the view that esure hadn't done anything wrong. Mr L remained of the view that the consequences to him was disproportionately harsh. On that basis his 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 this complaint. I'll now explain why.

I do understand and appreciate Mr L will be very disappointed with my decision. However, both the law and the regulations under which esure must operate, fully endorse the approach esure has taken here. This Service's role is to assess what if anything a business such as esure, has done wrong. As both the law and regulations permit esure to cancel a policy as if it never existed for these circumstances, then obviously neither the investigator nor I can then say it has done anything wrong.

The law that governs this complaint is the Consumer Insurance (Representations and Disclosures) Act 2012 (CIDRA). In this Act as the investigator also explained to Mr L, the consumer (Mr L here) is under a duty to answer all the questions on the application form including from any aggregator website, truthfully and honestly. If an answer to any question is incorrect, untrue, or wrong, then under CIDRA that is classed as a 'qualifying misrepresentation'. Such a qualifying misrepresentation under the Act, gives the insurer certain remedies. If it's the case that the insurer would have never offered the policy, had it known the correct information, then it's entitled to cancel the policy as if it never existed. If it thinks the misrepresentation made was merely careless, it must also refund the premium paid.

Esure has shown us the questions Mr L was asked from the aggregator website he used to find this policy. It says the following:

'Is the driver (or will they be) the legal owner of the car?

Is the driver (or will they be) the registered keeper of the car?'

Beside both of those questions is a pop-up box saying the following:

'Car ownership

You're the legal owner if you're registered with the Driver and Vehicle Standards Agency (DVSA) as having bought the car or received it as a gift.

The owner of the car and the registered keeper can be different people. For example, a leasing company might be the legal owner of a car, but if you're leasing it you could be the registered keeper.

Check whether you're the car's registered keeper by looking at who's [sic] is on the vehicle's logbook (V5C).'

On this basis, I consider the questions asked on the application were clear and directed someone like Mr L, who has said he wasn't aware of the nuances between owner and registered keeper, to check his V5 before answering the question asked. And it clearly explained the difference between registered keeper and owner. If Mr L had paid attention to the questions asked here, his misunderstanding about this, however innocent, wouldn't have been permitted to persist.

Insurers are also permitted by their regulator the Financial Conduct Authority (FCA) to decide what risks they wish to cover and what risks they don't want to cover. This is part of their commercial discretion. Under the FCA's regulations about treating customers fairly that means what an insurer wishes to insure and what it doesn't must be in their underwriting guide. Esure has shown us that it doesn't want to insure cars where the owner and/or registered keeper was a business instead of a person. I can't show Mr L esure's full underwriting guide as it's commercially sensitive. But on this basis esure has shown me that it hasn't treated Mr L any differently to any other applicant for this motor policy. And it must show this also, which it has now done.

Clearly on the evidence it's more than likely this was just a careless mistake by Mr L. There is no evidence to show me that he was deliberately reckless or fraudulent either. Therefore, I consider it was reasonable for esure to decide this misrepresentation done by Mr L was merely careless. That meant esure also has to return Mr L's premium that he paid. And esure has shown us that it has done this as well.

There is no allowance under CIDRA for Mr L to correct matters, as he has tried to do with correcting the V5 for his car so as to try and remove the cancellation notice from his insurance record, even if he's willing to repay the premium, as he has offered. Sadly, for Mr L, CIDRA (the law on the matter) doesn't provide him with this option at all. Therefore, as esure is wholly obliged by the FCA to record the correct information on Mr L's insurance record, the cancellation of this policy must stand as recorded on his insurance record. The law is very clear on this indeed.

So, all this means that esure has now fully complied with the law and the regulations that it was obliged to do. That in turn means it has done nothing wrong at all here. So, there is nothing for me to put right for Mr L.

My final decision

So, for these reasons it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 August 2024.

Rona Doyle
Ombudsman