

The complaint

Miss D complains that esure Insurance Limited have reduced the settlement for her car because they say she had failed to advise them of a previous claim. Miss D says she didn't inform them because the claim was cancelled, and that they have provided poor service.

What happened

Miss D took out a car insurance policy with esure through a comparison website in September 2021 and renewed the policy in September 2022. There was also a mid term adjustment on 18 June 2023 when Miss D bought the car that was subsequently stolen.

On 29 June 2023 the car was stolen and she made a claim.

Esure accepted the claim, but only paid out a proportionate settlement figure which was 92.83% of the value of the car because they found that Miss D had failed to declare two previous accidents in 2021 and 2022 (which she had not made claims for), and they classed this failure to inform them as a careless misrepresentation.

Miss D says she had no idea she needed to disclose the accidents because they were cancelled claims and so they no longer existed. She is unhappy because she had a finance agreement in place on the car and this has left her £2300 short when clearing the finance.

Miss D was also unhappy that esure delayed in paying the settlement, and she had to keep paying the £600 per month finance payment for several months after the decision to settle had been made.

Miss D brought her complaint to us and our investigator thought it should be upheld. He agreed that the proportionate settlement was fair and in line with the terms of the policy but felt that esure had delayed in settling the claim and recommended that they pay some of the additional costs incurred by that delay.

Miss D and esure both disagreed with the investigator. Miss D thinks the compensation is too low, and esure don't think they should have to pay for the losses caused by the delay. So the case was passed to me for an ombudsman's decision.

I issued a provisional decision on the complaint. My provisional findings were as follows:

There are two aspects to this complaint and I will deal with them separately.

Misrepresentation

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Esure have offered a proportionate settlement which means that they consider that Miss D failed to take reasonable care not to make a misrepresentation when she renewed her policy

As this claim was made after the policy had renewed and had also been subject to a mid-term change as a result of the change of car, I have to consider what Miss D was told about declaring any claims when she renewed her policy and changed her car. This is because each renewal creates a new consumer insurance contract.

In June 2023 esure issued new documents after Miss D changed her vehicle.

The renewal policy schedule says: "Please check this document carefully. It contains all the information you provided to us".

"You are required to take reasonable care that this information is true and complete. If the information is wrong, incomplete or changes during the year, call us immediately on 0345 604 3550 and tell us the changes. Otherwise, we may reject or reduce any claim you make or even treat you as being uninsured."

The relevant section of the policy schedule states: "Details of the claims, accidents or losses in the last 5 years for all the drivers". This section records "None disclosed"

So it shows Miss D didn't disclose either of the accidents from 2021 or 2022. I appreciate that she thought she didn't have to as both she and the third party driver agreed not to pursue it because of minimal damage, but the schedule is clear that the disclosure required relates not just to claims, but to claims, accidents and losses.

Miss D was aware of the two accidents, one of which had occurred between renewal and the change to the new car, and so I'm satisfied that she didn't take reasonable care to ensure that the information she had provided was complete and correct.

Esure have provided evidence from their underwriters to show that if the claim had been disclosed, they would still have insured Miss D, but at a higher premium. They said that the premium she had paid was 92.38% of what it should have been if the claims been disclosed.

This means I'm satisfied Miss D's misrepresentation was a qualifying one.

As esure have offered a proportionate settlement, they have classified this misrepresentation as careless, and I would agree that it is, rather than being deliberate or reckless. I'm therefore satisfied that it was fair for esure to provide Miss D with a proportionate settlement based on the shortfall in premium.

I can see that Esure have used the value of the car when it was purchased on 12 July as the starting point and paid 92.38% of that value as settlement – a figure of £30442. This is the right approach and in line with CIDRA, so I'm satisfied that the settlement figure is fair.

Delays in settling the claim

Miss D made her claim on 29 June 2023, but this was not settled until 10 October 2023.

Miss D told esure she wanted a swift resolution as she had a new born baby but she had to continue to pay £600 per month under a finance agreement during the period of delay, without access to her car.

Miss D's failure to declare the previous accidents didn't cause this delay, as the premium that would have been payable was calculated on 6 July 2023 and the motor guide prices were obtained on 18 July 2023. There was no reason why the settlement figure could not then have been calculated straightaway, but the calculation wasn't completed until 31 July 2023 and the offer was £30942.68, which was 92.38% of what Miss D had paid for the car 18 days before it was stolen. The £500 excess had to be deducted off this, leaving a payment of £30442.

The settlement letter from the finance company showed a settlement figure of £33154.39 to be paid by 28 July 2023 – and if it had been calculated and paid on time, it would have left Miss D paying the shortfall of £2711.71 .

However, when the settlement offer was made on 31 July and Miss D expressed unhappiness about the proportionate settlement, esure didn't pay the settlement. They could have made the payment pending the dispute but didn't.

Esure eventually issued a cheque on 13 September 2023. However, it didn't arrive, and Miss D chased the payment on 26 September. A CHAPS payment was then made on 10 October, even though Miss D had previously been told that esure couldn't make a payment by CHAPS, which is why a cheque was requested.

Miss D has explained to both us and to esure how she was impacted financially and emotionally by this delay in payment.

Financially, the delay meant an increase in the settlement figure, as having missed the deadline for the settlement payment additional interest accrued until 10 October. Miss D also says she ended up having to find additional funds to buy a "run-around" car for £3050 on 12 July to be able to be mobile with her newborn baby. Miss D says that she made a loss on this car when she sold it some months later as it has a lot faults.

I have to think about how Miss D has been disadvantaged by this delay and how to put her back in the position she would have been in if it hadn't occurred, and I so I'm satisfied that it's fair ask esure to pay any interest that accrued on the finance agreement between 28 July 2023 and 10 October 2023 because if the settlement had been paid when it should have been, that additional cost would not have existed.

The purchase of the run-around car is less clear in terms of determining the additional cost to Miss D as a result of the delay.

I can see that Miss D bought this car less than two weeks after her car was stolen, and before the settlement figure was calculated. So while I understand that with a newborn she wanted transport quickly, I don't think e sure are responsible for the choice to purchase the car as early as 12 July, nor for the quality of the car that was bought - because at the time of the purchase e sure hadn't done anything wrong and no delay had yet occurred.

However, I am also conscious that Miss D had to keep that run-around car for nearly three months longer than she would have done if the settlement had been paid at the earliest opportunity. If the payment had been made at the end of July, she would have been free of

the £600 per month finance payments and would have been able to sell the run around car and get something better.

In terms of putting a value on the cost of this delay, the investigator has recommended using the guides to value it at the two points in time - but there are so many different factors that may affect the value and cost of running that car and the rate of depreciation that I don't think that calculating it in line with the guides is necessarily accurate or fair, so instead I propose to increase the distress and inconvenience award offered by the investigator to include the additional inconvenience and frustration of having to keep the run-around car for longer than anticipated with a new born baby – and this is where my provisional decision differs from that of the investigator.

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.

Miss D hasn't responded to my provisional decision, but esure have. They have accepted my decision but have asked to clarify that even if they had made the payment of £30442 in July, there would have been a shortfall.

I agree that there would always have been a shortfall, and that is why my decision makes it clear that esure should only be responsible for any additional interest charges which have accrued as a result of the delay in settling the finance, not the shortfall itself.

Putting things right

To put things right, esure should:

- refund any extra finance costs Miss D paid due to the settlement payment being made on 10 October 2023, instead of 28 July 2023 (the latest it would have been reasonable for esure to have paid the settlement based on the specific claim circumstances) *
- pay £450 for the distress and inconvenience caused by the level of claim service provided

* Miss D would need to get the figures from her finance company showing what she would have paid if the £30,442 was paid by 28 July 2023, and what she actually paid due to the payment being made on 10 October 2023.

My final decision

My final decision is that I am upholding Miss D's complaint about esure Insurance Limited and directing them to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 1 October 2024.

Joanne Ward
Ombudsman