

The complaint

Mr P complained about esure Insurance Limited settlement payment under his motor insurance policy.

What happened

Mr P's car was stolen, and he claimed under his policy. esure noticed then that Mr P had more points on his driving record than he had disclosed when he renewed his policy. esure said that Mr P hadn't told them about that when he renewed the policy and, if he had, they would still have insured him but for a higher premium. They said that he had misrepresented the position to them, and because of this misrepresentation they would apply a proportionate reduction to the amount they paid him for his car's loss.

The premium Mr P did pay was 67.61 % of the premium Mr P would have paid if esure had known about all of his convictions. So esure paid him for his car's loss that same percentage of what they said was its market value. This meant a reduction of £2,355.

Mr P felt that his mistake was one which anybody else could reasonably have made in the circumstances and was a simple administrative oversight. He thought that esure's reduction was too harsh a punishment and was out of proportion to what the additional premium would have cost him, and it felt tantamount to a fine. He wanted them to either pay him the full difference of £2,355 or a compromise amount that fairly reflected that he'd made an inadvertent mistake. He also felt that they'd taken too long to deal with his complaint.

The investigator didn't recommend that Mr P's complaint be upheld. She thought that Mr P had made a careless qualifying misrepresentation under CIDRA and that it was fair for esure to apply the proportionate settlement they did. Mr P didn't agree and so I've been asked 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.

Mr P was unhappy with the time esure took to give their final decision on his complaint, but I can't comment on that as we don't investigate the manner of complaint handling itself. I can only look at how esure handled Mr P's claim.

The relevant law here is the Consumer Insurance (Disclosure and Representations) Act 2012. As the investigator noted, it says that a consumer needs to take reasonable care not to make a misrepresentation when taking out an insurance policy. If a consumer fails to take reasonable care, and their misrepresentation is a qualifying one, the insurer can take certain actions.

This means I need to consider whether Mr P did take reasonable care not to make a misrepresentation, whether his misrepresentation was a qualifying one, and whether the actions esure then took were in line with CIDRA.

Reasonable care

esure said Mr P didn't take reasonable care when he renewed his policy in that he didn't disclose his convictions totalling six points. esure said these were a TS10 21/04/2022 three points, and a SP30 3/02/2021 three points.

At renewal he was asked for "*Details of motoring convictions and fixed penalty offences in the last 5 years for all the drivers*" and this appeared on his policy schedule.

The schedule said that Mr P should check it and inform esure if anything in them was incorrect or missing. The schedule gave clear warning that, if it wasn't correct, esure might reject or reduce any claim he made.

Mr P admitted that he didn't disclose all six points when he renewed . There's no dispute that Mr P didn't provide the correct information then. He said this was due to a mistake on his part and wasn't deliberate. He thought he had disclosed three points rather than six, as he'd thought one set of the three point convictions expired earlier than it did, but he didn't check the exact date. But even if it was a mistake, I think that Mr P didn't take reasonable care not to make a misrepresentation. esure were entitled to be told of the six points he had. I haven't been shown that it would have made any difference to the matter if he had disclosed three points instead of six.

Qualifying misrepresentation

Whether a potential insured has driving offences and disqualifications is fundamental to an insurer deciding to insure. So I think that Mr P should have been expected to know that he should answer the question about driving offences in the last five years correctly and disclose all of his convictions. esure asked that specific question to obtain the information they needed in order to decide whether or not to insure Mr P and at what premium.

esure have shown us their underwriting criteria that confirm that although they would still have insured Mr P had he answered the question correctly and declared all his points convictions, they would have charged him a higher premium for that. so I think esure's decision to treat Mr P's misrepresentation as a qualifying one was fair and reasonable.

esure have also shown us their proportional calculations taking into account what premium Mr P should have paid then compared to what he did pay then and showing how they calculated the percentage they applied to his car's settlement amount. Mr P thinks the decision is unfair based on the additional premium he has recently paid, now declaring all six points. But we can't know what other factors were involved in setting that premium now. And in any event, that's not the correct basis for applying CIDRA.

Mr P said that he hadn't deliberately made a misrepresentation and it was just a mistake as to the dates. He feels his mistake was only to give slightly incorrect information and it was just a small oversight and he didn't set out to mislead esure. I've got no reason to disbelieve that. And so I agree that his misrepresentation was careless rather than deliberate or reckless under CIDRA.

Nevertheless, Mr P did not take reasonable care not to make a misrepresentation when he failed to disclose all his points and so this was a careless qualifying misrepresentation. Under CIDRA this entitles esure to pay the claim proportionately, as they have done.

I know that Mr P sees it as harsh. He thinks that esure should have compromised with him at least. But this Service can't ask a business to compromise, but only to put things right where it gets things wrong. Here esure have followed CIDRA and so I don't think that esure have done anything wrong. I can see that this will be disappointing for Mr P. But in these circumstances, I don't think that esure have acted unfairly or unreasonably and so I don't ask them to do anything else.

My final decision

For the reasons given above, it's my final decision that I don't uphold the complaint .

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 January 2025.



Rosslyn Scott
Ombudsman