

The complaint

Mr J complains esure Insurance Limited (esure) have proportionally settled the claim he made under his motor insurance policy and charged an additional premium.

What happened

In November 2023 Mr J's vehicle was unfortunately stolen and so he submitted a claim to esure. During its investigation into Mr J's claim, esure found the named driver on Mr J's policy held a driving conviction it said it hadn't been made aware of. esure said had it been made aware of the conviction it would have charged an additional premium and so it would be settling Mr J's claim proportionally. It paid 78.06% of Mr J's claim.

When Mr J called esure to insure his new vehicle he made it aware of the conviction and it charged him an additional premium backdated to the start of his policy. Mr J didn't think this was reasonable and so raised a complaint. esure didn't send Mr J a final response within eight weeks and so he referred his complaint to this Service.

After Mr J referred his complaint to this Service esure made an offer. It said Mr J shouldn't have been charged an additional premium following it settling his claim proportionally and so it would refund the additional premium Mr J had paid. It also offered to pay £150 compensation.

Our investigator looked into things. He said he thought the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) applied. He said he thought esure were entitled to settle Mr J's claim on the proportionate basis it had done as there had been a qualifying misrepresentation. He said he didn't think esure should have charged Mr J an additional premium mid-term but it's offer to refund the additional premium charged and £150 compensation was reasonable.

esure accepted our investigator's view but Mr J rejected it. He said now he had paid an additional premium esure were unable to demonstrate it had suffered a loss. He said esure should keep the additional premium he had paid and settle his claim in full.

As Mr J didn't agree with our investigator, 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.

I want to acknowledge I've summarised Mr J's complaint in less detail than he's presented it. I've not commented on every point he has raised. Instead I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Mr J and esure I've read and considered everything that's been provided. I've addressed the key points separately.

Misrepresentation

The relevant law in this case is 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 that 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 think Mr J failed to take reasonable care not to make a misrepresentation when he failed to tell it about a driving conviction the named driver had.

I've looked at the question Mr J was asked when he completed the application in March 2023. Mr J was asked:

'Have any drivers had any motoring convictions, driving license endorsements, or fixed penalty points in the last 5 years?

If the convictions or points will be equal or greater than 5 years by the time the policy starts you won't need to include them.'

There was an option for Mr J to click for more information on how to find this information.

esure have provided evidence the named driver on the policy received a conviction and six penalty points in November 2019. I'm satisfied the question was a clear one and sufficient information was provided explaining how Mr J could find this information. The standard of care required is that of a reasonable consumer, and I think a reasonable consumer in this position would have declared the conviction. Therefore I think Mr J failed to take reasonable care when answering this question.

I've gone on to consider whether this misrepresentation is a qualifying misrepresentation.

esure have provided underwriting evidence to show had it been made aware of the driving conviction, it would have charged Mr J a higher premium. Mr J paid £605.73 for his policy, but had the conviction been declared he would have been charged £775.99 for his policy. As esure have been able to show it would have offered Mr J the policy on different terms had it been made aware of the conviction, I'm satisfied this is a qualifying misrepresentation.

esure have treated Mr J's misrepresentation as a careless one rather than deliberate or reckless. I think this is reasonable and so I've looked at the actions esure can take in accordance with CIDRA.

As Mr J has made a claim, CIDRA entitles esure to settle the claim proportionally based on the premium Mr J has paid, compared to the premium he should have paid. As Mr J has paid 78.06% of the premium he should have paid for the policy, it's fair for esure to pay 78.06% of Mr J's claim. As CIDRA reflects this Service's long standing approach to misrepresentation cases, I think allowing esure to rely on it to proportionally settle Mr J's claim produces a fair and reasonable outcome in this complaint.

Additional premium

esure have acknowledged it shouldn't have charged Mr J an additional premium for the undeclared driving conviction during the term of the policy. I've therefore considered whether it's offer to reimburse Mr J the additional premium he has paid, and pay compensation is reasonable to put things right.

I think esure's offer to reimburse Mr J the additional premium he has paid places him back in the position he should have been in had esure not made an error. I acknowledge Mr J feels esure should keep the additional premium it charged him and settle his claim in full, however I don't agree this leads to a fair outcome. esure didn't make an error by settling Mr J's claim proportionally, its error was charging Mr J an additional premium and so this is what it needs to put right.

Mr J has been caused some distress and inconvenience due to being incorrectly charged an additional premium and due to the delay in esure addressing his concerns. I think esure's offer of £150 is reasonable to acknowledge the distress and inconvenience he has been caused and is in line with what I would have expected it to have offered in the circumstances.

My final decision

For the reasons I've outlined above, I uphold Mr J's complaint about esure Insurance Limited. I require it to:

- Refund Mr J the £166.54 additional premium he has paid
- *Pay 8% per year simple interest on this refund calculated from the date Mr J paid it to esure to the date it is refunded to Mr J.
- Pay £150 compensation

*If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 January 2025.

Andrew Clarke
Ombudsman