

The complaint

Miss S complains that esure Insurance Limited (esure) has both undervalued her vehicle and proportionately settled her claim after her vehicle was written off in an accident.

What happened

Miss S took out a motor insurance policy with esure through a price comparison website. In March 2020 she was involved in an accident. She submitted a claim to esure who inspected her vehicle and deemed it a total write off.

esure placed a value of £4,731 on the vehicle. It then deducted 19.68% from this valuation because it deemed Miss S to have misrepresented her annual mileage when the policy was taken out. esure says it used the vehicle trade guides to value the vehicle and that under the rules it's allowed to make a pro-rata payment based on what it would've charged Miss S if she'd declared her correct annual mileage.

Miss S doesn't agree that this is the correct value for her vehicle. She says this vehicle is of sentimental value to herself and her family. She spent many years saving for this vehicle, and she only had it for 11 months. She says the vehicle is worth £7,000.

Miss S also denies that she misrepresented on her insurance. She says the mileage she provided was an estimated figure, and that having to suffer a further reduction in the total loss settlement is unfair.

I issued a provisional decision not upholding this case on 3 March 2021. That provisional decision is below and forms part of my final decision.

What I've provisionally 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 planning on upholding this complaint. I'll explain why.

Vehicle valuation

Miss S is unhappy with the valuation that esure has placed on her vehicle. Our approach is to consider whether esure has settled Miss S's claim in line with the terms and conditions of her policy, fairly and reasonably. So, I have considered the terms of the policy and the offer made in order to determine whether esure has acted fairly. I can see that in the event the vehicle can't be repaired, esure won't pay more than the market value of the vehicle at the time of the loss.

Market Value is defined as "the amount you could reasonably have expected to sell your car for on the open market immediately before your accident or loss. Our assessment of the value is based on cars of the same make and model and of a similar age, condition and mileage at the time of accident or loss. This value is based on research from motor trade

guides including: Glass's, Parkers and CAP. This may not be the price you paid when you purchased the car."

Our usual approach to complaints about vehicle valuations is to look at motor trade guides for valuing second-hand vehicles. We find these persuasive because their valuations are based on nationwide research and likely selling prices. The guides refer to advertised and auction prices to work out what the likely selling price for the same vehicle would be. This takes into account all the specifications of the vehicle as well as any extras and the mileage. If a guide price is significantly higher or lower than the others, we may think it's reasonable to ignore it. This depends on the value of the vehicle.

Customers sometimes say the amount they've been paid is unfair because they've seen similar vehicles advertised at higher prices. We wouldn't normally place as much weight on adverts to decide whether a valuation is fair. Differences in mileage or year of registration can significantly affect value, and sometimes the vehicle actually ends up selling for a lower price than advertised. Adverts may be helpful if the complaint involves a classic or rare model. Or if they strongly indicate that the guides could be wrong.

I've checked the motor trade guides for the value of Miss S's vehicle at the time of the incident and they produced the following valuations: CAP £4,594; Glass's £5,240 and Cazana £4,921.

esure has used the same approach that we rely upon in working out a fair reflection of the market value of a vehicle. And looking at the three guide prices together our approach I'm satisfied the valuation offered of £4,731 is fair. I can see esure wrote to Miss S giving her the valuations from the three trade guides I've used above. And even though our valuations are very slightly different, I can see the valuation it gave Miss S is within the range of the valuations provided. So, looking at all of this, I think esure acted fairly and reasonably and in line with Miss S's policy terms in giving the valuation it did.

Misrepresentation

esure claims that Miss S misrepresented her annual mileage when she took out the policy, so it's only paid her a proportion of the total loss settlement. Miss S says she didn't misrepresent, and applying a further deduction is unfair.

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.

I've looked at the question that was asked during the online sales journey. And it says, "what is the total annual personal mileage for this car". Alongside this question, in a pop out information box it says, "this is the total number of miles you expect this car to be driven over the next year by all drivers named on the policy. This includes travelling for social and domestic use as well as commuting to and from a single place of work. It's important this is

accurate as possible, underestimating the mileage could impact your cover or lead to increased charges”.

esure thinks Miss S failed to take reasonable care not to make a misrepresentation when she provided a figure for her annual mileage. The schedule of insurance shows that Miss S told esure she estimated she would be travelling 7001-8000 miles in that year. However, at the time the accident, the difference between the two last recorded mileages, at MOT and the time the accident occurred, shows Miss S had travelled 16,000 miles in 11 months.

Looking at the question that was asked, I don't think it's a misleading or unclear question. I appreciate that Miss S says she was asked to estimate her annual mileage, and our investigator has argued that asking for an estimated mileage didn't constitute a clear question under the rules. But I think there may have been some confusion about how the information is presented on the policy schedule as opposed to the question that was actually asked on the online application screen. Looking at this I can see the word “estimate” is used on the policy schedule only. But the important wording is on the online screen, and it is very clearly looking for a clear and definite answer when it asks, “what is the total annual personal mileage for this car”.

So, in this case, I think a clear question was put to Miss S about her annual mileage. And from what I've seen, I think Miss S gave the wrong answer to the question. We asked Miss S why she declared approximately 8,000 miles and yet travelled 16,000 miles in 11 months. Miss S advised that when she took out the policy, the answer she provided looked about right. But that in the following year a long journey she'd previously been making had increased in frequency, and this probably accounted for the increase in mileage. We asked her if this was unexpected. But Miss S told us it was a journey she'd have made previously. So, I have to conclude that Miss S should've thought about this when she was submitting her annual mileage figures.

esure can show that Miss S provided mileage figures that were a lot lower than she actually travelled. The mileage figures she provided are just half of what she actually travelled. So, I don't think Miss S took reasonable care when answering this question.

Whether esure can take action as a result of that depends on whether it can show that Miss S made a qualifying misrepresentation. esure has provided supporting evidence that Miss S had only paid 81.32% of the premium she would've been charged, but for the misrepresentations. So, I'm satisfied Miss S made a qualifying misrepresentation.

esure has treated the qualifying misrepresentation as careless, and has opted to settle the claim proportionally. Where the misrepresentation is deemed careless CIDRA says esure can settle a claim proportionately. This is based on the proportion of premium Miss S paid against what she would have been charged, but for the misrepresentation. And as this remedy is the most favourable remedy available for Miss S in this scenario, I think this is fair.

Miss S says this is unfair, and the proportionate settlement is a further reduction on what she believes is an already lessened valuation. But Miss S was using her vehicle almost twice as much as she's told esure at the beginning. And it's understandable that insurers will deem people who use their vehicles more regularly to be a greater risk, and that they'll charge more for cover. esure has shown this is a significant factor to them and that they'd have charged Miss S a lot more for her policy if it had known her true annual mileage.

I appreciate this may seem harsh, and may feel unfair, especially where someone is found not to have deliberately misled their insurer – but it does make clear the importance of taking reasonable care not to make a misrepresentation.

esure was able to demonstrate that Miss S had paid 81.32% of the premium she would've been charged, but for the misrepresentations – so that was the proportion of her claim that was paid. And it's what CIDRA allows for. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing esure to rely on it to proportionally settle Miss S's claim produces the fair and reasonable outcome in this complaint.

esure has confirmed it received my provisional decision and has nothing further to add.

Miss S hasn't responded.

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.

As Miss S hasn't responded, and esure has nothing further to add, I see no reason to depart from my provisional decision as set out above. I'm satisfied esure has provided a fair valuation for this vehicle using a fair and reasonable approach. And that under CIDRA its correctly offered Miss S a proportionate settlement of the vehicle valuation in order to settle this claim.

My final decision

For the reasons set out above, and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 15 April 2021.

Derek Dunne
Ombudsman