

The complaint

Mr M complains that esure Insurance Limited unfairly refused to pay a claim he made on his motor insurance policy and voided the policy.

What happened

Mr M had a motor insurance policy with esure. He bought a car from abroad. He phoned esure to arrange to put the new car on his policy. But when he explained that he was importing the car esure said that the only imported cars it covers are “*ones which have been imported to UK specs from European countries*”. Mr M said during the call that he’d been mistaken about the country he’d originally said the car was coming from. But neither country Mr M referred to was in Europe. Esure’s adviser said that esure couldn’t insure Mr M’s car even though Mr M stressed it was built to UK specifications. This was because it fell outside esure’s criteria.

Just under four weeks later Mr M had got a new number plate for the car from DVLA. He phoned esure again and spoke to a different adviser. She took various details of the car. But she never asked whether the car was imported. The new car was put on Mr M’s policy.

The catalytic converter was subsequently stolen from Mr M’s car. Esure’s engineer considered that the car was written off as a result. But in the course of inspecting the car, he noticed that it was from overseas. And the country it had been imported from wasn’t in Europe.

Esure refused to pay Mr M’s claim. It said that the answers Mr M gave to the adviser’s questions on the second phone call didn’t accurately reflect the true origin of the vehicle and the vehicle registration number. So in addition to refusing to pay the claim, it considered that it was justified in voiding the policy.

Mr M wasn’t happy with esure’s decision, and brought his complaint to us.

One of our investigators considered Mr M’s complaint, and thought it should be upheld. In summary, he said esure shouldn’t have voided Mr M’s policy, as it hadn’t asked whether the car was imported. And since Mr M hadn’t been asked the question, he hadn’t said anything about where the car came from, so there’d been no misrepresentation. So the investigator said esure should reinstate the policy, consider Mr M’s claim and pay him £300 as compensation for the inconvenience caused to Mr M by Esure’s handling of his claim.

Mr M was happy with the investigator’s view, but esure didn’t agree, so the complaint was passed to me.

My provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to esure on 26 August 2021. I said:

"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 to uphold the complaint. I'll explain why.

Mr M says he didn't remember what he was told in the first phone call when he phoned again a few weeks later to arrange the policy. He explained to esure he was making a lot of calls at the time. I accept that it may have been difficult to remember the details of what he was told on every call. But esure was Mr M's existing insurer. That being the case, I think it's unlikely he'd have forgotten the gist of what esure said to him.

Mr M would have known after the first call with esure that he wasn't going to be able to insure the new car (which he explained that he'd already gone ahead and bought) with esure. So he was going to need to find a new insurer. I think Mr M would have expected that finding a new insurer to take more time and effort than staying with his existing insurer. And even if he understandably didn't remember every bit of detail of the conversation he'd had with esure, I think it's highly unlikely that Mr M would have forgotten this crucial point.

Mr M says he looked at a number of insurers online and many of them asked specifically whether the applicant's vehicle was imported, but esure didn't.

I've listened to both the phone calls Mr M had with esure. It's true that in the second call, when the insurance was arranged, esure didn't ask him whether the car was imported. So Mr M didn't have to answer that question. But I note that Mr M said "I think the registration number has been changed". Esure then asked him "Is that the original number plate? When you bought the car was that what was on it?" Mr M replied "No. I think it was probably on a cherished plate or something, so it's been changed."

I'd generally consider, as the investigator said, that the onus is on an insurer to ask an applicant the questions it needs to know the answers to before deciding whether or not to insure. And I accept that technically the answer Mr M gave to esure's question was right. The number plate on the car wasn't the original one.

But I'm satisfied that Mr M knew that the reason the number plate had been changed was because the car had been imported, not because the previous number plate had been cherished. I think that he sought to steer esure away from any suspicion that the car was imported by speculating that the car might previously have had a cherished plate. And I think that he did this because he realised that esure wouldn't insure the car if it knew it was imported.

Taking everything into account, I don't consider that it would be appropriate for me to interfere with esure's decision to refuse Mr M's claim and to void his policy, or to require it to take any other action.

I realise that Mr M will be unhappy with my provisional decision, but I've considered all the comments and evidence that both he and esure have provided very carefully. And for the reasons I've set out, and based on what I've seen so far, I'm not intending to uphold Mr M's complaint."

Further submissions

Esure has told us it's happy with my provisional decision and doesn't have anything further to add. But Mr M has made detailed further submissions which he's asked me to take into account. I've considered everything that Mr M has said in reaching my decision. But I hope he'll understand if I focus on what I think are the most significant points he's made. I'll summarise those points here:

- He answered all the questions esure asked him.
- He thinks he spent a few days getting quotes, including one from esure. Some companies said they'd be willing to insure him. Others didn't.
- Esure's was the third best of the prices he was quoted. But the differences between the quotes weren't too much, and he had no experience or history with the other insurers, and hadn't heard of them.
- He genuinely didn't remember calling esure the previous month. He'd been suffering with serious health issues and had been in excruciating pain. He was on very strong painkillers, which affect his short-term memory.
- He bought the car through an agent. The agent told him the registration plate would need to be changed, as the previous owner of the car still owned it. He's never bought an imported car before, so he didn't know that the registration number would need to be changed when it was imported. He assumed that the existing plate would remain on the car.
- He was always honest when getting the quotes. If he'd remembered his previous conversation with esure, he'd have insured the car with one of the other insurers who'd quoted, and which were a little cheaper.
- Esure's website doesn't say anything about not covering imported cars. And it didn't say anything about imports in his renewal documents either. It could have asked a simple question to establish the position, and the whole situation could have been avoided.
- He's pretty much lost his independence, has suffered depression and has lost a car which he can't afford to replace.

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've thought carefully about everything that Mr M has said in response to my provisional decision, including the points I've itemised above. I know that Mr M will be disappointed, but I'm not convinced that there's a good reason to change the conclusions I reached in my provisional decision.

It's not always possible to be sure what happened, or why someone did or said something. Where the evidence is incomplete or inconclusive, I need to decide what I think's most likely to have happened, based on the information I have.

As I said in my provisional decision, I've listened to both the phone calls Mr M had with esure. I'm satisfied that when he made the first phone call, Mr M knew that the car had come from overseas. And during the call, it was made clear that since it had been imported from outside Europe, esure wasn't willing to insure it even though Mr M explained that the car met UK specifications. There was no ambiguity about the fact that esure wasn't willing to insure it. It was quite categorical.

I've listened again to the phone calls. In the first call Mr M was asked if he had the car's registration number. He said he didn't, and immediately explained that he'd imported the car, and that the DVLA had told him to insure it using the vehicle identification number until it gave him a new registration number. So on the first call, Mr M was immediately forthcoming about the fact that the car was imported. And he seemed to link that to the fact that he needed to change the number plate.

Of course it's possible that the number plate had also been cherished by the previous owner. But it was the fact that the car had been imported which Mr M mentioned in the first call, when he explained that he was waiting for a new number plate. And I think it would have been natural to mention this in the second call when he was asked whether the number plate was the original one. As it was, Mr M made no mention at all of the car having been imported during the second call. And on balance, I think he deliberately avoided referring to the fact that the car was imported.

I accept that esure's website may not say anything about whether it insures imported cars. And I take Mr M's point that it would be a relatively easy question to ask. But this doesn't change my view. I'm satisfied, on balance, that Mr M knew that the fact that the car was imported mattered to esure, and that if he'd mentioned this during the call, it would have refused to insure him.

I acknowledge that Mr M's told us that his short-term memory has been affected by painkillers. And I have sympathy for the health problems he's experienced. But it was made clear to him in the first call that esure wasn't willing to insure his car because it was imported. And I'm satisfied that Mr M understood this. As I said in my provisional decision, that meant he'd need to change insurer, which would have been a bit of a nuisance compared with staying put with esure. And as Mr M's said, he knew esure, but had never heard of the other companies who offered him cheaper quotes. So I can see why he'd probably have preferred to stay with esure if he could. And taking everything into account, I still think it's unlikely, on balance, that Mr M would have forgotten that esure wasn't willing to insure the car.

So having thought carefully about everything that's been said, my view remains that I don't consider that it would be fair or reasonable for me to interfere with esure's decision to refuse Mr M's claim and void his policy.

Mr M has also mentioned that he considers that esure's salvage agent damaged his car before dropping it off at his nominated garage in an undrivable condition. Esure has now provided a separate response to Mr M's complaint about the damage, which will be dealt with separately.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 December 2021.

Juliet Collins
Ombudsman