

The complaint

Mr T had a car insurance policy with esure Insurance Limited (esure). Mr T's son was also included on the policy as a named driver. On 30 October 2020 Mr T's son says that the insured car was stolen from outside his place of work. However, esure has declined to pay Mr T's claim and instead voided the policy. Mr T and Mr T's son complain that this is unfair and esure should pay the claim.

What happened

I issued a provisional decision on 5 November 2021. I have repeated the content below:

Mr T is represented by his son. Mr T's son says that an incident occurred whilst he was at work which led to the car in question being stolen. Mr T made a claim to esure for the lost value of the car.

After considering Mr T's claim, esure explained to Mr T that it was voiding his policy from 27 May 2020 when he last changed vehicle. It said that it would not pay the claim because it had discovered that Mr T's son was the registered keeper of the vehicle. It said it would refund the policy premium less an administration fee.

Mr T complained that this was unfair. He said that the fact that he was named as the owner of the car was an oversight cause by the earlier renewal of the policy. Mr T's son said he had obtained quotes from esure based on his ownership of the car which showed that it would have offered insurance if he had been the registered owner. He said this would have cost the same or less than the policy Mr T had. So it was unfair to void the policy.

Esure considered Mr T's complaint but did not uphold it. It said that when the policy was taken out Mr T was said to be the owner of the car. However Mr T's son was actually the owner and esure said that if it had known this then it wouldn't have offered cover. Therefore it thought its decision to void the policy from outset was correct.

Mr T referred his complaint to this service and it was considered by an investigator. The investigator thought initially that esure had acted appropriately in declining the claim. However Mr T's son subsequently provided information which persuaded the investigator that Mr T hadn't deliberately or recklessly given esure incorrect information about the ownership of the car. She thought that esure would have insured Mr T's son and that it should reassess the claim.

esure didn't agree. It said that the address it had been given as to where the car was kept was most likely incorrect. It said this as Mr T's son had said the car had been stolen from his place of work – which was in London. The car was said to be kept at an address (Mr T's address) in Glasgow. So most probably the car was actually kept in London – rather than Glasgow – a factor taken into account when insurance is provided.

It also said that there were some differences between the details provided to esure by Mr T's son when he obtained his recent quotes and the details relevant to the actual car insured previously. This meant that the insurance would have been significantly more expensive with

Mr T's son as the registered keeper of the vehicle.

The investigator was persuaded to change her view of the complaint. She thought there was a benefit to be gained in taking out the insurance with Mr T as the registered keeper and owner of the car. She felt that esure's decision to void the policy on the basis that it had been provided with incorrect information about the owner of the car was reasonable.

Mr T's son did not agree. He provided new quotes which showed that he would have been able to obtain cover in his own name on the car. He reiterated that the reason the insurance for the car was in his father's name was because of a previous change of car. The previous car was owned by his father and when it came to change the car, they simply changed the car on the policy but not the registered keeper. This was an oversight and not a deliberate intention to provide incorrect details to save money.

As the complaint has not been resolved it has been passed to me for review.

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.

Mr T's son has not disputed that he owned the car in question, or it was registered to him. And I note that in correspondence with esure, Mr T's son confirmed he was the registered keeper of the car.

However he says that the fact that his father, Mr T, was noted as the registered keeper and owner (and main policyholder) was an oversight. He says that the car insured with esure (which I will call car A) immediately before the car that was stolen (which I will call car M), was registered to, and owned by, his father. Mr T's son says that when he purchased car M, they simply contacted esure to change the car on the policy. As it was simply a change of car and the insured drivers were the same (Mr T and his son) then they did not think to inform esure that the registered keeper was different, or it was actually Mr T's son that owned the car.

I would note for completeness that the esure certificate of motor insurance records Mr T as the policyholder and his son as a named driver who can drive the car.

And I also note that esure obtained details of the V5 DVLA vehicle registration document for car M. This recorded that Mr T's son was the registered keeper of the vehicle from June 2020. It is for this reason that esure voided the policy and declined to pay the insurance claim. It has said that it would have declined the application for car M if it had known of the true situation.

Where a policyholder makes a mistake or doesn't answer an insurer's questions accurately in the policy application process, that inaccuracy is known as a misrepresentation. And there's specific law - the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) - which sets out what insurers may do when a consumer's made a misrepresentation. CIDRA says that a consumer must take reasonable care not to make a misrepresentation. So I've first thought about whether Mr T made a misrepresentation. I think he made a misrepresentation because when he asked for car M to be insured he had a duty to notify esure of any relevant changes or factors he would be aware of that might affect the policy. A significant change was that, unlike car A, he would not be the owner or registered keeper of the car.

I would note at this point that esure say that when it spoke with Mr T about changing the insured car from car A to car M, he was asked if he was the owner and he said he would be.

In order for an insurer to have a remedy under CIDRA it needs to be able to show that, but for the misrepresentation, it wouldn't have entered into the contract (the policy) or would only have done so on different terms. In those circumstances CIDRA refers to the misrepresentation as a "qualifying misrepresentation". I believe that Mr T made a qualifying misrepresentation.

In those circumstances, esure could apply the remedies CIDRA offered to it. Those remedies depend upon whether the misrepresentation was either: careless; or deliberate or reckless.

We have asked Mr T's son to provide evidence that car A was registered and owned by Mr T. Mr T's son has provided a finance agreement for a loan to purchase car A. This records Mr T as the person obtaining the loan for the car. A part of the V5 registration document for car A has also been supplied but this does not contain any detail about the ownership of car A.

Mr T's son has also provided a DVLA record dated 5 October 2020, addressed to Mr T, that confirms Mr T is no longer the registered keeper of car A.

Furthermore, Mr T's son has provided confirmation from DVLA that the registered keeper of car A from 9 February 2011 to 5 October 2020, was Mr T.

It is clear therefore that the registered keeper and owner of car A was Mr T. We have also asked Mr T's son why car M was registered to an address in Scotland but his place of work (where car M was stolen) is in the south east of England. Mr T's son has said he was initially working in Scotland but had the opportunity of investing in a business in London – where his partner in that business works. He says he invested in the business in August 2019 but did not move to London. He travels occasionally to London because of that business but lived in Scotland – his partner managed the business. When he visits London he either stays with friends or stays at a hotel. Now that the business is more developed he plans to move to London permanently. He jointly owns the property in Scotland with his father. Mr T's son provided evidence of hotel stays in December 2019, July 2020, October 2020, November 2020 and July 2021.

Given the evidence I believe it is more likely that Mr T's son is correct and the car was not 'kept' in London but used for travel there.

In my view Mr T (and Mr T's son) would have known that Mr T didn't own car M and was not the registered keeper of it. Furthermore Mr T was named as the main driver on the policy which I believe is unlikely given that Mr T's son purchased the car, was the registered keeper and appears to be using the car to travel to the south east of England. Therefore when Mr T changed the car esure insured in 2020, he should have told it of these matters. Having said that, bearing in mind that Mr T was the keeper and owner of car A, it is entirely plausible that, given those insured were to remain the same, Mr T (and Mr T's son) would have simply changed the car to be insured on the policy, not giving thought to the fact that they should inform esure of the change of ownership. As I have said, I believe that is a misrepresentation but I think it is a careless one, not deliberate or reckless.

Whilst esure have said that, if they had been given correct information, they would have declined to insure Mr T and his son, I don't believe that is likely or what the evidence shows. Although probably more expensive, Mr T's son has provided evidence that esure would have insured him if he had been the owner/keeper of car M.

esure seem to have arrived at its decision based on a retrospective assessment – that this was a case of 'fronting' (essentially where an application is made knowingly on the basis that

one individual is the main driver/keeper but in actual fact it is another individual that is the main driver/keeper). Firstly, as discussed, I don't believe that is evidenced here (I believe it is more likely an oversight), and secondly I do not believe that is the correct approach. The approach that should be taken is what terms would have been offered if esure had received the correct information, not on the basis that there was 'fronting' – esure wouldn't have been aware of that at the point of application (or more accurately policy alteration). In any event, I do not believe that it has been demonstrated that 'fronting' was taking place.

Bearing this in mind I currently intend to uphold Mr T's complaint insofar as esure would have insured him had it been given the correct information. I therefore believe a proportionate remedy is fair and reasonable in the circumstances, on the basis that esure has indicated it would have charged a higher premium if informed of the correct details. It might help if I explain that there's specific law - the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) - which sets out what insurers may do when a consumer's made a misrepresentation. And that says that where, but for that misrepresentation, an insurer would have offered the policy, but charged a higher premium, then the insurer may settle any claim on a proportionate basis. By that I mean it can work out what percentage of the correct premium the policyholder had actually paid compared to what they should have paid and limit its settlement of any claim to that percentage (as set against the overall settlement figure).

In this case esure has indicated that if Mr T/Mr T's son had given it the correct information then it would have charged them considerably more for the premium. So esure should calculate the correct premium it would have charged had it been given correct information. It should then calculate what percentage of that premium it was actually being paid. It can then apply this percentage to the correct claim value due to the theft of car M.

My decision assumes that there would otherwise have been a valid claim under the policy. Mr T and Mr T's son would need to provide any details esure reasonably require to carry out the calculation and/or assess the claim.

esure did not accept the provisional decision. In summary it said:

- The decision condones 'insurance fronting'.
- Mr T (I assume here esure is referring to Mr T's son) did not approach it for an insurance quote and instead, "engaged in deception by his father saying he was the owner".
- It is "telling" that Mr T's son only obtained a quote after the policy was declared void.
- Mr T (I assume esure is referring here to Mr T and not his son) was asked a clear question and answered it clearly (I assume esure refers to Mr T being asked who the registered keeper of car M was when the car being insured was changed from car A to car M).
- It is not a case of applying a proportionate remedy under CIDRA. The only way for the situation to be avoided would have been for Mr T's son to obtain a new policy himself – the old policy being cancelled. It cannot see that a reasonable remedy would be to set up a new policy, backdate this five months and backdate the cancellation of the policy five months. If Mr T had told it he didn't own the car it would have refused cover.
- It remains unpersuaded that Mr T's son lived in Glasgow but commuted to London. It

notes that Mr T's son was able to 'go home' to get a spare key for the car.

- The “policy was littered with misrepresentations” – the ownership of the car, a conviction not declared, and Mr T's son being listed on the policy as a student and hotel worker when he was running a business in London. These are deliberate misrepresentations.
- A proportionate remedy is not possible as it could not have offered a premium based on Mr T being the policyholder and Mr T's son being the owner and keeper as its system does not allow it. It is not possible to backdate the policy or cancellation either.

I reviewed the complaint and issued a further provisional decision dated 16 December 2021.

The content was as follows:

“Esure has said that my previous provisional decision would appear to condone ‘fronting’. I would confirm that my decision did not. As I said in the provisional decision, I did not believe it was demonstrated that this was a case of fronting – it was not demonstrated that Mr T knowingly made representations in order to obtain a specific benefit.

For essentially the same reason I disagree with esure's premise that Mr T or his son necessarily “engaged in deception”. I said the evidence did not demonstrate that.

It is unclear what esure is seeking to suggest when it says that it is “telling” that Mr T's son only obtained a quote after the policy was declared void. But I don't think that unusual. If it was the case that the application being made on the basis of the car being registered to Mr T, rather than his son, was an oversight and Mr T's son or Mr T thought the car was correctly insured prior to esure's refusal to pay the claim, it would only be on esure's refusal and it highlighting the basis of the insurance that Mr T's son would seek to obtain a quote. There would be no reason to do so prior to that, especially if Mr T and his son thought the car correctly insured.

Mr T's son did not say that he commuted to London every day. He said that he went to London occasionally to check on the business that he had an interest in. The evidence he has provided in terms of hotel stays would support that.

I did set out in my previous provisional decision that, in a case of careless misrepresentation, esure should apply a remedy under CIDRA appropriate to that. That was to pay a claim on a proportionate basis.

However esure has pointed out that this would not be a remedy under CIDRA because it would not have been able to offer cover (essentially change the policy Mr T and his son had) on the basis that Mr T's son was the registered keeper and owner of the car.

I accept esure's submissions that it would have essentially had to provide a new policy if Mr T's son was the owner and registered keeper of the car. If the correct circumstances had been disclosed to esure when car M was to be insured, esure would not have been able to insure car M because under the policy they had, Mr T was the main driver, owner and registered keeper of the car. None of those facts were correct in respect of car M. It would not have been able to offer cover with Mr T as the main policyholder, owner and registered keeper – essentially the policy in existence would not have continued and would have become void.

So a proportionate remedy under CIDRA (the applicable insurance law) is not available. In fact, as esure could not have supplied or changed the basis of the current insurance on the basis that Mr T's son was the owner, registered keeper and main driver, the correct remedy under CIDRA is for the policy to be voided – here from the point the policy was altered to cover car M.

I appreciate that Mr T's son may say that he would have applied for a new policy on the basis that he was the registered keeper and owner. However that would have been a different, new policy and there is no certainty that this would have been obtained with esure. It should be remembered that this was not a situation of esure's making – it is not liable for car M being uninsured – that has arisen because of the incorrect details given by Mr T to esure. In any event, granting Mr T or his son an award on the basis that another policy would have been taken out is not the applicable redress under CIDRA.

I am sorry for the disappointment this will cause but I do not believe, on review and taking into account esure's submission, I can now uphold the complaint and award redress based on a proportionate remedy.

What I do believe esure should pay, however, is a refund of whatever premiums Mr T or his son paid after the car was changed on the policy to car M. That is with the addition of 8% simple interest on those premiums from the date they were paid to the date they are refunded. I do not believe the misrepresentations have been demonstrated to be deliberate or reckless so a refund should be paid."

I upheld the complaint but only on the basis that esure should refund the premiums as set out above.

I have not received any further submissions from esure.

Mr T's son queried whether a claim would now be paid (it was confirmed it would not be) but made no further submissions.

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.

Bearing in mind and that I have not received any further submissions since I issued my provisional decision of 16 December 2021, having reviewed the complaint, I would confirm that my findings remain as set out in that decision.

My final decision

I uphold the complaint but only on the basis that esure should refund the premiums paid - as set out in my provisional decision of 16 December 2021. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mr T to accept or reject my decision before 22 February 2022.

David Bird

Ombudsman