

The complaint

Mr M complains that esure Insurance Limited avoided his motor insurance policy and refused to pay his claim.

Reference to esure includes its agents.

What happened

Mr M took out a motor insurance policy with esure over the telephone. When he was involved in a road traffic accident, he made a claim to esure for the damage caused.

esure said Mr had answered the question it asked him about the registered keeper of the car incorrectly. And it considered this to be a qualifying misrepresentation, which entitled it to avoid his policy and not deal with his claim.

One of our investigators looked into Mr M's complaint and recommended it be upheld. He thought Mr M had answered the question incorrectly, but that he hadn't failed to take reasonable care to do so. Our investigator thought esure was acting unfairly by avoiding Mr M's policy. He thought esure should reinstate the policy and assess Mr M's claim in line with the remaining terms and conditions.

esure didn't agree and asked for an ombudsman's decision. It thinks Mr M did fail to take reasonable care, so the case has been passed to me.

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.

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.

esure thinks Mr M failed to take reasonable care not to make a misrepresentation when he said that he was the registered keeper of the car. It said had it known he wasn't the registered keeper of the car, it wouldn't have insured him.

Factually, Mr M made a misrepresentation here. When asked whether he was the registered keeper of the car, he told esure that he was. He wasn't.

But CIDRA says an insurer can only take action if the misrepresentation is a qualifying one. To be a qualifying misrepresentation, a misrepresentation needs to have made a difference to the insurer, and the consumer needs to have failed to take reasonable care when giving the answer they gave.

Here, the information Mr M gave was incorrect, and had it not been, esure has evidenced that it wouldn't have insured him. That part needs no further consideration.

What I need to consider is whether Mr M failed to take reasonable care not to make a misrepresentation when he gave the answer he did. CIDRA doesn't require the consumer (Mr M) to answer every question with 100% accuracy. It requires him to take reasonable care not to make a misrepresentation. And the level of care required is that of a 'reasonable consumer'.

So, what I need to consider is why Mr M gave the answer he did, and crucially, decide whether or not 'a reasonable consumer' would have answered the same way in the exact same circumstances.

In this case, Mr M took out the policy with esure over the telephone. During that call he makes it clear the car is financed by a lease agreement. It's also made clear this is a lease taken out by his employer. In the call Mr M is asked who the owner of the vehicle is. He lets esure know that the owner is the finance company – which was correct. He's then asked who the registered keeper is. He tells esure that he is the register keeper – which as explained, was incorrect.

As set out above, Mr M isn't the registered keeper of the car. But he's advised us he thought he was. He's explained the car is leased by his employer. He's said the car was taken out for his sole purpose, for his sole benefit and he was tasked with insuring it himself. He's said the car is kept at his address not his work's.

esure thinks Mr M failed to take reasonable care because Mr M isn't listed on the V5C (registration) document and thinks this clearly indicates he is not the registered keeper. But Mr M says he was never given this by his work, and thought nothing of it, because the car was taken out by his work, for him. And I think that's reasonable. In his eyes, he was the keeper of the car.

I'm aware that you need to be registered on the V5C to be deemed the registered keeper, and it's clear esure know this too. I understand esure's position and don't find it at all illogical. But I don't find it fair. I'm not persuaded that a reasonable consumer has the same level of knowledge. Especially given the context of how Mr M was asked here. He was asked over the telephone whether he was the register keeper. There was no explanation of what this meant, which there often is when taking a policy online. In the documentation sent to Mr M regarding this policy, he's clearly listed as being the registered keeper. But again, there's no explanation of what this means or what this requires. So checking this wouldn't have achieved anything – because Mr M thought he was the registered keeper.

esure's question is clear, but it does, in my opinion, require a certain level of knowledge to answer that a reasonable consumer may not have. So, given Mr M's situation, I think a reasonable consumer may well have answered the same way as Mr M did. Therefore, I don't think Mr M failed to take reasonable care not to make a misrepresentation. So, even though the answer he gave is factually wrong, I find that Mr M's misrepresentation wasn't a qualifying one under CIDRA.

Putting things right

As Mr M's misrepresentation wasn't a qualifying one under CIDRA -because I don't find that he failed to take reasonable care - esure shouldn't avoid this policy and should deal with Mr M's claim. Therefore, to put things right esure should reinstate Mr M's policy and assess his claim in line with the remaining terms and conditions of that policy.

My final decision

For the reasons set out above, I uphold Mr M's complaint. To put things right I require esure Insurance Limited to:

- Reinstate Mr M's policy and assess his claim in line with the remaining terms and condition of it, settling the claim in full if those conditions so require.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 March 2022.

Joe Thornley
Ombudsman