

The complaint

Mr G complains that esure Insurance Limited mishandled a claim on his motor insurance policy.

Where I refer to esure, I refer to the above-named insurance company and I include claims-handlers and others insofar as I hold esure responsible for their acts or omissions.

What happened

The subject matter of the claim and the complaint is a sports utility vehicle. Mr G had the vehicle on a finance agreement. He had GAP (guaranteed asset protection) insurance to cover any gap between the balance on the finance agreement and any total loss payment by his insurer.

In early September 2020, Mr G went onto a price comparison website. For the year from 20 September 2020, he insured the car on a comprehensive policy with esure. He was the policyholder. The policy also covered a named driver who Mr G has told us is his wife.

In taking out the policy, Mr G said he'd been involved in four previous accidents or claims from the following dates:

4 January 2017
11 September 2017
13 October 2018
16 June 2019

Unfortunately, Mr G reported that on 27 July 2021, his vehicle had been involved in another accident. He made a claim to esure. It arranged recovery of the vehicle (and later paid the recovery agent £30.72). esure said the vehicle was a total loss.

Within a few days, esure checked the Claims Underwriting Exchange database ("CUE") and found that other insurers had recorded additional claims when Mr G's wife had been driving on the following dates:

2 October 2018
28 May 2019

By an email dated 3 September 2021, esure declined Mr G's July 2021 claim and said the policy was void because it wouldn't have insured him if he'd disclosed those two additional claims. Its file shows that esure refunded Mr G as follows:

Mr G paid	£1,347.35
esure deducted voidance fee	£ 26.00
esure deducted claim costs	£ 30.72
esure refunded	£1,290.63

Mr G complained to esure that it wasn't treating him fairly. He said that he couldn't make a

claim on his GAP insurance until esure made an offer for his vehicle.

By a final response dated 21 September 2021, esure turned down the complaint.

Mr G got a letter dated 24 November 2021 from the insurer who had paid the claims dating from October 2018. He sent that letter to esure, but it still said his policy was void. So Mr G brought his complaint to us.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. He referred to Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). He thought that esure would've offered cover for Mr G without the named driver, and esure had said the misrepresentation was careless. So we wouldn't say it was fair to avoid the policy. Instead esure should amend the terms by removing the named driver from cover.

The investigator recommended that esure should:

1. reinstate Mr G's policy but remove the named driver and deal with Mr G's claim in line with the policy terms and conditions;
2. recalculate Mr G's premium without the named driver from the policy start date. If this changes the premium, they need to tell Mr G how much he owes them taking into account the voidance fee and claim deduction already applied;
3. remove the policy voidance from all internal and external databases and write to Mr G to confirm the voidance was esure's error;
4. Mr G took new motor insurance with [a new insurer] in January 2022. He should provide [that new insurer] with a copy of the letter that confirms the policy voidance has been removed by esure. If [that new insurer] aren't prepared to amend and backdate Mr G's premiums based on the voidance being removed, esure will also need to cover any increased cost to Mr G's premiums due to the policy voidance with his new insurer from inception to renewal;
5. pay £200.00 compensation to Mr G for the distress and inconvenience caused.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr G and to esure on 9 August 2022. I summarise my findings:

It was fair and reasonable for esure to conclude that there had been a qualifying misrepresentation under CIDRA.

However, esure did offer cover to Mr G (a more long-standing licence holder) after he said he had the four claims. The evidence shows that esure would've offered cover for Mr G without his wife as a named driver.

Mr G's wife was a less experienced driver, I would expect the policy to have cost less without her as a named driver. But Mr G made a careless misrepresentation about her driving record. So I wasn't minded to find it fair and reasonable to direct esure to reduce the premium he agreed to pay.

I was minded that Mr G brought trouble on himself by his careless misrepresentation. So I wasn't minded to find it fair and reasonable to direct esure to pay him compensation for distress and inconvenience.

Subject to any further information from Mr G or from esure, my provisional decision was that I upheld this complaint in part. I intended to direct esure Insurance Limited to:

1. not treat Mr G's policy as void but to treat it as covering Mr G (but not his wife) to drive the vehicle at the time of the accident reported in July 2021; and
2. not charge a voidance fee; and
3. write a letter to Mr G (which he may show to any current or future insurer) saying that it voided his policy in error and it has removed any record of its voidance from any internal or external database to which it supplied such a record; and
4. deal with Mr G's claim in line with the policy terms; and
5. add simple interest at a yearly rate of 8% on any payment it makes in settlement of the claim, from the date of the claim to the date of its settlement. If esure considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
6. deduct the premium of £1,347.35 from any payment it makes in settlement of the claim; and
7. refund Mr G any amount of premium that the insurer under his policy from January 2022 certifies as relating to the voidance and as non-refundable notwithstanding the letter saying that esure voided his policy in error and it has removed any record of its voidance from any internal or external database to which it supplied such a record.

Mr G's response to the provisional decision was as follows:

*"So when I bought the insurance for my car; I thought they ask for total of the accident and I already told them everthing.
I didn't know that I had to devide accidents between myself and my wife. I just gave them total of accidents what we made together."*

esure hasn't responded to the provisional decision.

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 should say at the outset that I am troubled by the letter dated 24 November 2021 from the insurer who had paid the claims dating from October 2018. Mr G relies on the sentence in that letter that says that the only incident that occurred in October 2018 was on 2 October and that the insurer had removed the record of the claim dated 13 October 2018.

However, the letter says that a third party had made a claim that Mr G's wife had hit the third party's car on 2 October 2018 in a street. The insurer says that it had recordings of calls in which Mr G made a claim that on 13 October 2018 an unknown third party had damaged his vehicle outside his home – but in mid-September 2021 Mr G said he had made that claim because he didn't have the details of the third party who his wife hit on 2 October 2018.

The letter of 24 November 2021 said that Mr G had fabricated the incident of 13 October 2018. The insurer asked him to repay its outlay on repair of Mr G's vehicle and to the third party. From that letter, I conclude that there had been a real incident and a third party claim dating from 2 October 2018 and an additional claim from Mr G which he said dated from 13 October 2018. That reflects badly on Mr G.

From what I've seen, in early September 2020, the comparison website asked Mr G a number of questions.

From the policy schedule, I find that Mr G had said that his partner had held a full UK driving licence for one year. If that's correct, she must've been driving on a different licence in October 2018.

From what I've seen, the questions included one as follows:

"Claims and convictions

In the last five years, have you had or caused any accidents, claims or damage involving any motor vehicle (including cars, motorbikes and/or vans), even if no claim was made and regardless of blame?"

I'm satisfied that the question was reasonably clear and specific.

From the policy schedule, I find that Mr G answered "yes", and the website prompted him to give details. He gave details of the four incidents or claims listed earlier in this decision.

Later the website asked the same question but in relation to the named driver. From the policy schedule, I find that Mr G answered "no".

He was saying that he had been involved in an accident in October 2018, but his wife had not. And he was saying that she hadn't been involved in an accident in May 2019. I don't consider that his answers were correct.

According to the letter dated 24 November 2021, Mr G knew his wife had been involved in the accident on 2 October 2018 and he made the claim dating from 13 October 2018.

According to CUE, Mr G's wife had been involved in an accident in May 2019, for which the insurer paid out over £7,000.00 for her damage and a similar sum to the third party. So that was a significant accident that I would expect Mr G to remember in September 2020.

So I'm far from satisfied that Mr G took reasonable care not to make a misrepresentation to esure when he took out the policy in September 2020.

From the evidence supplied by esure, I'm satisfied that Mr G's careless misrepresentation made a difference to esure. If Mr G had disclosed the fact that his wife (who had a recently issued UK driving licence) had had two claims, then esure wouldn't have offered the policy at all. So I'm satisfied that it was fair and reasonable for esure to conclude that there had been a qualifying misrepresentation under CIDRA.

However, esure did offer cover to Mr G (a more long-standing licence holder) after he said he had the four claims. The evidence shows that esure would've offered cover for Mr G without his wife as a named driver.

Putting things right

So I find it fair and reasonable to direct esure to:

1. not treat Mr G's policy as void but to treat it as covering Mr G (but not his wife) to drive the vehicle at the time of the accident reported in July 2021;
2. not charge a voidance fee;
3. write a letter to Mr G (which he may show to any current or future insurer) saying that it voided his policy in error and it has removed any record of its voidance from any internal or external database to which it supplied such a record;
4. deal with Mr G's claim in line with the policy terms;
5. add simple interest at a yearly rate of 8% on any payment it makes in settlement of the claim, from the date of the claim to the date of its settlement. If esure considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate;

Mr G's wife was a less-experienced driver, I would expect the policy to have cost less without her as a named driver. But Mr G made a careless misrepresentation about her driving record. So I don't find it fair and reasonable to direct esure to reduce the premium he agreed to pay. Rather I find it fair and reasonable to direct esure to:

6. deduct the premium of £1,347.35 from any payment it makes in settlement of the claim;

I've thought about Mr G's policy from January 2022. I find it fair and reasonable to direct esure to:

7. refund Mr G any amount of premium that the insurer under that policy certifies as relating to the voidance and as non-refundable notwithstanding the letter saying that esure voided his policy in error and it has removed any record of its voidance from any internal or external database to which it supplied such a record;

I've thought about the distress and inconvenience Mr G has suffered as a result of a voidance I've found unfair. But I consider that Mr G brought trouble on himself by his careless misrepresentation. So I don't find it fair and reasonable to direct esure to pay him compensation for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct esure Insurance Limited to:

1. not treat Mr G's policy as void but to treat it as covering Mr G (but not his wife) to

drive the vehicle at the time of the accident reported in July 2021; and

2. not charge a avoidance fee; and
3. write a letter to Mr G (which he may show to any current or future insurer) saying that it voided his policy in error and it has removed any record of its avoidance from any internal or external database to which it supplied such a record; and
4. deal with Mr G's claim in line with the policy terms; and
5. add simple interest at a yearly rate of 8% on any payment it makes in settlement of the claim, from the date of the claim to the date of its settlement. If esure considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
6. deduct the premium of £1,347.35 from any payment it makes in settlement of the claim; and
7. refund Mr G any amount of premium that the insurer under his policy from January 2022 certifies as relating to the avoidance and as non-refundable notwithstanding the letter saying that esure voided his policy in error and it has removed any record of its avoidance from any internal or external database to which it supplied such a record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 October 2022.

Christopher Gilbert

Ombudsman