DRN-4043950

The complaint

The estate of Mrs B, represented by its executor, Ms W, has complained about esure Insurance Limited (Esure). Esure, following claims made for buildings and contents items stolen and damaged during a burglary, declined liability for the claims on the basis the property was underinsured and did not have a working alarm.

What happened

Ms W spoke to Esure in November 2019. At that time, the policy, which was in Mrs B's name and covered the property and its contents, was due to renew – I'll refer to this as policy one. Mrs B had passed away in May 2019. Ms W had been living in the home for quite some time and Mrs B's will named her as the executor for the estate.

The result of Ms W's conversation with Esure was that a new policy was put in place – I'll refer to this as policy two. On policy two Ms W was named as the policyholder. The level of cover offered for contents items was reduced from that offered in policy one.

In February 2020, whilst Ms W was staying away from the property for a while, there was a theft and fire. The thieves stole belongings from the property, and set fire to outbuildings. The cleaner for the property discovered the loss and damage. Ms W claimed to Esure under policy two.

Esure began considering the claims. It looked at the value of contents at the property and felt they'd been underinsured – against the sums allowed for in policy two. It was satisfied that the buildings were not underinsured (in policy one or two). Ms W said she hadn't been sure of values when policy two was arranged as she'd still been struggling to deal with everything following the passing of Mrs B (her mother). She said she was also not convinced by some of the values Esure had put forward for some jewellery items. She said some were based on answers she had given to questions asked by a jeweller – but she hadn't been wholly sure about some things. Ms W further said she had thought she could insure just some items, rather than having to insure them all.

During correspondence Esure asked to see an inventory for the estate. It also noted concern over Ms W's ownership of the items and property. A tax form showing details for inheritance tax purposes was provided, but not an itemised inventory for the estate. Regarding ownership Ms W said that as well as being the executor for the estate, she was its sole heir and had lived at the property as her main residence since before her mother passed away. So she didn't think there could reasonably be any issue in respect of ownership.

Esure said that if it had been told of the true value of the contents items, it would still have offered policy two, but on different terms – an alarm would have been required and the premium would have been different. It said the claims would then have been assessed in light of the property having needed an alarm. But, in the same letter, Esure went on to say that, because Ms W's property did not have an alarm, it wouldn't have offered cover at all. It said on that basis it was declining the claims. Ms W complained to us.

Our Investigator considered the complaint from the point of view of Ms W being the complainant. But when the parties wouldn't agree to the findings issued, the complaint was passed to me for an Ombudsman's decision. I felt the complaint should be considered as having been brought by the estate of Mrs B as represented by Ms W.

Having issued my jurisdiction decision to both parties on that point, the complaint came back to me to decide the merits of the estate's complaint. I asked both parties for further details and, having considered everything, I felt that the complaint should be upheld, so I issued a provisional decision. My provisional findings were:

"I think policy one should have been renewed

Seemingly Esure had been made aware, at some point before policy one was due to renew towards the end of 2019, likely by solicitors acting for the estate, that Mrs B had passed away. Esure then seems to have tried to establish contact with Ms W. I think that was a reasonable thing for it to do – it would have needed to make some checks, including whether a policy to cover the estate of Mrs B, who had been its policyholder, was required. From what I can tell, Esure had some difficulty making contact and this resulted in it sending letters saying the policy could not renew.

However, I am satisfied that Esure had been planning on renewing the policy and had issued paperwork to that effect – such is referenced in the conversation Ms W had with Esure setting up policy two. And Ms W had contacted Esure, so any bar to renewal going ahead, on account of Esure not having been able to talk to her, seems to have been resolved.

Further Esure has shared its underwriting criteria with us as would have applied to a renewing policy. It shows that it might have chosen to add some terms to a policy renewing where the policyholder had passed away – but not that renewal would have been declined. And I think that reflects good industry practice where usually insurers will allow cover for at least a year after the policyholder has passed away, even where the property is empty. Here Ms W was staying at the property. So I can't see any reason, within Esure's underwriting for renewing policies, or given what I've explained is good industry practice, why policy one should not have renewed.

Esure though told Ms W, when it called her in 2019, that it could not renew policy one – that it had to set up a policy in Ms W's name – policy two. And this is where I think Esure got it wrong. Esure does not sell policies on an advised basis. So, in theory it was always up to Ms W, as executor for the estate, to choose whether or not to keep policy one or go ahead and arrange policy two. However, Esure called Ms W, the representative introduced themselves as being from Esure's underwriting team, and told Ms W that policy one could not be renewed, that a new policy (policy two) would have to be arranged. In light of the way this happened, I don't think Ms W was left feeling that she had any choice. Esure was wrong to say policy one couldn't be renewed and it left Ms W, as the executor, in a position where she felt there was no choice but for policy one to end and for her to set up policy two.

In the call Ms W was clearly busy and distracted, her goal seeming to be to ensure cover continued and she expressed some concern about the letter received about renewal for policy one not being agreed. Ms W agreed to go ahead with setting up the new policy to make sure cover continues and because time was a factor. But I think it's fair to say that if Esure had called her and just explained that it needed her agreement, as executor, to amend policy one to reflect that the cover, from renewal, would be in the name of Mrs B's estate, Ms W would have been satisfied by that. So, to me, the fair and reasonable logical first step to unwinding all of this is to consider what would likely have happened if policy one had renewed.

Did policy one provide adequate cover

If policy one had renewed – it would have been the cover available to the estate at the time of the claim. Now, Esure has already argued that looking at this situation as if policy one had been in place, would make no difference – as, in its view, the estate, as against policy one or policy two, was underinsured. But, so far, Esure has sought to decline the claims outright – even that for buildings damage. And that is only on the basis of what Ms W told it when arranging policy two and what it would have done regarding policy two if she had given it correct details. And Esure having allowed policy one to renew, would have avoided all of that. Which brings me back to the point of deciding what I think would most likely have happened had policy one renewed.

I think that Ms W, if policy one had renewed, would not have given its content much thought. I think that it was only on being prompted to go through specific questions whilst arranging policy two that Ms W put her mind to what cover might likely be required. Based on everything I've seen, I think that without other prompting, Ms W would just have let policy one renew as it was, with the exception of the necessary amendment as I've said, to account for the estate's involvement.

Policy one gave unlimited cover for the buildings and, as confirmed during the call Ms W had with Esure in November 2019, the renewal sum insured total for contents was £69,040 (broken down with 65.3% applying for household goods, 32.2% for high-risk items and 2.5% for personal possessions). So Esure's liability and the claims should have been assessed on that basis.

Esure believes that a total of £69,040 was not sufficient for replacing all contents items covered by the policy as new. It thinks the likely cost for that is £142,638 – split between household and high-risk items (the later including jewellery). That the total replacement value for household goods was £80,070, determined by its loss adjuster and for high-risk items £57,068. The high-risk total was determined by Esure's jewellery specialist.

I know Ms W is not satisfied by the replacement sums put forwards by Esure – that she feels particularly that the high-risk figure is flawed because it was reached by Esure's specialist talking to her about items and, consequently, upon detail she gave, which she was unsure about. Whist I can understand Ms W's concerns in these respects, I don't think they give me cause to doubt the findings of Esure's specialist.

It is not uncommon for parties to a claim to sometimes be unsure for one reason or another about items claimed for, such as jewellery, which have been lost, where limited documentation and or photos are available to help value them. Specialists, like the one used by Esure here, are able, using their skill and expertise, to make reasonable determinations about jewellery, and other high-risk items, by talking to those involved in the loss. And they can utilise their skill and expertise to take into account any uncertainties presented during the discussion. I've no reason to doubt the assessment undertaken by Esure's specialist or the values that were returned. Similarly, loss adjusters can usually reasonably assess the replacement cost for household items. Esure's loss adjuster did that here, and I've no reason to doubt the outcome of that assessment either.

In saying that I know that Ms W presented an estimate to Esure from a clearance company – but I note that the items therein were not jewellery/high-risk items. And the values given were in regards to selling items second-hand which the estate still had in its possession. I've not seen any evidence, such as an assessment from the estate, as to what it would cost to replace as new the estate's high-risk or household items.

Which leads me to conclude that policy one did not provide adequate cover for the estate, that the estate was underinsured. So I've looked at what that means.

What is the impact of policy one being underinsured

Whilst this was a difficult time for Ms W, it would have been up to her, as executor, at renewal of policy one to take reasonable care not to mislead Esure about any policy details. The policy schedule sent to Mrs B in 2017 included this at the top of the document: "You have a duty to take reasonable care to ensure the information provided or confirmed to us before you enter into, vary or renew your Policy is accurate and not misleading. This duty includes a requirement to ensure that your household goods, high risk items, personal possessions and specified items are insured for the full replacement cost as new at all times." And I've no reason to think the renewal policy documents in 2019 would have said anything different.

There is legislation relevant here; the Consumer Insurance Disclosures and Representation Act 2021 (CIDRA). This required Ms W to take reasonable care in this respect too. And it explains that if an insurer can show that it would have done something different if correct detail had been given, it can have a remedy based on what it would have done. But here Esure hasn't shown me that it would have done anything different regarding the renewal of policy one, so it isn't entitled to a remedy afforded by CIDRA.

CIDRA though is not the only thing to take into account here. That is because Esure has chosen, in respect of policy one, to include terms in the policy that reflect what CIDRA says. But the fact remains that Esure has not shown it would have done anything differently regarding policy one. So I don't think these policy terms make a difference.

However, Esure has also included in the cover a term specifically for underinsurance. The term says: "You must make sure that all Your Household Goods, High Risk Items, Personal Possessions and Specified Items are covered for what it would cost to buy new replacements. If You do not do so, We will proportionately reduce the amount payable on any claim. We will calculate the reduction by comparing the Sum Insured for all Your Household Goods, High Risk Items and Personal Possessions with the new replacement cost for all items.".

Now clearly that term relates to contents items, and there is no similar term in respect of buildings. In any event, Esure accepts that the sum insured for buildings was adequate. In fact it never had any concerns in this respect. So it follows that the above term doesn't apply to the buildings claim. In my view Esure then must fairly and reasonably settle the buildings claim in line with the remaining terms of the policy (policy one). And as it should have done this earlier, in my view, if that is settled by way of a cash payment, interest from the date of loss until the settlement is made, should be applied to any sum paid to the estate.*

The claim for contents though is, in my view, reasonably caught by the above term. And given the amounts in question, I think Esure would always have chosen to settle in cash. I've said I'm satisfied by the values returned by Esure regarding what the likely replacement value is for all the insured property. So that means that the cover available on policy one for contents represented 48.4% of the total replacement value – £69,040 being 48.4% of £142,638. Which means that Esure is liable to the estate for 48.4% of its claim (which totalled £70,088 being £13,020 for household goods and £57,068 for high-risk items). And there is the policy limit for high-risk items that needs to be considered too. So 48.4% of £13,020 is £6,301.68. And 48.4% of £57,068 is £27,620.91. The high-risk limit on the policy, as mentioned above, was 32.2% of the total sum insured but there was a limit for personal possessions too, at 2.5% of the total sum insured.

This service often views that in respect of complaints about claims for lost or stolen jewellery, where there is an element of underinsurance but cover and limits for high-risk items as well as personal possessions might apply, it is usually fair and reasonable to take both into account. I see no reason not to follow that approach here. So that means that 34.7% of the sum insured reasonably applies for high-risk items under this claim (32.2% plus 2.5%). Which equates to a sum of £23,956.88 available to the estate for high-risk cover.

That is less than the figure generated above by applying 48.4% to the claim value for high-risk items. But given what I've said above about what I think Ms W would have done at renewal, it seems likely to me that any shortfall that exists is not due to any failure by Esure. As such, in settling this claim, I think Esure, can reasonably rely on £23,956.88 as its limit of liability for high-risk items. Which means that for the claim of £70,088, taking into account the underinsurance and applicable policy limits, Esure reasonably has liability to the estate under policy one for £30,257.88 (£6,301 plus £23,956.88).

There is something else that would have happened too though. The estate, if policy one had renewed, would have paid more for cover than it did under policy two. To fairly and reasonably require Esure to settle the claim based on policy one's cover, I have to allow for 'payment' in respect of that policy cover. Considering the documents for policy two, along with detail recorded in the phone conversation between Ms W and Esure in 2019, the difference in price of cover was £465.58. I say that as the cost of policy two was £498.42 and Esure's representative in the call with Ms W said the price for policy one to renew was £964. Therefore, Esure can reasonably deduct £465.58 from the sum I've found due under the cover for contents of £30,257.88. Making the sum due to the estate in settlement of the contents claim £29,792.30.

I think Esure should have settled this a long time ago though. It knew from early on in the claim that the replacement cost of all items likely far exceeded even the cover which should have been in question under policy one. And that concern was confirmed by the specialist's report on high-risk items dated 12 May 2020. So I think it's fair and reasonable to require Esure to add interest to the sum payable to the estate of £29,792.22, applied from 12 May 2020 until settlement is made.*

Compensation

I appreciate that this has been a difficult time for Ms W, likely not helped by the claim not resolving. But as the executor of the estate, I can't take into account or blame Esure for any distress and inconvenience she has experienced. And the estate itself can't suffer distress. Whilst it could be inconvenienced, I haven't seen that has happened here. So I don't intend to make any compensation award for distress and inconvenience."

Ms W, on behalf of the estate, said she accepted my decision. She said she had nothing further to add.

Esure said it would agree to consider the buildings claim. But it couldn't agree to covering the contents claim. In summary:

- It maintained its claims decision was correct regardless of the name on the policy.
- It questioned my ability to tell it how to operate its business.
- The need for policy two only arose because Ms W had ignored its attempts to communicate with her.
- Ms W misrepresented the level of cover needed and her being "busy and distracted" doesn't seem to be a reasonable excuse for that.
- It's not fair to say it doesn't have any entitlement under CIDRA to a remedy.

- Renewal of policy one doesn't change the fact of significant underinsurance, and it is suspected that Ms W would have reduced that further.
- It would always have required a working alarm to be in place for the correct level of cover.
- There was no working alarm.
- So its claims decision would always have been the same.
- As such it won't comment on the calculations used to determine the settlement award made.
- It thinks it being allowed to deduct the extra premium for policy two is incorrect – the remedy would/should be in line with CIDRA, a proportional settlement of the claim based on the premium taken against that which would have been charged.

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 note Ms W's acceptance of my findings. I note Esure has agreed to cover the buildings claim. I've considered Esure's other comments made in reply.

Esure has maintained that its claims decision would have been the same and that it should have entitlement under CIDRA. Including that CIDRA should be applied to pro-rate any settlement awarded for contents items. But all of that stands on the principle that Esure has shown it would have done something differently with policy one at renewal if it had been told the correct level of contents at the property. And Esure has not done that. Not even in terms of premium for policy one. I concede that it has said numerous times that it would have applied an alarm endorsement – but it has not shown with adequate evidence – for example either by a statement from a senior underwriter or on presentation of its underwriting criteria which applied to policy one – that an alarm would have been required. Without that it has not shown that its claims decision would fairly and reasonably have been the same. And it is not entitled to any remedy under CIDRA for Ms W having misrepresented the level of contents (or rather that she likely would have done by not correcting the level of cover available on policy one). That is because CIDRA remedies only apply to qualifying misrepresentations – i.e. where the misrepresentation made the insurer do something differently than it otherwise would have done.

It is not for me to tell an insurer how to complete its business. But it is for me to consider whether, in effecting and carrying out a contract of insurance, it has treated its policyholder fairly and reasonably. And if I find that it has not then I also need to think about what is needed to put matters right.

I agree, and explained provisionally, that the simple renewal of policy one would still have resulted in the estate being significantly underinsured. I took into account, as explained, that Ms W would always have likely failed to correct the level of cover policy one provided. And, based on the policy terms which I was satisfied would apply in that instance, I worked out what fair and reasonable settlement of the claim would be – bearing in mind that Esure had not established to my satisfaction that it would have required a working alarm to have been in place and in use at the property at the time of the loss. But also, the premium which would have applied to policy one had it renewed.

I note Esure has not sought to comment on or challenge my calculations set out to explain the award I was suggesting. As such I've no reason to comment further on those calculations or, indeed, to change them.

I realise that Esure disagrees with my decision on this complaint. But I've taken into account its stated position – both as set out before I made my provisional decision and given in response to it. However, I remain of the view that Esure failed the estate of Mrs B, its policyholder, in this instance and that it must act to put that right. As my views on the complaint have not changed, my provisional findings, along with my comments above, are now the findings of this, my final decision.

Putting things right

I require Esure to:

- Reinstate policy one, amended to show it covers the estate of Mrs B, until renewal in 2020.
- Settle the claim for damage to the buildings in line with the remaining terms and conditions of policy one. If this results in a cash settlement, add interest* to the amount to be paid to the estate, from the date of loss until settlement is made.
- Pay the estate £29,792.30 in settlement of the contents claim, plus interest* applied from 12 May 2020 until settlement is made.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Esure to take off tax from this interest. If asked, it must give the estate of Mrs B a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require esure Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 20 April 2023.

Fiona Robinson
Ombudsman