

## **The complaint**

Ms G and Ms A complain esure Insurance Limited cancelled Ms G's motor insurance policy and declined to deal with the claim.

The policy was in Ms G's name and Ms A was a named driver on the policy.

## **What happened**

Ms G took out a motor insurance policy in November 2022 with esure. She later made a claim as the car was stolen in January 2023.

In February 2023, esure rejected the claim and cancelled the policy from the beginning. It said no further policy premiums would be taken and the amount paid would be returned. esure said this is because Ms G didn't have a full UK driving licence, instead, she has a full EU driving licence. As this was different to what Ms G told it when taking out the policy, it said she'd made a misrepresentation. esure explained if it knew the correct position, it wouldn't have given Ms G a quotation nor issued a policy to her.

Ms G complained to esure, but it said the decision it had made was fair.

Ms G and Ms A brought their complaint to this service. They said when taking out the policy, it was for esure to make the question clear. However, when asked about a full UK driver's license, they understood this to mean the right to fully drive in the UK, which Ms G has through her EU licence. They also feel esure should've checked the information provided by them at the time the policy was taken out rather than when they made a claim - it now feels to them like it's an excuse to avoid paying their claim.

The Investigator recommended the complaint should be upheld. They thought esure hadn't shown that it received inaccurate answers to clear questions, nor it wouldn't have offered Ms G a policy even if it had been given the correct information about her licence. They recommended esure take steps to put things right.

Ms G and Ms A accepted the Investigators view. esure responded to ask for more time to respond. It didn't reply by the agreed date. The Investigator chased it explaining the impact of it failing to respond and provided it a final deadline to respond. Again, esure didn't reply by the agreed date and, at the time of writing this decision, still hasn't responded.

The matter has been passed to me for a 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.

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.

If the 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 must 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.

When considering whether a consumer has taken reasonable care not to make a misrepresentation, we look to see the insurer – here esure - asked a clear question when the policy was taken out. If it was, we also check if the correct information would have affected whether a policy was offered or the terms of the policy which would've been offered. This is usually done by checking the underwriting criteria of the insurer.

esure hasn't sent this service evidence of the questions asked when Ms G took out the policy with it, guidance provided to a consumer when answering these questions nor Ms G's answers. So, it's not possible for me to say clear questions about the type of driver's licence held by Ms G were asked when the policy started or that she failed to answer the question with reasonable care. Further, I have no evidence to suggest what Ms G has said is wrong, therefore, I accept she has the right to drive in the UK and understood this to be what the question was asking her when she took out the motor insurance policy with esure.

Even if I thought the question asked was sufficiently clear and Ms G failed to answer it with reasonable care, I'd also need to consider what esure would've done differently had the correct information been provided. It said in its avoidance letter of February 2023 it wouldn't have offered a quotation or issued a policy to Ms G if it was aware she had a full EU licence. However, esure also hasn't sent its underwriting criteria to this service. Without evidence to confirm this, I can't say esure would've done anything differently even if there was a misrepresentation by Ms G.

Taking the above into account, I can't say esure has shown Ms G and Ms A made a qualifying misrepresentation. Therefore, it doesn't have a remedy under CIDRA. It follows it's unfair for esure to avoid the policy and reject the claim for this reason. It therefore needs to put things right by following the below steps.

Ms G and Ms A have been undoubtedly distressed and inconvenienced by esure's decision. I think esure should compensate Ms G and Ms A for the impact caused by the unfair avoidance of Ms G's motor insurance policy. The Investigator recommended £400, and I consider this to be fair and reasonable in the circumstances.

### **Putting things right**

I require esure Insurance Limited to do the following to put things right:

1. Reinstate Ms G's policy.
2. Provide Ms G and Ms A with a letter to say the avoidance was its mistake so they may pass it to their subsequent motor insurer(s) so they can recalculate any premium(s) affected by the avoidance.
3. Remove any record of the policy avoidance on all internal and external databases and provide Ms A and Ms G with a letter confirming this has been done. This can be incorporated with the letter above.

4. Consider Ms G's claim in line with the terms and conditions of the motor insurance policy.
5. Pay Ms G and Ms A £400 compensation for the distress and inconvenience they have been caused by the unfair cancellation of their policy. esure should pay this compensation within 28 days of us telling it the consumer has accepted my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at a rate of 8% a year simple\*.

\*If esure Insurance Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Ms G and Ms A (as appropriate) how much it's taken off. It should also give Ms G and Ms A a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is I uphold this complaint. I require esure Insurance Limited to put things right by taking the steps outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A and Ms G to accept or reject my decision before 30 October 2023.

Rebecca Ellis  
**Ombudsman**