

The complaint

Mr W is unhappy about how esure Insurance Limited trading as Sheila's Wheels ("esure") dealt with a claim he made on his motor insurance policy when his car was stolen. He also complains about esure settling the claim proportionately.

What happened

Mr W has car insurance with esure. The policy started in June 2020 and renewed each year. The policy was renewed in June 2022.

Unfortunately in October 2022 Mr W's car was stolen, and so he reported it to esure. esure noted Mr W had received a fixed penalty fine and three points on his driver's licence but hadn't declared it. And so it made the decision to settle his claim proportionately.

Mr W says esure undervalued his car and told him he would need to take out gap insurance to bridge the gap. Mr W wasn't happy with the settlement offer for the vehicle but esure didn't increase it. Esure said it used industry guides to value Mr W's car and this gave the settlement figure of £24,354.

Mr W feels he is being punished for an oversight when taking out his insurance and that, given the consequences of making such an error, esure should flag it before issuing the policy. He says when he took out the policy he answered the questions truthfully but the renewal email from esure only says 'thanks for renewing your car insurance' and the rest of the information is easily overlooked by the recipient, which is what happened here.

Esure said Mr W had been offered 77.75% of the car's market value because he hadn't disclosed a driving conviction. And if he had his premium would have gone up by 22.25%. Esure said Mr W was required to take reasonable care that the information provided is true and complete, otherwise it may reject or reduce the claim, or the policy may be invalid. Esure said because the information provided by Mr W wasn't accurate it reduced his claim settlement proportionately. So Mr W received £18,936 subject to his policy excess.

Mr W wasn't happy with the response from esure and so referred his complaint to this service. Our investigator looked into things for him. He said he could see Mr W made a misrepresentation but esure hadn't demonstrated it was qualifying, and so he didn't think esure acted fairly in proportionally reducing the claim. The investigator also said the valuation wasn't fair and should be increased to £26,113.

Esure didn't agree. It said it had demonstrated there had been a misrepresentation, and that it had reduced its settlement in line with CIDRA. Because esure didn't agree the complaint has come to me to decide.

My provisional decision

I recently issued a provisional decision setting out my thoughts on the key complaint points and how I thought matters might best be resolved. I said;

"I'd like to start by reassuring both parties that I've considered all the information provided to me as well as comments from both sides. But I've focused on what's relevant to the outcome of this complaint.

I appreciate Mr W has experienced a difficult time during the course of the claim so I can see this has been a stressful experience for him. Mr W feels very strongly that esure has treated him unfairly.

Car valuation

This service's role isn't to work out exactly what the value of an individual vehicle is. We look at whether the insurer has applied terms of a policy correctly and valued the vehicle fairly. Under the terms of the policy esure must pay the market value of the car at the time of the loss, less the excess.

Mr W's policy says, "we won't pay more than the market value of your car at the time of loss, less the total excess payable.". The policy defines market value as, "the amount you could reasonably have expected to sell your car for on the open market immediately before your accident or loss. Our assessment of the value is based on cars of the same make and model and of a similar age, condition, and mileage at the time of the accident or loss. This value is based on research from motor trade guides: including Glass's, Parkers, and CAP. This may not be the price you paid when you purchased the car."

I need to consider whether esure used the right market value for the car under the terms of the policy. Standard practice is to use industry accepted trade guides which are based on extensive nationwide research of likely selling prices by reputable dealers. I have seen copies of the valuations used by esure and am satisfied the correct vehicle details were used to obtain them.

Esure's policy says its approach to the valuation is to pay the amount Mr W could reasonably have expected to sell his car for before the loss. It's starting point is the available guides referred to above. Esure considered one of the valuations an outlier since it said it was an anomaly given it was approximately £28,600; higher than the others. So esure offered £24,354 in total.

Mr W didn't agree. He said esure's figure is lower than the prices he was able to find and he didn't see a comparable car for the price of the total settlement value. Mr W provided a number of adverts and valuations for similar cars to his own which showed a variance in price. But the variance in price demonstrates that valuing a car isn't an exact science.

In this case there are large variations in the three main trade guide prices for Mr W's car. Because these variations are so marked and given the available evidence of advertised prices for replacement cars, I don't think it's fair, in this case, to disregard only the highest value. I also don't think averaging the lower values produces a fair and reasonable figure.

Our investigator didn't agree with esure's valuation. He obtained four valuations and since two of them were around £28,000 he used five valuations to obtain a settlement figure.

Taking everything into account I think on balance the investigator's recommendation that the valuation should be based on five trade guides at £26,113 is fair and reasonable in this case. And I think esure should increase its valuation of Mr W's car to this figure and deal with the claim accordingly.

Misrepresentation

The relevant law in this case is the Consumer Insurance (Disclosure and Representation) Act 2012 ("CIDRA"). This requires the consumer – in this case Mr W - to take reasonable care not to make a misrepresentation to the insurer, esure. And if a consumer fails to do this the insurer has certain remedies provided the misrepresentation is a qualifying one. For it to be qualifying 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 depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Esure say Mr W failed to take reasonable care not to make a misrepresentation when his policy renewed. Our investigator asked esure to provide details of the call where Mr W renewed his policy but was told there wasn't one. The policy wasn't renewed over the telephone. The policy was automatically renewed and the documents sent to Mr W. Those documents say;

"You are required to take reasonable care that this information is true and complete. If the information is wrong, incomplete, or changes during the year, call us immediately...otherwise we may reject or reduce any claim you make, or even treat you as being uninsured."

The documents also say;

"Tell us before your next renewal date if you or any driver under your policy is convicted of a motoring offence including convictions, endorsements, fixed penalty notices and speed camera offences."

Mr W's testimony from the beginning of his complaint, and throughout, is that he contacted esure and told it he had received the driving conviction. He was told the conviction might increase the price of his premium – but it didn't. I have seen a letter to Mr W dated 4 July 2022 that says, "Thank you for your recent request to change your car insurance policy and we confirm these changes have been made for you." And this appears to support Mr W's version of events. Without any other proof, I don't know what exactly Mr W said and what he was told. So in the absence of proof, I've considered what is more likely to have happened. And I think Mr W's intention was to tell esure about the conviction and wasn't aware he needed to do this online.

Mr W says he wasn't aware he needed to log the penalty points via his online account and I understand why. I haven't seen anything confirming that any changes need to be reported online. The policy requires that if any information is wrong, incomplete, or changes then consumers should 'call us immediately' and on the evidence available to me, that is what Mr W appears to have done.

If a consumer has provided information that is incorrect or incomplete then in order for the misrepresentation to be a qualifying one esure need to show Mr W didn't take reasonable care not to make a misrepresentation; and based on what I've said above I'm not persuaded Mr W didn't take reasonable care.

But even if Mr W hadn't taken reasonable care not to make a misrepresentation esure has to show it would have done something differently. Here, esure says it would have charged a higher premium so this service asked esure to provide evidence of this. But from what I've seen I can't say esure has done this. Mr W paid £767.48 for his policy but esure says if it had been aware of the conviction it would have charged him £987.06; which is

approximately 22% higher. But I haven't seen any evidence to suggest this is the case, despite requesting it.

I asked esure to evidence what premium Mr W should have paid at the time they took out the policy. I need to be satisfied the increase is in line with the underwriting criteria that applied to all consumers and that it reflects the price Mr W would have paid at renewal – not the price calculated at a later date.

The evidence I've seen suggests a vehicle change triggered an increase in the premium from March 2022 to June 2022. The evidence says the vehicle change had a significant bearing on the price. Esure says when the policy renewed in 2022 it scored various risks differently which led to the customer benefitting from a more favourable position for his circumstances. But there is no mention of the penalty points, or evidence to show how they would have impacted the premium not just for Mr W, but for all customers.

And so because I don't think esure has demonstrated it would have acted differently had it been aware of the penalty points, and I think Mr W took reasonable care not to make a misrepresentation then it follows that there is no qualifying misrepresentation here. And so esure is unable to take any action in respect of the policy or reducing settlement."

Response to my provisional decision

Neither party raised any additional points.

Esure didn't agree with the provisional decision. It said the consumer provided incorrect information when setting up the policy and has been treated in line with other consumers.

In response I explained my decision is based on the evidence and from what I'd seen I wasn't persuaded Mr W had been treated fairly for the reasons I've explained.

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.

In light of the fact that neither Mr W or esure had anything to add to the findings set out in my provisional decision (which I've reproduced here and which forms part of this final decision), I'm satisfied it represents an appropriate way to resolve the dispute. For the reasons I've set out above I'm upholding Mr W's complaint.

Putting things right

I think a figure of £26,113 is a fair settlement in the circumstances and takes into account the valuation of four guides. So the valuation is £1,759 more than the final offer from esure. So I think esure should settle the claim based on a valuation of £26,113 less the excess and any amount already paid in settlement of the claim.

I also think esure should pay interest at a rate of 8% simple per year from the date of the original offer to the date of the settlement. For the avoidance of doubt no reduction should be applied to the final settlement.

And had esure settled the claim fairly in the first instance I don't think Mr W would have needed to continue to engage with us and esure in an attempt to recoup the amounts he felt had been deducted unfairly. I'm satisfied this has taken time and effort from Mr W, and I don't doubt it would have been both stressful and upsetting to be without a vehicle. And so I

think esure should pay Mr W £250 to recognise the trouble and upset. I think this is fair and falls in line with our service's approach. So I intend to direct esure to pay this additional amount.

My final decision

For the reasons I've explained I'm upholding Mr W's complaint and direct esure Insurance Limited trading as Sheila's Wheels to do what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 October 2023.

Kiran Clair
Ombudsman