

The complaint

Mr A and Miss W complain that esure Insurance Limited's handling of a claim on their joint motor insurance policy resulted in a County Court Judgement (CCJ) to be issued against Mr A. This has had a significant on-going financial impact on them.

What happened

esure dealt with a motor claim made against Mr A in 2019. Mr A and Miss W submitted a mortgage application to a building society I will refer to as 'Company S'. In May 2022, their joint application was declined which is the point they say they became aware of a County Court Judgement (CCJ) being issued against Mr A on 21 August 2019. They say this CCJ was registered as a result of esure's handling of the motor claim in 2019.

Mr A and Miss W say this resulted in having to take a mortgage with a much higher interest rate, so they are paying significantly more each month and will do over the course of the mortgage. They also say they lost out on making £200,000 in profits from a building project they planned to do with the refinance funds.

esure accepted responsibility for the CCJ being registered but were not persuaded this was the sole reason it was declined. They said other factors may have contributed to this, such as Mr A's age being 50+, this application was for additional lending, and that they had applied for an interest only mortgage. As they didn't receive any proof that the CCJ was the sole reason for the application being declined, they limited their offer to pay £500 for the distress and inconvenience they'd caused in failing to prevent the CCJ from being registered.

Mr A and Miss W rejected this offer and brought their complaint to this service. Our investigator agreed with esure that in the absence of evidence to confirm the CCJ was the sole reason the mortgage application was declined; he was unable to consider the consequential losses being claimed. He also reconsidered the compensation esure awarded and agreed with Mr A and Miss W that it didn't truly reflect the full extent of the distress and inconvenience the CCJ caused to them. He said esure should increase the total compensation to £950.

As Mr A and Miss W didn't accept the investigators view, this has come to me for a decision. I issued a provisional decision on 23 November 2023 explaining why I was intending to uphold this complaint. I include this below.

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.

What I've provisionally decided – and why

In their final response, esure accepted they'd failed to make the payment within the one month period required resulting in the CCJ being recorded against Mr A. I also agree with

esure that in the absence of any evidence to confirm the CCJ was the reason for the mortgage application being rejected, I would also be unable to consider the additional losses claimed.

Since the investigator wrote his view in December 2022, further information has been provided by Company S to confirm the reason Mr A and Miss W's mortgage application was declined was "due to the adverse credit notably unsatisfied public information". Upon review of Mr A's credit report, I can see that this specifically refers to the CCJ recorded in 2019 and no other adverse credit is noted. As such, I am satisfied the CCJ was the reason why the mortgage application was declined and intend to uphold the complaint against esure. I've then considered what this meant for them, the impact this has had and then how to fairly resolve this complaint.

Putting things right

When putting things right, my aim is to put Mr A and Miss W in the position they would have been in had esure not made the errors resulting in the CCJ being registered. I need to establish what they would have done if the error hadn't happened. Mr A explains what he intended to do with the funds he would obtain from the new mortgage, so I have looked at this in more detail.

Mr A intended to retire within seven years of the event and says he wanted to release equity in his home to fund a building project on a plot of land. This new build was estimated to be worth in excess of £300,000, which he would then sell to pay the remainder mortgage outstanding on his home. They had applied for £200,000 interest only mortgage over 14 years with a fixed rate of 2.89% for five years with no fees applicable. The monthly repayment amount was £481.67 which reduced their original mortgage by £702.30 per month.

Mr A says their original mortgage payment of £1183.97 has now increased to £1700 per month because of interest rate increases. The evidence clearly shows, had it not been for the mortgage application being declined, they would have been tied into the lower interest rate with the lower monthly repayments for five years. As such, I think it is fair that esure should compensate Mr A and Miss W for being out of pocket.

It's clear that esure ought reasonably have known the consequences of making a payment to the court late and so should have been aware of the CCJ as early as September 2019. They should have rectified the situation as soon as they became aware of the CCJ being recorded against Mr A, particularly as they recognised and accepted early on that it had been registered because of their delays. I would expect them to have made efforts to at least minimise the impact their error had on Mr A, but they failed to do this. As of November 2023, the CCJ was still showing as active on Mr A's credit report, and I've seen no evidence to suggest any effort has been made to mitigate the impact on Mr A and Miss W by having this removed or marked as satisfied.

I appreciate Mr A and Miss W have been put in a very difficult situation paying far more than

they would have done if it wasn't for esure's error, and they've lost the opportunity to proceed with their new build development plans. However, it is difficult to say with certainty that all his losses including those that he may incur in the future can be attributed to the CCJ being recorded. I say this because changes in the wider market and economy would inevitably have had an impact on what would have happened after the five year fixed rate expired. It could also impact whether Mr A would have made the profits he projected on the new build development plans he intended to pursue.

In addition to this, they continued to make interest and capital repayments towards their existing mortgage which over the remainder term would have decreased the total balance repayable. So, I am not persuaded it would be reasonable to ask esure to pay all of the losses being claimed.

I've thought carefully about the level of compensation I would consider fair in this situation. I've detailed above the considerable impact it has had on Mr A and Miss W. I do feel esure's handling of the situation has added to the issues they've experienced, particularly as this continues to impact them. I believe this has prolonged the level of distress and inconvenience suffered by both Mr A and Miss W. I'm also aware that it may still take several months for the CCJ to be removed.

Making an award for compensation in this situation is not an exact science as it is impossible to measure the precise loss Mr A and Miss W have suffered or will continue to suffer. There are a number of factors which cannot be predicted, such as interest rate changes, changes in the housing market affecting home value and therefore potential profit or loss and whether the home is sold, and the mortgage is redeemed. Upon removal of the CCJ, Mr A and Miss W may also be able to obtain a new mortgage which would then change the course of any impact suffered.

What is clear is the additional cost they've incurred based on the difference between what their original mortgage payment was and increased to (because of interest rate changes) and what they would have paid if their mortgage hadn't been declined because of the CCJ. I've used this as the base level starting point for what I deem to be the appropriate level of compensation. With all of the above in mind, I intend to direct esure to have the CCJ against Mr A removed in the first instance if possible, and where this is no longer possible to have this marked as satisfied to minimise any continuing impact. I also intend to direct them to pay Mr A and Miss W £12,500 compensation and add 8% interest on this amount from May 2022 until the date the payment is made.

My provisional decision

For the reasons given above, I intend to uphold this complaint against esure Insurance Limited. I intend to direct esure to have the CCJ against Mr A removed in the first instance if possible, and where this is no longer possible to have this marked as satisfied to minimise any continuing impact. I also direct them to pay Mr A and Miss W £12,500 compensation and add 8% interest on this amount from May 2022 until the date the payment is made.

Responses to my provisional decision

Mr A and Miss W responded to accept my provisional decision.

esure requested copy of the evidence Company S provided confirming the reason the mortgage was declined. The investigator provided this evidence. They then responded to say their solicitors were in the process of having the CCJ marked as satisfied and had no further points to add.

Putting things right

As Mr A and Miss W accept my provisional decision and esure have not objected to this, I see no reason to depart from my provisional findings and make the same findings here.

My final decision

For the reasons given above, my final decision is that I uphold this complaint against esure Insurance Limited. They should :-

- have the CCJ against Mr A removed in the first instance if possible, and where this is no longer possible to have this marked as satisfied to minimise any continuing impact.
- pay Mr A and Miss W £12,500 compensation
- pay Mr A and Miss W 8% interest on the compensation from May 2022 (the day their mortgage application was declined) until the date the payment is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss W to accept or reject my decision before 8 February 2024.

Naima Abdul-Rasool
Ombudsman