

The complaint

Mr L has complained that esure Insurance Limited unreasonably refused to deal with his claim under his motor policy and then unfairly cancelled his policy.

What happened

Mr L's named driver was involved in an accident. So, Mr L made a claim to esure for the damage to his car.

On examining Mr L's car, esure decided it was an imported car from Asia which it said it would have never insured had Mr L disclosed this when applying for his policy. Esure decided Mr L had deliberately failed to disclose this, so it wouldn't deal with his claim, and it cancelled his policy, retaining the premium.

Esure also allowed the salvage yard to sell Mr L's car without his permission. Mr L complained but esure wouldn't change its stance although it said it would pay him the salvage for his car.

Mr L brought his complaint to us. The investigator was of the view it should be upheld as esure failed to provide any evidence to show it wouldn't have insured this car, plus it failed to provide any evidence of Mr L buying this policy showing he misrepresented the position about his car.

As esure failed to respond to the investigator's view, Mr L's complaint has been passed to me to decide.

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.

Having done so I'm upholding this complaint. I'll now explain why.

Non-disclosure and misrepresentation in insurance cases is dealt with under the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA). In the event of proof that a consumer misrepresented the risk to be covered on applying for a policy, an insurer has several remedies available to it. These remedies depend on the questions it asked the consumer and its underwriting guide as to what risks it wished to cover and which risks it didn't want to cover and how it might price those risks.

So, first esure has to show the misrepresentation was a 'qualifying misrepresentation' under CIDRA by showing Mr L didn't take reasonable care in answering the questions that esure asked him about his car. As esure didn't provide any evidence of the questions it asked Mr L about his car and more importantly his answers to those questions, then I have to conclude

esure hasn't shown me Mr L didn't take reasonable care in answering any questions asked of him.

Further unless esure can show it would have never insured Mr L's car given it was imported from Asia, or that it would have charged a higher premium, it further hasn't shown any misrepresentation made by Mr L was such a qualifying one under CIDRA.

CIDRA also goes further as esure has to decide on the evidence in the event of any non-disclosure that Mr L either carelessly misrepresented or deliberately misrepresented the facts. If the misrepresentation was merely careless – in the event the policy is cancelled esure would have had to return Mr L's premium paid for that policy year. If esure decided it was deliberate misrepresentation then and only then, is esure permitted to keep the premium paid by Mr L for that policy year. Although esure was of the view Mr L deliberately misrepresented matters but because it didn't produce any evidence of the questions asked and Mr L's responses, it then hasn't shown what category any misrepresentation allegedly made by Mr L falls into either.

Therefore, I don't consider it was right or indeed fair and reasonable that esure cancelled this policy in the manner it did, as it has never shown this was a qualifying misrepresentation under CIDRA. The investigator's view was dated 5 January 2024 and esure simply failed to respond to it at all. And certainly not by 19 January 2024, as the investigator requested. Esure's actions also caused considerable detriment to Mr L's insurance record too.

So, on this basis, I now require esure to remove all details of any cancellation of Mr L's policy from any internal and external databases. This means that Mr L can then go to his subsequent motor insurers and have them review the amount of the premium he has been paying as a result of esure's cancellation of this policy. Since Mr L has said his premium costs have increased substantially, it's more than likely his subsequent insurers will now be able to refund him the increase they charged given the cancellation of this policy being removed from his insurance record.

Given, I consider it was wrong of esure to cancel this policy on the basis it hasn't proved any misrepresentation by Mr L, that means Mr L's claim for the damage to his car is now payable. As it was deemed a total loss by esure that means there's no reason why esure should not pay the market value of his car to Mr L now.

Mr L explained his car was a very treasured car, as its make and model was highly revered by Mr L's father who is no longer alive. This meant Mr L didn't want esure to dispose of his car following this accident. Esure's file shows that it decided it was a total loss given the damage that occurred in the accident. And its engineers valued the market value of it as being £4,000 less £350 excess meaning the amount payable to Mr L would have been £3,650.

Given there is no detail on the category assigned to the total loss of Mr L's car, it's not possible for me to conclude it might have been repairable as Mr L had hoped.

I think it's accepted by Mr L that his car was unusual and likely to be imported. Given that, it's more difficult to value his car in any sort of straight forward manner. In the absence of any issues raised by Mr L on esure's valuation of his car, I consider it's fair that esure now pays Mr L the valuation of his car that its engineer stated, with interest.

However, esure's very poor handling of this matter meant that it didn't stop the salvage yard from selling Mr L's car, despite knowing Mr L clearly wanted to retain this car. Esure has admitted it made this error. But it never sought to offer Mr L any compensation for this. Clearly it had made an error in disposing of his car and in that case regardless of anything

else it ought to have compensated Mr L, but it didn't. It did offer to pay him the salvage value given that it had cancelled Mr L's policy. But it also never made that payment either.

The investigator was of the view that esure should pay Mr L £400 compensation for disposing of Mr L's car. Whilst Mr L is of the view the total compensation suggested by the investigator wasn't high enough, he didn't make specific comments on this element of the compensation.

We publish how we deal with compensation that is payable by businesses when things go wrong on our website. No compensation is awarded as a type of fine or punishment against a business when things go wrong. It's solely to do with the impact on the consumer. Here it's not known if Mr L would have been able to repair his car so it was classed as being driveable again, and given that, it was possible that Mr L would have ended up having to dispose of it anyway. Therefore, I consider the sum of £400 for this loss of chance on knowing that for certain, plus the shock that his car was simply gone is adequate in the very particular circumstances of this complaint, given the age and unusualness of Mr L's car.

The investigator also suggested compensation of the amount of £250 for how esure dealt with Mr L's claim and cancelling his policy. Again, I do consider this is about right given the circumstances here. It remains in line with our stated policy on compensation.

I can see clearly that Mr L was very upset about his entire experience. That stemmed primarily from the accident occurring, which obviously led to all these events which I'm satisfied esure didn't deal with properly. But as against that, esure weren't involved in the accident at all. There is sadly a considerable amount of upset and inconvenience and trouble in dealing with the aftermaths of an accident which hasn't got anything to do with the insurer. So, I remain of the view that a total amount of £650 compensation, plus the market value of his car and interest on that remains an appropriate resolution for Mr L. Further given I'm requiring the cancellation on this policy to be removed from his insurance record then he should be able to obtain refunds of any overpaid premium from his subsequent insurers too.

My final decision

So, for these reasons, it's my final decision that I uphold this complaint.

I now require esure Insurance Limited to do the following:

- Remove the cancellation from Mr L's insurance record including all internal and external data bases.
- Pay the market value of Mr L's car which it has assessed as being £4,000 less the excess payable of £350 making the total £3,650. Add interest of 8% simple per year from the date it disposed of Mr L's car to the date it refunds him.
- If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr L for HMRC purposes.
- Pay Mr L £400 compensation for disposing of his car and pay him £250 for its poor service in dealing with his claim, making the total £650 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 March 2024.

Rona Doyle
Ombudsman