

The complaint

Mr R complains about the way esure Insurance Limited handled a claim he made on his car insurance policy.

What happened

In 2023, Mr R's car was stolen, he made a claim for it under the policy. esure accepted the claim and said it would pay Mr R the market value of the car. Having assessed everything, esure said it would reduce its settlement offer by about £4,400. It said this was because Mr R hadn't disclosed a motoring conviction when taking out the policy.

Mr R complained to esure, he said he didn't have a conviction on his license anymore, as the offence happened in 2019. esure didn't respond to Mr R's complaint in time, so he brought it to this Service. Having done so, esure then provided a complaint response. In this it said that Mr R hadn't disclosed a motoring conviction when he took out his policy, so he made a misrepresentation. It said because of this, it had reduced the settlement offer for his vehicle by around £4,400.

Despite numerous attempts by our Investigator, esure didn't provide any evidence in relation to the complaint. So our Investigator said esure hadn't demonstrated Mr R had made a misrepresentation, in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

She said she hadn't been provided any evidence as to what esure asked Mr R at the point he took out the insurance, so she couldn't establish a misrepresentation had taken place. She also said esure hadn't provided any evidence that Mr R's misrepresentation (if he'd made one) was a qualifying one, showing what esure would have done with his policy if it had known about the conviction. So to resolve the complaint she said esure should pay Mr R the £4,438.36 it had deducted from his settlement amount. She also said esure should pay £100 compensation for the unnecessary distress and inconvenience it had caused.

Mr R accepted our Investigator's opinion. esure didn't respond to it. As esure didn't respond, the matter has come 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.

Despite many attempts over a number of months, esure hasn't provided this service with any evidence relating to this complaint. The dispute resolution rules (DISP rules) which govern this service say we are entitled to consider the complaint if a respondent (so in this case esure) fails to comply with any time limits we set when requesting information.

As set out by our Investigator, the relevant law in this area is CIDRA. This says that a consumer needs to take reasonable care not to make a misrepresentation. Mr R doesn't dispute that he had a conviction in 2019, but he says this only stayed on his driving license for three years, so when he took out the policy with esure in 2023, he didn't think he needed

to disclose it. In esure's final response, it says it wants to know about any convictions in the last five years.

esure hasn't provided any evidence as to what it asked Mr R at the point of sale, so this Service hasn't seen that it did ask Mr R to disclose any convictions in the last five years. Nor has esure provided any evidence as to how Mr R answered any question about convictions. So I'm not satisfied esure has shown that Mr R failed to take reasonable care not to make a misrepresentation.

As esure hasn't shown this Service that Mr R failed to take reasonable care not to make a misrepresentation, it follows that esure hasn't shown it can fairly reduce his claim settlement.

In cases where a misrepresentation has happened, if a business can show that the misrepresentation was a qualifying one, then in law it has certain remedies available to it. esure hasn't explained to Mr R or this Service how his alleged misrepresentation is a qualifying one, or why any misrepresentation means it's allowed to reduce the claim settlement amount by around £4,400. It is not my role to work this out in the absence of any evidence from esure.

So because esure hasn't provided any evidence to support its claim that Mr R made a misrepresentation, I can't say esure has fairly settled the claim. So to resolve the matter, esure will have to pay Mr R the amount that it deducted when settling the claim. From reviewing the very limited information I have; I believe this figure to be £4,438.36. It's unclear from the file when esure settled the claim. But as I haven't found it fairly deducted the above amount, esure needs to pay 8% simple interest on that amount from the date it settled the claim, to the date it makes this further payment.

Mr R says esure hasn't responded to some of his communication with it, despite numerous chasers from him to get more information and raise a complaint. Even from the limited information I have, I can see esure hasn't responded promptly to Mr R, as I'd expect it to. And not doing so will have caused Mr R unnecessary distress and inconvenience. So to recognise this esure must pay £100 compensation.

My final decision

My final decision is that esure Insurance Limited needs to pay Mr R £4,438.36 as the amount it deducted from his claim settlement.

It should also pay 8% simple interest on that amount from the date the claim was settled, to the date of settlement.¹

esure Insurance Limited also needs to pay £100 compensation for distress and inconvenience.

esure must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 March 2024.

Michelle Henderson
Ombudsman

¹ If esure Insurance Limited considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.