

The complaint

Mr P complains that when his car was stolen and he made a claim under his motor insurance policy esure Insurance Limited voided his policy and declined his claim.

What happened

In February 2024 Mr P's car was stolen. He submitted a claim to esure for his car. When investigating his claim esure found that Mr P hadn't correctly declared the penalty points on his licence, and had he done so they wouldn't have offered him cover. So they voided his policy from inception and declined his claim.

esure emailed Mr P on 6 March 2024 to advise him of their decision. They said that when investigating his claim they'd found that he had two undeclared motoring convictions from 2 May 2023 (SP30 – three points) and 14 December 2021 (TS10 – three points). And in addition his wife, a named driver on his policy, had an undeclared conviction from 11 November 2021 (SP30 – three points).

esure told Mr P that this information was different to what he'd provided when he purchased his policy. And had the correct information been provided they wouldn't have been able to offer him a quotation or issue a policy.

They told Mr P they wouldn't be covering his claim for the theft of his car, they'd be refunding his insurance premium and he'd need to declare the voidance to future insurers.

Mr P wasn't happy with esure's decision and raised a complaint which they responded to on 21 March 2024. esure said that when taking out his policy Mr P did declare two motoring convictions, but these weren't the two they discovered when validating his licence. And they said his convictions would have been unacceptable, regardless of his named driver's conviction.

Mr P had told esure that he declared six points, and they'd found six points, so this shouldn't make any difference to the validity of his policy. But esure said different ratings are applied to convictions based on the conviction code and the time since the conviction, so not all convictions are rated the same. And they were satisfied that their decision to void his policy was correct.

They also said that they hadn't said Mr P had been dishonest, but they maintained there'd been a misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), which they were treating as careless, rather than reckless or deliberate. As had he declared his correct convictions they wouldn't have entered into an insurance contract with him. And the remedy available to them under CIDRA was to declare the policy to be void, refuse any claims and refund all premiums, which was what they'd done. So Mr P's complaint wasn't upheld.

When he raised his complaint Mr P told esure that he'd expected them to check his licence and validate the information he'd provided. esure said that their Privacy Notice does refer to checking his licence, but they weren't persuaded that this removed his responsibility to

provide accurate information to allow them to make an informed judgment. And he couldn't rely on his perception of the Privacy Notice as a defence to misrepresentation.

Unhappy with esure's response Mr P complained to our service. Our investigator considered the case and said that when taking out a policy CIDRA requires a consumer to take reasonable care not to make a misrepresentation.

The application process required Mr P to provide details of all motoring convictions or fixed penalty notices in the last five years. He provided details of speeding convictions (SP30) in December 2018 and March 2019. But hadn't declared his conviction for failing to obey traffic lights (TS10) from December 2021, or his wife's speeding conviction (SP30) from November 2021. esure had also referred to a further SP30 offence in May 2023.

Our investigator said that the TS10 offence was rated differently to the speeding offences by esure and when this was taken into account the risk exceeded esure's acceptance criteria, so they wouldn't have offered cover.

Our investigator was satisfied that Mr P wasn't aware of the May 2023 speeding offence until he received a Notice of Impending Prosecution dated 4 August 2023. So he was satisfied Mr P wasn't aware of this when he applied for his policy. And as this and his wife's speeding conviction wouldn't have affected esure's decision to void the policy he said these weren't relevant to the outcome of his investigation.

Our investigator said that there was a warning on Mr P's policy schedule to check the document carefully to ensure everything was correct and to contact esure if it wasn't. And as the TS10 wasn't listed he felt Mr P should have known that the information he'd provided wasn't correct.

Our investigator was satisfied that both during the online application process and in the documentation they provided esure had made clear what action Mr P needed to take if he found any inaccuracies in his documents.

He also considered what the privacy notice esure had sent Mr P said about checking his driving licence details with the DVLA. He said that this was something the notice said esure might do, but they'd confirmed this wasn't part of their process at application stage, it was something relied on in the event of a claim.

esure had provided evidence of their underwriting criteria and our investigator said this showed that had the correct information been provided by Mr P about his convictions, his application would have been declined. So he was satisfied they'd been a qualifying misrepresentation which esure had treated as careless. So he didn't uphold the complaint or ask esure to take any action.

Mr P didn't accept our investigator's opinion. He didn't accept he'd been careless with the information he provided as he'd provided his driving licence details so esure could check the information he'd provided, which he'd expected them to do. He accepts that he gave the wrong dates and a wrong offence code for one of his driving convictions, but says this was a genuine mistake, and he believes the action taken by esure, and the impact of this on him and his family is very harsh.

Our investigator considered this and advised Mr P that he'd considered CIDRA which is the relevant law. And CIDRA says that a consumer must take reasonable care not to make a misrepresentation.

While our investigator said he understood what Mr P had said about the traffic convictions

he'd declared, the TS10 conviction carried a higher underwriting rating, and had it been declared when he applied for his policy, esure wouldn't have offered him cover. And despite the impact of esure's decision our investigator maintained that they'd taken the action they were entitled to.

Since our investigator provided his opinion Mr P has sent us details of quotes he's obtained online for a family member where an SP30 and a TS10 conviction have been declared. So he questions what esure have told us about these convictions not being acceptable.

We asked esure to comment on this and they've said that they've not said they don't insure people with those convictions. What they've said is that they wouldn't have insured Mr P had they known his correct conviction codes and the dates of those offences. They say they wouldn't have offered cover to another consumer applying at the same time as Mr P did with the same convictions occurring on the same dates as his did. And that in considering offering cover they take into account the age of the conviction as they consider that with the passage of time the driver becomes more rehabilitated.

The case has now come 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.

Mr P's policy was voided by esure as when validating his claim for the theft of his car they found that the details of the driving convictions he declared when taking out his cover weren't correct.

In reaching a decision on this case I have to consider the provisions of CIDRA. CIDRA s 2 (2) says that when entering into an insurance contract "It is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer."

CIDRA imposed a duty on Mr P to answer clear questions he was asked by esure with reasonable care. He was asked to provide details of motoring convictions and fixed penalty offences in the last 5 years for all drivers. I'm satisfied that this was a clear question and one that Mr P should have known the answer to.

Based on the correspondence with the police and the courts that Mr P has provided I accept that at the time he applied for his cover he wasn't aware of the speeding conviction (SP30) he later received for an offence in May 2023. But I'm still satisfied he didn't provide the correct details of his motoring convictions.

Mr P has argued that he declared two motoring offences and provided details of his driving licence and esure should have checked if the details he'd provided were correct. But this ignores the duty CIDRA placed on him to take "reasonable care" when entering into a contract of insurance. While the Privacy Notice esure sent Mr P does state that they may check his licence, this isn't something I'd expect them to do for every consumer applying for a policy. And it doesn't negate Mr P's obligation to provide correct information.

I'm satisfied on the basis of the underwriting information esure have provided that had Mr P provided the correct details of his motoring convictions they wouldn't have offered him cover. I accept that when making a decision on whether to offer cover esure look at both the offences and the dates of those offences.

esure haven't said that they wouldn't offer cover to anyone with an SP30 and TS10

conviction. So I'm not persuaded by Mr P saying they treated him unfairly as they were prepared to offer cover to a family member who declared both these convictions. I say this as it's both the convictions and the timing of these that are considered in assessing whether the underwriting risk is acceptable to esure.

Where a consumer has made a misrepresentation in breach of s2 (2) of CIDRA and the insurer shows that if they were provided with the correct information they wouldn't have entered into the contract, there's been a "qualifying misrepresentation."

I'm satisfied that Mr P made a qualifying misrepresentation. In these circumstances CIDRA sets out the remedies available to the insurers. esure treated Mr P's misrepresentation as careless, which I think was fair.

Where there's been a careless misrepresentation, and esure wouldn't have entered into the insurance contract on any terms, CIDRA says they "may avoid the contract and refuse all claims, but must return the premiums paid." This is what esure have done in this case, so while I appreciate what Mr P has told us about the impact of esure's decision on him, I don't require them to take any action.

My final decision

For the reasons set out above my final decision is that I don't uphold Mr P's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 November 2024.

Patricia O'Leary
Ombudsman