

## The complaint

Miss T complains that esure Insurance Limited trading as Sheilas' Wheels ("esure") mishandled her claim on a motor insurance policy.

## What happened

For the year from about 25 November 2021, Miss T had a policy with esure. It covered a car with a diesel engine.

The policy provided a courtesy car, but only during a repair of the insured car and not in the event of a total loss. Miss T didn't take the optional extra of "car hire benefit".

On about 9 October 2022, Miss T exceeded a speed limit of 30 miles per hour. Later, she received three penalty points on her driving licence.

For the year from about 25 November 2022, Miss T and esure renewed the policy. Any claim for theft was subject to an excess of £400.00.

In early 2023, Miss T part-exchanged her diesel car for a car with a petrol engine and that had first been registered in 2018. She acquired the new car on a finance agreement that required her to pay about £550.00 per month. In early February 2023, Miss T asked esure to change the vehicle covered by the policy.

In May 2023, Miss T made other minor changes to the policy.

On about 21 August 2023, Miss T reported that someone had stolen the car. Miss T asked esure for a courtesy car. It sold her the optional extra of car hire benefit. But that was after the theft. So esure didn't provide her with a car.

Esure said that Miss T hadn't declared the penalty points, which would've increased her premium. By early September 2023, Miss T had complained to esure that it wasn't treating her fairly.

On about 11 October 2023, esure said it had made a payment to the finance company. On about 14 October 2023, esure said that it had paid £27,730.82 to the finance company.

On 24 October 2023, esure told Miss T of her right to bring her complaint to us.

Miss T brought her complaint to us in late November 2023. She complained that, rather than £27,730.82 or 75%, esure should pay 100% or £36,974.40.

By a final response dated 13 December 2023, esure partly upheld Miss T's complaint. It said it had made an error with the car hire cover, but it had removed that cover and refunded the administration charge. It apologised for delays in addressing her concerns. It said it was sending Miss T a cheque for £175.00 compensation. However, esure's final response said that Miss T had made a misrepresentation about the penalty points. It said that it had made a proportionate settlement of the theft claim.

### *our investigator's opinion*

Our investigator recommended that the complaint should be upheld in part. He referred to Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). He didn't think that esure's actions had been fair. He thought that Miss T had been caused considerable trouble and upset. He recommended that esure should:

1. settle the full market value of her vehicle by paying the difference between £27,730.82 and £36,974.40; and
2. add 8% interest from the date it originally settled the claim; and
3. pay a further £500.00 compensation (making a total of £675.00).

Miss T accepted the investigator's opinion.

Esure disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint.

### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Miss T and to esure on 10 July 2024. I summarise my findings:

I didn't think that Miss T had made a misrepresentation.

I was minded that a more appropriate fair market valuation would be £38,000.00.

That would require esure to make a further payment of £9,869.18.

I considered that esure should've made that payment by about 11 October 2023. So I was minded to direct it to pay interest from that date at our usual rate.

I was minded that, in addition to the further payment of her claim and interest, and in addition to the final response payment of £175.00, it's fair and reasonable to direct esure to pay Miss T a further £500.00 for distress and inconvenience.

Subject to any further information either from Miss T or from esure, my provisional decision was that I upheld this complaint in part. I intended to direct esure Insurance Limited trading as Sheilas' Wheels to pay:

1. to Miss T or the finance company, in addition to its payment of £27,730.82, a further £9,869.18 for the stolen car; and
2. to Miss T or the finance company simple interest on that further payment at a yearly rate of 8% from 11 October 2023 to the date of the further payment. If esure considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss T how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. to Miss T, in addition to its payment of £175.00, a further £500.00 for distress and inconvenience.

Miss T accepted the provisional decision. She added that:

- A letter from esure said that its payment was as follows:

valuation	£28,130.82
less excess	£ 400.00
paid to finance company	£27,730.82

- The finance agreement is settled, so esure should pay the further balance to her.

Esure disagreed with the provisional decision in part. It says the following:

*“Although we will now accept the ombudsman’s position regarding the vehicle valuation in line with the highest guide, given your new way of looking at these type of cases, we don’t agree that the proportionality deduction applied should be removed.*

*I concede that we won’t be able to prove that an invite to renew the 2022-2023 policy was sent to the customer on the 12 October 2022. Our system states it was sent (attached snip image), but then I am unable to find the corresponding document sent to the customer on our system documents archive, therefore I cannot be confident that it was sent.*

*Nevertheless, I would suggest that it should be stating the obvious, that that any car owner holding insurance should understand that a speeding conviction would have an impact on their car insurance policy and that the insurer would need to be informed about this. This is with or without a document to remind them about this at renewal.*

*In fact, and to underline this obligation, I’ve not had to look far to find other examples when [Miss T] was told about the general requirement to update us about any changes to her circumstances which might then affect her insurance.*

*The 2021-2022 renewal documents (attached) confirm that we needed to be informed if her circumstances changed. This implies any information on the current policy schedule.*

*I’ve found a phone call the customer (attached) made in May 2023, following the renewal and about 6 months after the offence, when she made other changes to the policy but doesn’t inform our operator of the speeding conviction. She was asked at the time if everything else was correct on the policy but still fails to mention the conviction.*

*The 2023 schedule sent to the customer after renewal confirms her endorsement history & confirm no disclosed convictions. It also clearly reminds the customer -*

***“ 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 on 0345 604 3550 and tell us the changes. Otherwise, we may reject or reduce any claim you make or even treat you as being uninsured.”***

**Schedule**

**Details of the claims, accidents or losses in the last 5 years for all the drivers**

**Driver Date Claim Description Recovery made?**

**[Miss T] 14/03/2018 Accident No**

**Details of the convictions and fixed penalty offences in the last 5 years for all the drivers**

**None disclosed**

*All the documents attached above provide examples of the same situation whereby the customer is present with current information and is essentially asked to check its accuracy. Its our view, that the decision as it stands, allows the customer to receive an unadjusted claims payout without penalty, but whilst still benefiting from an incorrect and lower insurance premium.*

*This occurs at a time when she has had numerous contacts with the business, passing by the opportunity to inform us of the speeding offence and then failing to check the accuracy of everything in the policy schedule.*

*In view of this we respectfully ask that the ombudsman reconsiders the matter.  
We await the final outcome in due course"*

### **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.

When she took out the policy from November 2021, Miss T didn't have any penalty points.

The speeding offence was on about 9 October 2022.

In the ordinary course of events, esure would've sent a renewal invitation in late October or early November 2022 before the renewal date of about 25 November 2022.

It's not clear when Miss T first heard from police or when she accepted the penalty points.

Esure's final response said the following:

*"When you renewed the policy back in 24.11.2022, we asked you to make us aware of any driving convictions for you or anyone named on your policy in the last 5 years."*

However, esure hasn't been able to provide us with the 2022 renewal documents. And esure has told us that Miss T didn't contact it about the renewal. So I'm far from satisfied that esure asked her a clear question about penalty points in October or November 2022.

From the January 2023 schedule and from the May 2023 schedule, I see that esure hadn't recorded any convictions or fixed penalty offences. However, esure says that Miss T could only make changes by telephone, yet it hadn't provided any call recordings.

In response to the provisional decision, esure provided one call recording. I'm still not satisfied that esure asked Miss T a clear question about penalty points in January or May 2023 (see further below under "Esure's response to the provisional decision").

As I'm not satisfied that esure asked her a clear question about penalty points, I'm not persuaded that Miss T made a misrepresentation when she renewed the policy in November 2022 or when she made changes to the policy in January and May 2023.

The theft was inevitably going to cause Miss T some distress and inconvenience, especially as the policy didn't provide a hire car.

I've seen that esure got a Glass's guide valuation of £36,180.00.

Esure paid £27,730.82. From what I've seen, it calculated that Miss T had paid 75.56 % of what the premium would've been with the penalty points. So esure intended to pay 75.56 % of Miss T's claim.

In any event, I've not been persuaded that Miss T made any misrepresentation. So I've not been persuaded that she made a careless misrepresentation or a qualifying misrepresentation under CIDRA. I don't consider that esure treated Miss T fairly by only paying a proportion of her claim.

Esure's policy required it to compensate Miss T for the market value of the vehicle. The policy defined market value as follows:

*“The market value is 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 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.”*

In assessing what constitutes a fair value we generally expect insurers to review relevant guides to motor valuations - which is also our starting point for most valuation complaints. I’ve looked at the available guides to assess whether esure’s valuation is fair and reasonable. I have reviewed CAP Market Value Manager, Glass's Market Value, Auto Trader and Percayso guides, which gave values as follows:

Glass's	£36,180.00
CAP	£36,750.00
Percayso	£37,945.00
Auto Trader	£38,000.00

Looking at the valuations produced by the guides, I’m not persuaded that esure’s valuation is fair and reasonable. This is because the valuation guides have produced valuations which vary significantly from the lowest to the highest. Esure’s valuation sits in line with the lower values produced by the guides, but esure hasn’t shown why its offer is fair, or that Miss T could’ve replaced her vehicle with a similar one for that amount.

In these circumstances, to be satisfied that esure’s valuation represents a fair valuation, I’d expect to have been provided with other evidence (for example, adverts for vehicles for sale around the time of the loss, reports from experts etc) to support that a lower valuation point is appropriate. And I’d need to be persuaded that this evidence is relevant and persuasive (and more persuasive than evidence provided by Miss T) before accepting that a lower valuation should be used.

As esure hasn’t provided any other evidence to persuade me that a valuation in line with the higher valuation produced is inappropriate, and to avoid any detriment to Miss T, the highest valuation produced by the guides is my starting point. So, considering the overall variation of values produced, and the lack of other evidence provided by esure, I consider that a more appropriate fair market valuation would be £38,000.00.

#### Esure’s response to the provisional decision

Esure says that its 2021 documents told Miss T of the need to inform it of any changes in circumstances. However, I don’t find such a requirement fair for mid-term changes unless it relates to a fundamental change in the risk. I don’t consider an SP30 to be such a fundamental change in the risk.

Esure’s file notes suggest that it sent renewal documents on 25 October 2022. However, it still can’t provide copies. So I’m still not satisfied that esure asked her a clear question about penalty points in October or November 2022.

Esure has shown us that the January 2023 and May 2023 policy schedules each started with a reminder about taking reasonable care that the information was true and complete, otherwise it might reduce any claim.

Also, esure has shown us that the January and May 2023 changes each generated a letter including the following:

*“Your new documents are now available in your Policy Portal and your schedule shows the updated Annual Premium. Please let us know straightaway if any of the details are incorrect.”*

Further, esure has belatedly provided the recording of the May 2023 call.

I’ve listened to that call and noted that Miss T referred to the policy schedule and made minor changes to the information about overnight parking and the number of vehicles in the household. However, esure didn’t ask her to confirm the other information in the schedule. The closest it came was to ask her if there was anything else she could think of.

So I’m still not satisfied that esure asked Miss T a clear and specific question about penalty points in January or May 2023.

Esure says that the provisional decision allows the customer to receive an unadjusted claims pay-out without penalty, but whilst still benefiting from an incorrect and lower insurance premium.

However, I’ve not been persuaded that Miss T made any misrepresentation. So I don’t consider that esure treated Miss T fairly by only paying a proportion of her claim.

#### Miss T’s response to the provisional decision

Miss T has shown us a letter saying that esure’s valuation was £28,130.82. That must’ve been after the percentage deduction, but the letter says it was before the excess deduction. That implies that esure’s valuation was over £37,000.00 before a deduction to 75.56%.

I accept that esure deducted the excess. My calculation ensures that the excess is only deducted once.

I have no reason to doubt Miss T’s statement that the finance agreement is settled. However, I would expect esure to check with the finance company before deciding whether to pay the balance to that company or to Miss T.

#### **Putting things right**

To put things right will require esure to make a further payment as follows:

Valuation	£38,000.00
Less	
excess	£ 400.00
paid	£27,730.82
balance	£ 9,869.18

I consider that esure should’ve made that payment by about 11 October 2023. So I will direct it to pay interest from that date. In the absence of details of Miss T’s finance agreement, I will direct interest at our usual rate.

I accept that esure’s under-payment left Miss T with a balance outstanding to the finance company. She has told us that wasn’t covered by her GAP insurance. So I accept that she

wasn't able to buy a replacement vehicle. That meant she couldn't drive her son to school and he moved to live with his father. That was an upheaval in Miss T's family life.

I've also seen the emails in which Miss T recorded her frustration at waiting for esure to answer telephone calls and emails. I accept that she felt ignored.

Whilst Miss T hasn't provided enough medical evidence to show that esure damaged her health, I accept that esure's handling of her claim has caused her unnecessary distress and inconvenience for almost a year.

So I consider that, in addition to the further payment of her claim and interest, and in addition to the final response payment of £175.00, it's fair and reasonable to direct esure to pay a further £500.00 to Miss T for distress and inconvenience.

As Miss T will have had the benefit of the policy, I don't agree with her complaint that esure should refund the premium.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct esure Insurance Limited trading as Sheilas' Wheels to pay:

1. to Miss T or the finance company, in addition to its payment of £27,730.82, a further £9,869.18 for the stolen car; and
2. to Miss T or the finance company simple interest on that further payment at a yearly rate of 8% from 11 October 2023 to the date of the further payment. If esure considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss T how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate; and
3. to Miss T, in addition to its payment of £175.00, a further £500.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 19 August 2024.

Christopher Gilbert  
**Ombudsman**