

## **The complaint**

Mr B complains that esure Insurance Limited trading as Sheilas' Wheels ("esure") refused to pay his claim and voided his car insurance policy. Mr B is represented in his complaint, but for ease I'll refer to him throughout.

## **What happened**

Mr B bought a car insurance policy with esure which originally started in August 2020 and renewed each year.

Later in 2020 he was convicted of two motoring offences which meant he received 11 points on his driving licence.

Mr B says he told esure about this in about August 2021 when he called it to renew his policy. He said he'd struggled to be understood by esure's call handler.

His policy subsequently renewed in August 2022 and 23. His policy record didn't show his convictions in any of the years.

In January 2024 Mr B's car was stolen. He contacted esure and made a claim. esure looked into his records and said he'd not told it about his convictions. It said it thought he'd acted carelessly when he'd renewed his cover and had misrepresented his details.

It voided his policy from January 2021 and wouldn't pay the claim. It refunded the annual premiums he paid. It told him he'd need to tell other insurers about it cancelling his policy in the future, and it said it wouldn't insure him again.

Mr B complained but esure wouldn't change its decision. He asked for copies of the call when he says he told esure about the points on his licence, but esure said it couldn't provide them as their systems were being changed. It said it should be able to locate the call when the system change was complete.

Mr B brought his complaint to this service. He asks that esure settles his claim and pays him compensation. Our investigator looked into Mr B's complaint and thought it wouldn't be upheld. She thought esure had acted correctly.

Mr B didn't accept the view. Because he didn't agree, this complaint has been passed to me to make a final 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.

It's important I start by saying that Mr B has taken legal advice before approaching this service. There's extensive correspondence in the file and while I won't discuss it all here, I'd like Mr B to know that I've read it all. This is in line with this service's informal approach.

Having read the file of evidence, I'm not upholding Mr B's complaint. I do appreciate this will come as a disappointment to him and I'll explain why I've decided this.

If Mr B doesn't agree with my decision, then he's still able to take legal action against esure.

I'd also thank Mr B for his patience while his case was with this service. esure needed to supply evidence to us in a different format, and clarify some mistakes it made in its correspondence with him, which took some time to rectify.

Mr B has also made a Subject Access Request to esure about the data it holds on him. He's not been satisfied with esure's response and it's mentioned in his approach to this service. If Mr B wants to make a complaint about how esure handled his data then he can approach the appropriate regulator which is the Information Commissioner's Office (ICO).

The starting point here is The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a policy. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms, or not at all, if the consumer hadn't made the misrepresentation.

esure has shown this service evidence that shows it wouldn't have accepted Mr B on cover if it'd known about the 11 points on his driving licence. What this means is Mr B made a qualifying misrepresentation.

CIDRA also sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

esure has said it thinks Mr B acted carelessly when he renewed his policy.

I've listened to the call relating to the renewal of Mr B's policy in summer 2021. In that call, there's a negotiation about the price Mr B was being charged for cover. Mr B declines one part of cover, and then confirms he'll renew. esure's call handler tells him his policy documents will be sent to him by email and he should check these as mistakes may mean his policy is invalidated. Mr B agrees. There's no discussion about points or convictions.

Importantly, I don't think there's any misunderstanding between him and esure's call handler.

esure then sent Mr B his policy documents.

I've said above that their policy renewed twice with esure in 2022 and 2023. Mr B needed to check his details each year and to contact esure if there's something incorrect. The documents sent to him include this statement:

*"What you need to do now*

*Please check this document carefully. It contains all the information you provided to us.*

*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*

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

The Car Insurance Schedule includes a section saying:

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

Alongside Mr B’s entry is the entry “None disclosed”.

Having been sent his policy documents, I think it’s fair I say Mr B didn’t take reasonable care in checking his details. What this means is that I think he acted carelessly, but I also don’t think he acted recklessly.

What CIDRA then says is that esure is entitled to void his policy if there’s been a qualifying misrepresentation, and I’ve said above this applies here.

esure did this, and refunded Mr B’s premiums paid from renewal in 2021, as CIDRA stipulates. I think its decision is fair and in line with the appropriate legislation.

Unfortunately for Mr B, this means that I think esure acted according to CIDRA in declining the claim and voiding his policy.

It follows that I’m not upholding Mr B’s complaint and I don’t require esure to do anything else.

### **My final decision**

For the reasons set out above, it’s my final decision that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 3 February 2025.

Richard Sowden  
**Ombudsman**