

## **The complaint**

Mr M complains esure Insurance Limited (esure) avoided his motor insurance policy and refused to pay his claim.

## **What happened**

In February 2024 Mr M's vehicle was unfortunately stolen. He submitted a claim to esure under his motor insurance policy. During its investigation into Mr M's claim, esure found Mr M and the named driver had driving convictions it said it hadn't been made aware of. esure said had it been made aware of these convictions it wouldn't have offered Mr M the policy. It told Mr M it would be avoiding his policy and refunding his premium. Mr M didn't think this was reasonable and so raised a complaint.

On 23 April 2024 esure issued Mr M with a final response to his complaint. It said had it been made aware of the convictions it wouldn't have offered the policy and so it was fair for it to avoid the policy. It said it was aware it had written to Mr M requesting payment for an outstanding balance, but as a gesture of goodwill it would waive this. Mr M didn't think this was reasonable and so referred his complaint to this Service.

Our investigator looked into things. He said he thought the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) applied. He said he thought it was reasonable for esure to avoid Mr M's policy as there had been a qualifying misrepresentation. He said he thought it was reasonable for esure to refund Mr M's policy premium.

Mr M didn't accept our investigator's view. He said the conviction wasn't settled until December 2023 and he hadn't been asked for details of any pending convictions. He also said he believed he had declared the named driver's conviction when taking out the policy.

As Mr M didn't agree with our investigator, the 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.

I want to acknowledge I've summarised Mr M's complaint in less detail than he's presented it. I've not commented on every point he has raised. Instead I've focussed on what I consider to be the key points I need to think about. I mean no discourtesy by this but it simply reflects the informal nature of this Service. I assure Mr M and esure I've read and considered everything that's been provided.

The relevant law in this case is CIDRA. This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (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 that it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA 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 and reckless, or careless.

esure think Mr M failed to take reasonable care not to make a misrepresentation when he failed to tell it about driving convictions Mr M and the named driver had. The conviction which is relevant to this complaint is the one belonging to Mr M and so this is what I have focussed on as part of this decision.

I've looked at the question Mr M was asked when he completed the application in November 2023. Mr M was asked:

*'Have you committed any driving offences or had any Fixed Penalty Notices in the last 5 years?'*

*'If you don't tell your insurer about previous offences, your car insurance may not pay out if you make a claim.'*

There was an option for Mr M to click for more information. Had he done so it stated:

*'Wondering what counts?'*

*'Insurers need to know about any driving offences you've been convicted of, including any Fixed Penalty Notices (FPNs) you've been issued for offences such as speeding, driving without due care and attention or driving with blood/alcohol levels about the limit.'*

*'If you've attended a speed awareness course, you don't have to declare this as a conviction.'*

*'Penalty Charge Notices (PCNs) issued for parking offences don't have to be declared either.'*

Mr M declared that he had a SP30 motoring conviction from June 2020. esure have provided evidence Mr M holds a CU80 driving conviction dated 2 May 2023 which hadn't been declared to it. Mr M has said he didn't declare this conviction because it wasn't settled until December 2023 following court proceedings, and he wasn't asked to declare any pending convictions.

Based on the evidence provided I think Mr M should have declared this to esure when he took out this policy. Mr M has confirmed he received a fixed penalty notice at the time of the offence, but due to an administrative issue, the appropriate forms weren't completed in time and so he had to attend court in December 2023 for this conviction. I'm satisfied the question is clear that the insurer requires information about any driving offences or fixed penalty notices that have been issued. At the time of taking out this policy Mr M was aware he had committed a driving offence and had received a fixed penalty notice and so I don't think the fact Mr M didn't attend court until December 2023 is important here. I think a reasonable consumer in this position would have declared this conviction. Therefore I think Mr M failed to take reasonable care when answering this question.

I've gone on to consider whether this misrepresentation is a qualifying misrepresentation.

esure have provided underwriting evidence to show had it been made aware of the CU80 driving conviction, it wouldn't have offered Mr M a policy. As esure have been able to show it

wouldn't have offered Mr M a policy, I'm satisfied this is a qualifying misrepresentation.

esure have treated Mr M's misrepresentation as a careless one rather than deliberate or reckless. I think this is reasonable and so I've looked at the actions esure can take in accordance with CIDRA.

If a misrepresentation is considered careless, CIDRA entitles an insurer to avoid the contract and refuse all claims, but it must return the premiums paid. esure have avoided Mr M's policy and refused his claim. I understand it did initially ask Mr M to request payment of an outstanding balance, but it has since refunded Mr M his policy premium. Therefore I think esure have taken the actions CIDRA entitles it to.

As CIDRA reflects this Service's long standing approach to misrepresentation cases, I think allowing esure to rely on it as they have done produces a fair and reasonable outcome in the circumstances of this complaint.

### **My final decision**

For the reasons I've set out above I don't uphold Mr M's complaint about esure Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 February 2025.

Andrew Clarke  
**Ombudsman**