

The complaint

Mr H complains that esure Insurance Limited (“esure”) unfairly reduced its settlement payment due to a motoring conviction - and valued his car below its market value after it was stolen under his motor insurance policy.

What happened

Mr H’s car was stolen in June 2024. He made a claim to esure and it offered him a settlement for £20,470. The market value of his car was calculated to be £25,895. But Mr H says esure took £5,425 from this, which equates to a payment for 79.05% of the car’s value.

Mr H was told he’d failed to declare a motoring conviction from September 2022. This meant his premium should’ve been higher. esure explained that the deduction it made to its settlement was proportional to the difference in premiums. Mr H didn’t think he’d been treated fairly and complained.

In its final complaint response esure maintained that it acted correctly once it was aware of the undeclared motoring conviction. Mr H didn’t accept this outcome and he referred the matter to our service.

Our investigator upheld his complaint in part. But he thought esure had acted fairly in relation to Mr H’s failure to declare his motoring conviction. He acknowledged esure had subsequently reviewed its valuation and decided this should be increased to £27,954, less the deduction and Mr H’s policy excess. But he says esure should also pay 8% simple interest on the delayed payment and £250 compensation for the distress and inconvenience this caused.

esure didn’t think it should pay £250 compensation. Mr H didn’t think it was fair that a deduction was made to his settlement payment. He says he’d told esure about the motoring conviction so, this shouldn’t have been an issue.

As an agreement wasn’t reached the complaint has been passed to me to decide.

I issued a provisional decision in January 2025 explaining that I was intending to uphold Mr H’s complaint in part. Here’s what I said:

provisional findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so I’m upholding Mr H’s complaint in part. Let me explain.

proportional settlement

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA Mr H must take reasonable care not to make a

misrepresentation when taking out insurance. If Mr H doesn't do this, CIDRA allows an insurer to take certain actions, assuming the misrepresentation is a qualifying one. A qualifying misrepresentation is where the insurer wouldn't have provided cover at all, it would only provide cover under different terms, or it would only provide cover for a higher premium.

Mr H has been insured with esure for a number of years. His policy has renewed annually. The last renewal was in April 2024 two months prior to his claim. I've read the policy schedule he was sent. It asks Mr H to check this document carefully. If anything is incorrect it says he should contact his insurance broker immediately. The document explains not doing so could mean a claim being rejected, reduced, or no cover being provided at all.

Page five of Mr H's policy schedule sets out details of motoring convictions and fixed penalty offences from the last five years. It says none have been disclosed. However, Mr H had three penalty points on his licence at the time his policy renewed in 2024. I've seen evidence to show these points were applied in September 2022. Mr H didn't disclose this information to esure at his renewal in 2024.

esure has provided its underwriting information that shows it would have charged Mr H a higher premium had he disclosed this information at renewal. This means he made a qualifying misrepresentation. The business says it doesn't think Mr H made this misrepresentation deliberately. But under CIDRA, where a misrepresentation is considered careless, the insurer can deal with a claim on a proportional basis. This is what esure did here.

I've seen the pricing information that shows Mr H paid 79.05% of the premium he should've paid, had he declared his penalty points. So, it was fair for esure to apply this to his settlement payment in line with CIDRA.

I've thought about Mr H's comments that he called esure to tell it about the penalty points he'd received. This was at the time of his 2023 renewal. We asked him to provide the telephone number he called the business from. Several numbers were provided and esure checked each of these against its call recording records. I've seen screenshots of the searches it ran that show no calls were received from these numbers dating back three years. I don't dispute Mr H's recollection of these events. But I'd expect there to be some record of the call he made. I note he refers to obtaining information from his telecoms provider(s). But he hasn't supplied information that shows he made a call to esure.

I note Mr H's comments that esure has an obligation to treat customer's fairly and maintain accurate records of customer communications. I don't disagree with what he says. But there's no evidence to support what he says about making esure aware of the penalty points he'd received, at any point, from when these were received in September 2022 until after his claim in 2024.

Based on this evidence, I don't think esure treated Mr H unfairly when it settled his claim on a proportional basis under the CIDRA rules.

Valuation

Mr H replied to esure's complaint response disputing the valuation it had used for his car. esure has says that although this should be a separate complaint, it agrees to the valuation point being considered here. This means I can consider this issue in my decision. Mr H's policy provides the market value in the event of a total loss due to accident damage. This is defined as:

"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: [list of four trade guides]. This may not be the price you paid when you bought the car.”

We don't provide valuations for vehicles but rather we look to see whether the insurer's offer is reasonable. In assessing whether a reasonable offer has been made, we obtain valuations from the motor trade guides.

These guides are used for valuing second-hand vehicles. We find these guides to be persuasive because their valuations are based on nationwide research and likely sales figures. The guides also consider regional variations. We also take all other available evidence into account, for example, engineer's reports.

esure initially obtained valuations from two of the trade guides. I've looked to see that it used the correct mileage, age, make and model of car, which it did. I also checked to see that it used the correct date for Mr H's loss, which was 10 June 2024. This was also done correctly. It valued the car at £25,895. esure has since obtained a valuation from another trade guide. Again, I've checked that it used the correct information, which it did. This resulted in the higher valuation for £27,954.

Our investigator was able to obtain a valuation from one more of the trade guides. Again, I've checked to see that he used the correct information for Mr H's car and the date of his loss, which he did. But the highest valuation was still the one esure obtained for £27,954.

Where there is a significant variance in the trade guide valuations, and the insurer doesn't offer the higher of these in settlement, we expect it to provide evidence to support why it considers its approach to be fair. However, esure has now said that the higher valuation for £27,954 should be used here. This is in line with the approach we consider fair. esure can still apply the deduction discussed earlier, along with the policy excess. But in basing its settlement on the highest of the trade guide valuations I'm satisfied Mr H has been treated fairly.

I think it's fair that esure should pay the difference in the valuations to Mr H plus 8% simple interest from the date of its first settlement offer until this payment is made.

Mr H has provided some links showing similar cars for sale in September 2024. But this was around four months after his loss occurred. These cars are no longer available to view. But the links do show some similar cars that are on sale now. These vary in value, some on sale for more and some for less than the highest valuation I've seen. I've considered this information, but I think using the highest trade guide valuation, taken from the date of the loss, is still the fairest outcome here.

I've thought about the impact all of this has had on Mr H. I think it was fair that esure relied on the CIDRA rules when applying a deduction to its settlement. But I don't think its approach to valuing Mr H's car was fair for the reasons I've explained. This has no doubt been a frustrating experience and caused him inconvenience. I understand that Mr H accepted esure's initial offer in part payment of his claim whilst he pursued his complaint. So, he had a large part of the settlement payment available to him, which he could put towards a replacement car. I think this was fair. But I think esure should acknowledge the inconvenience caused by the delay in providing the increased final settlement, by paying Mr H £150 compensation, not £250 as our investigator proposed.

I said I was intending to uphold this complaint in part and esure should settle the claim for £27,954, less the deduction for the misrepresentation, in addition to 8% interest and £150 compensation.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

esure responded to ask that the final section of my decision includes clear reference to the proportionality settlement. It says other than this point it doesn't dispute the outcome.

Mr H responded with a detailed email providing information about the CIDRA rules. The final section of his email says it's important that I consider the impact non-disclosure of his penalty points had on his premium. Mr H says arbitrary or unsupported claims by insurers are likely to be overturned on challenge. He says the three points he had on his licence didn't affect the claim. He says his insurance broker failed to inform esure about these points.

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.

Having done so I'm not persuaded that a change to my provisional findings is warranted.

In the body of my provisional decision, I explained that it was fair for esure to apply a proportional settlement to Mr H's claim. However, I take its point that, for the avoidance of any doubt, this should've been reiterated in the remedy section. I'll amend that here.

I acknowledge the points Mr H has made in his response. However, esure has shown that it would've charged a higher premium if Mr H hadn't made a qualifying misrepresentation. As discussed he failed to inform it of his penalty points. I've seen esure's underwriting criteria that shows the difference in premiums had this been disclosed. Based on this I'm satisfied it acted fairly when applying the remedy available to it under CIDRA to settle the claim on a proportional basis.

Mr H can complain to his broker if he believes it failed to pass on information to his insurer. But my decision here is about esure. So, I can't comment further on this point.

I'm sorry Mr H is disappointed by my decision. But I'm satisfied this is a fair outcome considering all the evidence and circumstances of his complaint.

My final decision

My final decision is that I uphold this complaint in part. esure Insurance Limited should:

- settle Mr H's claim (if it hasn't already) based on the highest trade guide valuation for £27,954, applying the proportional settlement deduction, and paying 8% simple interest* on the additional amount he's owed from the date of its original offer until this payment is made; and
- pay Mr H £150 compensation for the inconvenience its delay in making the full payment caused him.

**If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H 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.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 February 2025.

Mike Waldron
Ombudsman