

The complaint

Mr I complains that esure Insurance Limited (esure) avoided his car insurance policy and refused to pay his claim.

What happened

Mr I applied for and took out a car insurance policy with esure. He bought the policy online through a price comparison website. In July 2024 Mr I made a claim for theft. He said the car was stolen from outside his home and he reported the theft to the police and esure.

esure investigated and after gathering more information, told Mr I it was going to avoid the policy back to the renewal date in 2024. This meant no cover was in place at the time of the theft. esure said it did this because Mr I had told it he was the registered keeper of the car when he bought the policy. But esure had found the registered keeper was a limited company of which Mr I was the director of, which I'll refer to as 'F'. esure said, if it had known Mr I wasn't the registered keeper of the car, it wouldn't have offered cover at all.

Mr I referred a complaint to this Service. Our Investigator looked into things but didn't think the complaint should be upheld. She considered whether Mr I had taken reasonable care to provide correct information to esure. She didn't think he had. She said she was satisfied Mr I wasn't the registered keeper of the car. She thought esure wouldn't have offered the cover without the misrepresentation and felt esure was entitled to avoid the policy and decline the claim.

Mr I disagreed. He said he initially planned to use the car for business purposes so registered it to F. But he changed his mind with his business plans and dissolved the business. But he forgot to change the details on the car's registration documents. He maintained he was the owner of the car and he had an insurable interest in it. As Mr I rejected our Investigator's findings the case 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'd like to reassure the parties that although I've only summarised the background to this complaint, so not everything that has happened or been argued is set out above, I've read and considered everything that has been provided.

As the policy was taken out for Mr I's personal use and the policy didn't provide benefit for any business use, the relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (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 must show 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, reckless, or careless.

esure thinks Mr I failed to take reasonable care not to make a misrepresentation when he took out the policy when he said he was the registered keeper of the car. It later came to light that F was the registered keeper.

I've looked at the questions Mr I was asked when he completed the application. There were two questions directly below one another that said "*is the driver (or will they be) the legal owner of the car?... if you bought the car or receive it as a gift you will be the legal owner.*" and "*is the driver (or will they be) the registered keeper of the car?*"

To the right of each question there was an information box which referred customers to the car's logbook (V5) if they were unsure of the registered keeper and pointed out that the registered keeper and legal owner may not be the same. Mr I had to answer these questions separately and I think they're clear enough for Mr I to know he would need to consider both the legal owner and registered keeper when answering.

I've been provided with a copy of DVLA documentation, specifically the V5 Certificate, which shows F is the register keeper. I've not seen anything to suggest a transfer of registration was made or attempted. And Mr I seems to accept he forgot to transfer the registration into his own name when F dissolved. So, based on what I've seen, I'm satisfied Mr I wasn't the registered keeper.

Mr I says he owns the car. And he's provided evidence through a purchase invoice and his personal bank statements confirming this. He therefore says he had an insurable interest in the car. Whilst I don't dispute his feelings on the matter, and on balance, accept he was the car's owner, I'm satisfied he wasn't the registered keeper. When he took out the policy he wasn't just asked about ownership, he was also asked about the registered keeper.

I need to consider what a reasonable person in the same set of circumstances would do – i.e. was Mr I's actions in line with what a reasonable person would have done. It's expected of a customer (when purchasing insurance cover) to use the car's registration information, including the V5 to help answer any questions an insurer might ask them during the policy inception – and the questions he was asked prompted him to check this.

I've also seen the policy documentation esure sent Mr I once the policy went ahead. At the top of the documents, it asks Mr I to confirm all the information it held for him was correct. And if it wasn't, he needed to let it know. I think the documentation clearly set out Mr I's confirmation he was the registered keeper. And I've seen no evidence to show Mr I contacted esure to correct this.

Mr I says esure accepted a claim under a previous policy for the same car even though he confirmed he was the registered keeper. So, he didn't think the information he provided at inception (of the policy that's now been avoided) was incorrect or there was any reason to question what he provided. He also says the direct debit payments made towards the policy were being made from a separate business account, and something esure should have been aware of prior to the avoidance.

Whilst I appreciate Mr I's point of view on the matter, it's important to note that generally car insurance policies run for one year. And at renewal or at the point a customer buys new

cover (irrespective of whether that's with the same insurer) the duty on them to take reasonable care not to make a misrepresentation applies again. And I don't think the policy payments from a business account is in and of itself enough to say esure should have picked up on Mr I not being the cars registered keeper, or that he inadvertently confirmed F was the registered keeper in making these payments.

It follows I don't think esure accepting a claim on a previous policy or the way the policy was paid materially changes my findings. So, based on the above, I don't think Mr I took reasonable care not to make a misrepresentation when answering the questions.

esure has provided evidence in the form of underwriting criteria that, if Mr I hadn't made the misrepresentation, it wouldn't have offered cover. I'm aware Mr I has asked to see esure's underwriting criteria. But this is commercially sensitive information and not something we can share with him. However, I've carefully considered this, and I'm satisfied esure wouldn't have offered him cover had it known he wasn't the registered keeper. This means I'm satisfied Mr I's misrepresentation was a qualifying one.

esure has treated Mr I's misrepresentation as careless. Based on Mr I's comments around how and why he answered the question the way he did, I think esure's actions to treat the misrepresentation as careless is reasonable.

As I'm satisfied Mr I's misrepresentation should be treated as careless, I've looked at the actions esure can take in accordance with CIDRA.

esure avoided the policy and agreed to refund Mr I the premium he paid towards the policy. As I've seen underwriting criteria showing it wouldn't have offered cover had it known he wasn't the registered keeper, I'm satisfied it was entitled to avoid the policy in accordance with CIDRA. And, as this means that – in effect – the policy never existed, it's fair for it to decline any claim made, and to refund the premium he paid.

esure didn't refund Mr I the premiums he paid as quickly as it should, but I can see it has applied simple interest of 8% on the refund amount from the date it agreed to refund the premiums until the date of settlement, which I think is fair. It follows, I don't think it needs to take any further action.

As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing esure to rely on it to avoid Mr I's policy produces a fair and reasonable outcome in the complaint. It follows, I don't think esure need to take further action.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 25 April 2025.

Adam Travers
Ombudsman