

The complaint

Mr N complains that esure Insurance Limited (esure) unfairly avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim.

What happened

Mr N took out a motor insurance policy with esure through a price comparison site. When his car was stolen, he tried to make a claim.

esure said he'd answered the question it asked about driving related convictions, endorsements, penalties, disqualification or bans incorrectly because he hadn't disclosed all offences. It said had he informed it of all offences at inception as he was obliged to under the terms of the policy, it would not have offered a quote. And it considered this to be a careless qualifying misrepresentation, which entitled it to *avoid* his policy from the inception date and decline his claim because of this.

Mr N brought his complaint to us and our investigator thought it should not be upheld. They agreed there had been a qualifying misrepresentation and agreed it was careless and that esure were entitled to avoid his policy and refund the premium he'd paid.

Mr N doesn't agree with the investigator and has asked for an ombudsman's decision. He said his non-disclosure was careless, not deliberate, or reckless, and should not result in the voiding of the policy or the denial of his claim. He said the misrepresentation was not relevant to the specific circumstances of his claim. He said in a case of careless misrepresentation industry guidelines focus on proportionality, and the actions taken by esure don't align with this. He said esure should either honour his claim or apply a proportional remedy.

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.

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 has to 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 or reckless, or careless.

esure thinks Mr N failed to take reasonable care not to make a misrepresentation when he didn't disclose all of his motoring convictions in the last five years when he applied for a motor insurance quote through the price comparison website at the start of February 2024.

I've looked at the question asked. It says "*Have you had any driving related convictions, endorsements, penalties, disqualifications or bans in the past five years?*" I don't think Mr N took reasonable care to answer this question accurately because he disclosed he had three penalty points on his licence from April 2023 for careless driving, but he didn't disclose other penalty points from a speeding violation in November 2023.

esure has provided evidence by way of its underwriting criteria that if Mr N had not made the misrepresentation it would never have offered him cover.

This means I'm satisfied Mr N's misrepresentation was a qualifying one.

esure considered Mr N's misrepresentation to be careless rather than reckless or deliberate.

Mr N told esure that not declaring the more recent speeding conviction was an oversight due to worry and upset whilst he was dealing with some very stressful family issues at the time of his conviction, and which had then been ongoing for the following months.

I saw a few days before Mr N obtained the motor insurance quote on 2 February 2024, and took out cover, he had paid the fine for his speeding offence from November 2023. Although I recognise Mr N and his family had been going through a very stressful time, he was aware of the conviction. So I agree that careless misrepresentation was a fair classification, and this offers the most favourable outcome.

As I'm satisfied Mr N's misrepresentation should be treated as careless. I've looked at the actions esure can take in accordance with CIDRA. . Because it would not have offered cover it can;

- Avoid the policy from the point of misrepresentation. Often from the start, but not always (mid-term).
- Return any unused premiums the consumer paid.
- Treat the policy as though it never existed from the point of avoidance and not deal with any claims.
- Look to recover any cost's it's paid to a third party on any claim after the misrepresentation.

In this case esure avoided the policy from the start, refunded the policy premiums paid by Mr N and didn't deal with the claim for the theft of his car. This is in line with CIDRA.

I recognise Mr N thinks esure should deal with his claim proportionately, however a proportionate settlement is only an option if cover would be offered but with increased policy premiums. And in this case because esure wouldn't have offered cover at all if he had accurately disclosed both convictions, this is not an option.

I'm satisfied esure was entitled to avoid Mr N's policy in accordance with CIDRA and I agree the actions taken by esure are within the remedies available to it. As this means that – in effect – his policy never existed, esure does not have to deal with his claim following the theft of his car.

I can assure Mr N that I have taken his complaint very seriously. I am truly sorry to hear he was the victim of a crime, and I recognise he has had a significant financial loss. However because CIDRA reflects our long-established approach to misrepresentation cases, I think

allowing esure to rely on it to avoid Mr N's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 30 July 2025.

Sally-Ann Harding
Ombudsman