

The complaint

Mr B and Miss W complain that esure Insurance Limited unfairly avoided Mr B's motor insurance policy and refused to pay his claim after his car was stolen.

References to Mr B or Miss W will include the other.

What happened

Mr B took out a motor insurance policy with esure through a price comparison website. Miss W was a named driver on the policy. When his car was stolen, he tried to make a claim on his policy.

esure said he'd not answered the question it asked about motoring convictions in the last five years correctly. And it considered this to be a reckless qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and keep the policy premiums he'd already paid.

Miss W brought a complaint to us, and our investigator thought it should not be upheld. They agreed there had been a qualifying misrepresentation and agreed it was reckless and esure were entitled to avoid his policy, decline Mr B's claim, and retain the premiums he'd paid.

Miss W doesn't agree with the investigator and has asked for an ombudsman's decision. She said the question regarding motoring convictions didn't specify that expired convictions should still be declared and was open to interpretation.

What I initially said

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 B failed to take reasonable care not to make a misrepresentation when he made his application for a motor insurance policy via a price comparison website. This is because he didn't disclose all the motoring convictions in the past 5 years for Miss W, who was a named driver on the policy.

I've looked at the question asked, and it says ""Have you had any motoring convictions in the last five years?" It was declared that Miss W had one motoring conviction. A second conviction within the last five years which had now expired was not declared.

I don't think Mr B and Miss W took reasonable care to answer this question accurately. This is because the question asked for motoring convictions in the last five years. It does not say to exclude convictions in the last five years that had expired.

esure has provided evidence from its underwriters that it would never have offered cover for a driver between the age of 21 and 25 who had more than three penalty points, and/or with more than one minor conviction. Miss W was within this age range and had more than one minor conviction in the last five years.

This means I'm satisfied Mr B and Miss W's misrepresentation was a qualifying one.

esure said this misrepresentation was reckless. It said prior to the start of the policy Mr B and Miss W had obtained other quotes which had been declined. It submitted evidence of other quotes being obtained which triggered its acceptance criteria resulting in a decline of quote, however this evidence didn't show any details of what had been entered on the online price comparison sites.

Miss W said the wording of the question regarding motoring convictions was open to interpretation and it was answered based on their genuine understanding. She said their response was not an intentional misrepresentation but rather a misunderstanding of the question's intent.

I saw at the time of opening the policy, both Mr B and Miss W provided their driving license numbers, so I am not persuaded that a deliberate attempt was made to hide the expired conviction. Therefore I don't agree this was a reckless misrepresentation. However, I am persuaded it was careless.

I'm satisfied esure was entitled to avoid Mr B's policy in accordance with CIDRA. And, as this means that – in effect – the policy never existed, esure does not have to deal with the claim following the theft of Mr B's car.

Because I'm satisfied Mr B and Miss W's misrepresentation should be treated as careless I've looked at the actions esure can take in accordance with CIDRA. In this case because it would not have offered cover it can ;

- Avoid the policy for careless 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.*

I recognise what a terrible situation this is for both Mr B and Miss W. I understand they have been the victims of a crime which has resulted in a significant financial loss which has impacted their overall financial stability and in turn had a severe effect on their health and wellbeing. I accept expired points on a licence don't relate to a car being stolen however they directly relate to esure offering cover or not. And in this case esure have provided evidence it would not have offered cover/a policy if it had been correctly advised of the convictions in the past five years on Miss W's licence.

Therefore, although I agree that esure fairly avoided Mr B's policy and didn't deal with his claim, I am persuaded this was a careless misrepresentation and intend to require it to refund the policy premiums for the term of cover.

Responses to my first provisional decision

esure responded and provided more detailed evidence of motor insurance quotes requested from online price comparison sites, which showed variations of driving penalties being used to obtain quotes. It said this highlighted a customer trend to alter the quotes they received.

It said the question clearly asked for all convictions within the last five years and Mr B and Miss W must have understood this to mean all convictions within the last five years as the conviction in question was entered and then removed. It said it wasn't acceptable to say this was a careless mistake based on them believing the conviction had expired and therefore didn't need to be disclosed. It maintained it was a deliberate and reckless misrepresentation.

Miss W responded and said they maintained the question regarding motoring convictions in the last five years is easily misunderstood and they answered to the best of their understanding. She said esure had ample opportunity to raise the issue if it had a concern regarding her prior convictions and they believe they're entitled to a payout under the policy.

In my second provisional decision I said

Having considered the additional evidence provided, I am persuaded the misrepresentation was reckless rather than careless as in my provisional findings. Therefore I have changed my outcome – I'll explain why.

The additional evidence provided shows quotes being obtained from two price comparison sites. The specific question asked on one price comparison website was "In the last five years, has the driver received any motoring convictions, driving license endorsements or fixed penalties?". And on the other "Have you had any driving related convictions, endorsements, penalties, disqualifications or bans in the past five years?". Guidance in completing these questions was also provided.

I consider the questions are clear for that of a reasonable customer that information was being requested for the past five years. There was nothing to suggest speeding convictions in the last five years of which the penalty points had expired didn't need to be provided.

At the time quotes were obtained and motor insurance cover was taken out Miss W, the named driver, had two SP30 speeding convictions in the past five years which resulted in three penalty points for each conviction.

Miss W has said they were unclear about the question because three of the penalty points were no longer valid on her driving licence. However the additional evidence provided clearly shows a number of attempts were made to obtain quotes for motor insurance cover disclosing both of her SP30 points (six points in total) in the past five years, prior to obtaining cover disclosing only one SP30 with three points. This does not persuade me they were unclear of the question asked.

esure said driving licence numbers were requested by the price comparison website and it has no control over these questions. It confirmed it doesn't currently have the capability to validate conviction details from driving licence numbers without being provided with a further access code from the drivers under cover. It confirmed its standard claims process is that when a claim is made, validating documents are requested. And I saw this was the process followed in this case.

esure was entitled to accept Mr B and Miss W had provided it with accurate information. I saw at the start of the term of insurance it sent a letter that reminded Mr B of the importance

of himself and all named drivers to check documents to ensure that everything was correct and update it if they were not. It is also detailed at the start of the schedule of insurance document that it may reject or reduce any claim made or even treat them as being uninsured if the details on the schedule were incorrect.

After considering both the evidence that clarifies the exact questions asked on the price comparison sites, and the evidence of Mr B and Miss W obtaining quotes with both SP30 penalty points disclosed prior to only disclosing one, I am persuaded esure has shown that this qualifying misrepresentation was deliberate or reckless.

Therefore, I'm satisfied esure was entitled to avoid Mr B's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, esure does not have to deal with his claim following for the theft the car.

Responses to my second provisional decision

Miss W responded and said;

- The assertion that multiple quote attempts were made disclosing both convictions does not in itself constitute evidence of deliberate misrepresentation. That quotes were sought both with and without expired points suggests a lack of clarity and reflects ambiguity in the way such questions are framed across different providers.
- There was no direct evidence that the final application intentionally omitted relevant information.
- They had concern that the use of historical quote data from third-party price comparison sites could represent a potential breach of the UK GDPR.
- There is inconsistency in dealing with similar claims.

esure didn't make a response to the second provisional findings.

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.

In response to Miss W's comments;

- My decision is based on the evidence provided and I remain persuaded the questions asked by both price comparison sites were clear. There was clear instruction on both the price comparison sites, and also on the policy documentation provided to Mr B by esure which reminded all drivers to check documentation to ensure it was correct.
- Insurers are entitled to rely upon information given to them. esure received information each time Mr B did a quote through the comparison websites and was entitled to take this into consideration. It isn't for our service to say whether there was a data breach or not – that's a matter for the Information Commissioner's Office (ICO).
- This case has been considered on its own merits. I am unable to consider claims that relate to other victims of the same spate of car thefts.

I acknowledge again what a terrible situation this is for both Mr B and Miss W, and this matter has caused them a great deal of distress and a significant financial loss, but altering convictions is not acceptable and deemed as deliberate/reckless.

Because CIDRA reflects our long-established approach to misrepresentation cases, I think allowing esure to rely on it to avoid Mr B's policy produces the fair and reasonable outcome in this complaint. Therefore I don't uphold this complaint and don't require esure to do anything further.

My final decision

For the reasons set out above, I don't uphold Mr B and Miss W's complaint and don't require esure to do anything further in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss W to accept or reject my decision before 1 July 2025.

Sally-Ann Harding
Ombudsman