DRN-5683096

The complaint

Mr D says esure Insurance Limited unfairly avoided his motor insurance policy and declined a claim he made on it based on a misrepresentation it said he'd made.

What happened

In 2024, Mr D reported the theft of his car to esure. In validating the claim, esure noted that Mr D's limited company was the car's owner and registered keeper, not Mr D, as he had told it. It said it wouldn't have offered cover had it known the facts. Mr D thought its decision was unfair, as he owned the business that owned the car and was its sole director. As esure avoided the policy back to its start date (treated it as though it had never existed) the theft claim wasn't covered. But esure didn't think Mr D had acted deliberately or recklessly in providing the wrong details to it, so it said it would refund his premium.

One of our investigators reviewed Mr D's complaint. He noted that the relevant law was the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). He said under the Act an insurer can take certain action if a consumer hasn't taken reasonable care in answering a question put to them when buying a policy. He thought esure had shown Mr D didn't take reasonable care when he gave the wrong answer to a question about the car's registered keeper (thereby making a misrepresentation). He thought it was fair for esure to say it was a *qualifying* misrepresentation (one that made a difference to the insurer's decision about providing cover). So he thought it was fair for esure to avoid the policy.

Mr D said he didn't know his application would be unacceptable and he'd acted honestly throughout the process. He also said he hadn't received the refund of the premium.

As there was no agreement, the complaint was passed to me for review.

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've looked at whether it was appropriate for esure to conclude that Mr D had made a misrepresentation to it, and whether it was also reasonable for it to say it was a qualifying misrepresentation, that justified esure avoiding the policy.

In my opinion, Mr D was asked a clear question, which was "*Are you or will you be the registered keeper and legal owner*?" and his answer was yes. But in fact, Mr D's business owned the car. And the business was recorded as its registered keeper on the V5 registration document. Mr D could have recorded himself as the registered keeper, but he didn't, and his limited company is a separate legal entity.

I think it was reasonable for esure to find that Mr D didn't take reasonable care in answering the clear question put to him, and that as a result he had made a misrepresentation to it. But an insurer can't take any action following a misrepresentation unless it can show that it would have acted differently had it known the correct facts. esure has provided underwriting evidence that shows it would not have offered to insure the car at all had it known Mr D's business was the car's registered keeper. Mr D may think that's unreasonable, but esure is entitled to decide the circumstances in which it's prepared to offer cover. I think it was also reasonable for esure to decide that Mr D had made a qualifying misrepresentation.

Under CIDRA, a qualifying misrepresentation gives an insurer the right to avoid a policy, and I think it was reasonable for esure to do so. As avoiding a policy means the policy is treated as though it never existed, it follows that any claim made on it won't be dealt with. So Mr D's theft claim wasn't covered.

CIDRA requires an insurer to decide whether a qualifying misrepresentation was made deliberately or recklessly. If so, it has the right to retain the policy's premium. In this case, as esure thought Mr D had only acted carelessly, it agreed to return the premium to him, which I also think was reasonable. There was delay in providing it, which esure told us was due to an administrative issue, which it undertook to resolve.

I can see why Mr D is upset about what has happened, given that quite unexpectedly, he found there was no insurance cover for the theft, when he hadn't intended to mislead esure. But in my opinion, esure didn't act unreasonably. Its decision was based on its underwriting criteria, and it followed CIDRA's provisions. That means I can't uphold Mr D's complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 September 2025.
Susan Ewins
Ombudsman