DRN-5743366

The complaint

A limited company, which I will refer to as B, complains about the avoidance of a motor insurance policy and the decline of a claim by esure Insurance Limited.

Mr O, a director of B, brings the complaint on its behalf.

What happened

The parties are aware of the circumstances leading to this complaint. So, the following is intended only as a brief summary.

B purchased a new vehicle. Mr O has said that he paid for the initial deposit from his personal accounts. However, it does not appear to be disputed that B is the vehicle's owner. B is also listed on the V5C registration document as being the vehicle's registered keeper.

In December 2022, Mr O took out a motor insurance policy through a comparison website. The policy was underwritten by esure. It seems a number of unsuccessful attempts to take out the policy were initially made through one comparison site, with B being listed as the keeper. On the final attempt, through a second comparison site, the name of the keeper was listed as Mr O and the policy was sold. Mr O was named as the policyholder. A third party, Mr S, was listed as a named driver. Mr S is a former director of B and a current shareholder. The policy commenced in January 2023.

In June 2023, the vehicle was involved in an accident and a claim was made on the policy. esure arranged for the vehicle to be collected so that it could be assessed for repair. Having done so, in July 2023, esure requested a copy of the V5C document to validate the policy and claim. This was provided, but as it listed B as the keeper – which was different to what was declared when the policy was taken out – esure wanted to ask some further questions. Due to personal circumstances, Mr O wasn't available in August/September 2023. esure tried again in November 2023, without success. It was not until April 2024 that esure was able to speak to Mr O.

esure was not satisfied with the information Mr O was able to provide. And made the decision to avoid the policy. Initially, esure did not offer a refund of the premium paid – though it has since changed its stance on this aspect.

As esure did not change its decision to avoid the policy, Mr O complained about this, bringing the complaint to the Financial Ombudsman Service. However, our Investigator did not recommend the complaint should be upheld. He thought esure had made the decision to avoid the policy fairly and reasonably, based on the incorrect information provided at the point of sale.

Mr O remained unhappy with this. Mr O felt he had made an honest mistake as a result of not understanding the question being asked at the point of sale, nor that the registered keeper of the vehicle was such a significant issue. He pointed out that esure was willing to insure a second driver who was not the registered keeper. Mr O felt that esure ought to have carried out the validation checks at the point of sale, rather than relying on this when the time came to make a claim. Mr O also said that esure had waived its right to avoid the policy, by initially dealing with the claim. Mr O referred to a number of regulatory and legislative provisions in support of his arguments.

Our Investigator was not persuaded to change his opinion though, so this complaint has been passed to me for a decision.

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 am not upholding this complaint. I've explained why below.

Firstly though, I will just reiterate that the above is only a summary of the events. Additionally, whilst I have considered the detailed submissions from both parties, I will not be commenting on each point that has been made. Instead, I will be focussing on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman.

Secondly, this complaint has been considered as having been made by B rather than Mr O. This is because, as I have discussed further below, the owner and registered keeper of the vehicle is B. Mr O may have contributed personally to the purchase, so he may have a beneficial interest in the vehicle. But given the ownership and keeper status, this vehicle – and the insurance policy relating to it – have seemingly been acquired either for purposes relating to B's operations or for a purpose directly connected with Mr O's business, trade or profession. A natural person is only able to bring a complaint to the Financial Ombudsman Service where they are acting for purposes outside their trade, business or profession. So, it would appear Mr O would not be eligible to bring this complaint in his personal capacity.

I don't feel it is necessary to make an official finding on this point though. B is eligible to complain (even though it was not taken out in its name, the policy was taken out to protect an asset of B's, and hence was taken out for B's benefit). As B's representative in this complaint, Mr O has been able to make any submissions he feels are required. And I am not upholding this complaint. So, there is little prejudice to any of the parties in terms of this jurisdiction point. And in the interests of providing a resolution, I am satisfied that that is appropriate to reach my decision on the basis that B is the appropriate complainant.

In terms of the complaint itself, I do appreciate Mr O's frustration that the policy was avoided and that the claim has not been met as a result. However, it is also clear that the information given when the policy was taken out did not reflect the factual position regarding the vehicle.

During the sales process, the following question was asked:

> "Is the driver (or will they be) the registered keeper of the car?"

This was seemingly answered with a "yes". However, the official registered keeper of the vehicle was B, and the driver was to be Mr O (and Mr S). So, this answer was incorrect.

Slightly different rules apply depending on whether a contract of insurance is for a consumer or a non-consumer (i.e. a commercial contract). But these both effectively require the customer to provide accurate information. For the sake of convenience, I will refer to the provision of inaccurate information as being a misrepresentation.

By saying the registered keeper was the driver, whereas it was in fact the company, there was a misrepresentation at the point of sale.

Where there is a misrepresentation, the insurer can apply the position that would have existed had correct information been provided. If the insurer would not have offered the policy had correct information been provided, the insurer is entitled to avoid the policy. If the incorrect information was given deliberately or recklessly, the insurer would also be entitled to retain the premium.

In this case, esure has ultimately offered to refund the premium – so it is not treating the misrepresentation as deliberate or reckless. The consumer/non-commercial rules refer to such a misrepresentation as careless.

Mr O has argued that in giving the answer he did, this was an honest mistake. However, this was a mistake that I think it is reasonable for esure to consider to be careless. Mr O has said that no explanation was given for the meaning of the term registered keeper. However, when being asked the question above, the website would also have said:

> "If your name appears in the car's log book (V5 registration document) you will be the registered keeper."

Further explanation is given on the website if a "dropdown" option is selected. This explains that the owner and keeper might be different, and provides further information. It isn't clear that Mr O would've selected this though, so I have assumed he only saw the wording above.

However, I think this wording is clear that – if there is any uncertainty – the customer ought to check the V5 document. As Mr O gave information that did not match the V5, I can only presume he did not check this document. But in doing so, he was carelessly misrepresenting the information requested by the question (and/or was in breach of the duty of fair presentation – the requirement relating to non-consumer/commercial contracts).

I note Mr O has said that English is not his first language. But, if he answered a question he did not fully understand, and this led to him providing inaccurate information, I think that – in the circumstances of this particular case – he would still have been acting "carelessly".

And I consider it is fair and reasonable that esure treat the response accordingly.

esure has provided evidence that it would not have provided the policy had the correct information been provided.

The policy would reasonably have needed to have been set up with B as the policyholder and registered keeper, and with Mr O and Mr S as named drivers. This is a significant difference to the risks esure was willing to provide under, what is, a personal motor insurance policy. So, I do not find it surprising that esure would not have offered this policy had correct information been given. And by providing incorrect information, Mr O put esure in a situation where it was providing insurance it otherwise would not have – which is clearly prejudicial to esure.

Mr O has said that esure only offered to refund the premium more than a year after the accident, and that esure waived its right to avoid the policy by carrying out various actions in relation to the claim.

I have thought about whether esure could have acted sooner to make its decision to avoid the policy. However, I need to bear in mind the fact that esure wanted to speak to Mr O before taking such action – action which has serious implications. I think this is responsible behaviour by esure. It is right that it ought to explore all reasonable responses before taking the decision to avoid the policy.

In this case, despite a number of attempts, esure was unable to speak to Mr O for a significant period (around eight months). I appreciate that Mr O's personal circumstances made this difficult – especially during the early part of this period. But it is difficult to hold esure responsible for this period of time given it was making reasonable attempts.

It could only be said that an insurer has waived their right to avoid a policy if they have taken action to affirm the contract after the point in time they became aware of the reason to avoid it. I don't consider esure took any action after becoming aware of the issue with the registered keeper that would act to affirm the contract.

During the period after receiving the V5C, esure didn't overly progress the claim. It had already arranged for the collection of the vehicle by the time it received the V5C. After this had been received, the vehicle was transferred to another of esure's agents, but this was seemingly to allow esure time to speak to Mr O. It does not appear that esure carried out any activity of repairing the vehicle or otherwise progressing the claim during this period.

Ultimately, I don't think Mr O provided answers to the questions he was asked at the point of sale with reasonable care. He provided inaccurate information. And had the correct information been provided, esure would not have sold the policy. I am not persuaded that esure's actions waived any rights it has to avoid the policy. And I consider that esure acted fairly and reasonably when taking the decision to waive the policy and offer a refund of the premium.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 19 September 2025.

Sam Thomas
Ombudsman