

The complaint

Mr Q complains that esure Insurance Limited voided his motor insurance policy (cancelled it from the start) and declined his claim following the theft of his car. He wants his car repaired.

What happened

Mr Q's car was stolen and recovered damaged. But esure declined his claim and voided his policy because it said Mr Q had made a misrepresentation about unspent non-motoring convictions when he took out his policy. It said if he hadn't made this misrepresentation then it wouldn't have offered him cover. esure also said the misrepresentation was reckless and this entitled it to retain the premiums Mr Q had already paid. Mr Q was unhappy with this and wanted his car repaired.

Our Investigator recommended that the complaint should be upheld in part. He thought Mr Q hadn't taken reasonable care to not make a misrepresentation about his unspent non-motoring convictions when he took out the policy. And so he thought it was fair and reasonable for esure to void the policy and decline the claim. But he thought the misrepresentation had been careless as he thought Mr Q had mis-read the question asked. And so he thought esure should refund the premiums Mr Q had paid with interest from the date of voidance.

Mr Q replied that he thought the voidance was disproportionate for an honest mistake. He wanted it removed from his record. esure replied that it thought Mr Q had deliberately answered the question incorrectly knowing that otherwise he wouldn't have been offered cover or would have been charged a higher premium. esure asked for an Ombudsman's review, so the complaint has come to me for a final 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.

I was sorry to hear about Mr Q's experiences at the time of the theft of his car. I can understand that this and the loss of his car must have been very stressful and upsetting for him. Mr Q has also explained that esure's decision has had an effect on his parents. But I can't consider that here as Mr Q has yet to complain to esure about this.

esure said it had voided Mr Q's policy, declined his claim and retained his premiums because he had made a deliberate misrepresentation when he took out his policy. So I'm satisfied that the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. One of these is how clear and specific the insurer's questions were. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless or careless.

If the misrepresentation was reckless or deliberate and an insurer can show it would have at least offered the policy on different terms, it is entitled to avoid the consumer's policy. If the misrepresentation was careless, then to avoid the policy, the insurer must show it would not have offered the policy at all if it wasn't for the misrepresentation. But it must refund any premiums paid.

If the insurer is entitled to avoid the policy, it means it will not have to deal with any claims under it. If the qualifying misrepresentation was careless and the insurer would have charged a higher premium if the consumer hadn't made the misrepresentation, it will have to consider the claim and settle it proportionately if it accepts it.

esure thinks Mr Q failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that he had no unspent non-motoring criminal convictions. And I've looked at the question he was asked when he completed the application, and I agree he failed to take reasonable care.

This is because he was asked:

"Have you got any unspent non-motoring criminal convictions?"

And he was provided with advice so that he could answer this question correctly. This was restated on the policy schedule sent to Mr Q to check when he took out cover. But he didn't then correct this. And so I think this was a clear question asked by esure through the comparison site Mr Q used.

Mr Q answered "No". And he's explained that this was because he'd made an error. In fact, Mr Q had an unspent non-motoring criminal conviction that he should have disclosed. And I think this means Mr Q failed to take reasonable care not to make a misrepresentation when he said he had none.

esure has provided evidence from its underwriting guidelines which shows that if Mr Q had not made this misrepresentation, it would not have offered him a policy at all. This means I am satisfied Mr Q's misrepresentation was a qualifying one under CIDRA. Mr Q said other insurers would have given him cover with a higher premium if he had disclosed the conviction. But that's not relevant here as his policy was with esure and so I must consider its underwriting guidelines and not those of other insurers.

esure has maintained that Mr Q's misrepresentation was deliberate or reckless. But Mr Q said it was a mistake as he hadn't correctly read the question he was asked. He said he'd been a named driver on another policy, and this policy hadn't asked a question about unspent non-motoring convictions but only about motoring convictions. And he's provided us with evidence to show this. Mr Q said he had mis-read the question asked by esure through the comparison site as he thought it also referred to motoring convictions.

esure said the other insurer was known amongst criminals not to ask the question about non-motoring criminal convictions. And it thought this was the reason Mr Q was a named driver on a policy with this insurer. But I haven't seen evidence to show that this was deliberate. And I think that if Mr Q had known that this insurer wouldn't have asked the question and he wanted to avoid answering it, then he would have also taken out his cover with the other insurer rather than esure.

So I'm persuaded by Mr Q's explanation that he had mis-read the question. esure hasn't provided evidence to show that Mr Q intended to answer the question incorrectly. So I think Mr Q's misrepresentation was a careless misrepresentation.

As I've said above, if the qualifying misrepresentation was careless and the insurer wouldn't have offered cover if the consumer hadn't made the misrepresentation, it's entitled to void the policy and decline the claim. And so Mr Q will have to disclose the avoidance when asked by future insurers.

Therefore, I'm satisfied esure was entitled to void the policy and decline the claim in accordance with CIDRA, and in keeping with our long-standing approach. But as I'm satisfied the misrepresentation was careless then it must refund the premiums Mr Q has paid. And as Mr Q has been without his money for some time, then I think it should reasonably add interest to this refund. I think this produces the fair and reasonable outcome in this complaint.

Putting things right

I require esure Insurance Limited to refund Mr Q's premiums adding interest at the rate of 8% simple per annum from the date of the avoidance to the date of payment.

If esure considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr Q how much it's taken off. It should also give Mr Q a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part. I require esure Insurance Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 11 December 2025.

Phillip Berechree
Ombudsman