

## The complaint

Mr M complained because esure Insurance Limited voided his buildings insurance policy and declined his claim for fire damage.

## What happened

Mr M took out a buildings insurance policy with esure through a comparison website. A few months later he claimed for fire damage at the insured property.

Esure said that when Mr M took out the policy he answered questions about the occupancy of the property incorrectly. It considered this to be a careless qualifying misrepresentation, which entitled it to void the policy.

## What I provisionally decided – and why

I issued a provisional decision which explained why I didn't think the complaint should be upheld. The relevant parts of my provisional decision are outlined below and form part of my final decision.

- 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. If a consumer fails to take care to not make a misrepresentation, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation.
- Fundamentally, Esure's argument was that when answering questions about the occupancy of the property when he applied for the policy Mr M failed to take reasonable care not to make a misrepresentation. There were two main things esure had to show:
  - that Mr M made a misrepresentation when he applied for the policy – in other words, the answers he gave to the relevant questions were incorrect or incomplete
  - that it wouldn't have provided the policy had it been aware of the true position.

### *Was there a misrepresentation?*

- The questions Mr M was asked when he applied for the policy and the answers he gave were:

<b>Question</b>	<b>Answer</b>
Is this the policyholder's main residence?	Yes
Who lives at the property?	Policyholder as sole occupier
How many adults live there?	1

- The other options for answering the second question were *Policyholder and immediate family*; *Policyholder and immediate family and/or partner's family*; and *Policyholder and lodgers*. So all options included the policyholder living at the property.
- During its consideration of the claim esure discovered that:
  - Mr M lived at a different address
  - his intention when buying the property was for his mother to live there
  - he'd bought the property just over a year ago but it took a few months to renovate before his mother could move in
  - his mother had lived at the property for almost a year.
- As Mr M wasn't living at the property Esure thought he failed to take reasonable care not to make a misrepresentation when he answered the above questions.
- I thought it was fair to conclude there was a misrepresentation. This was because Mr M said the property was his main residence when it wasn't, that he lived at the property when he didn't and that he was the sole occupier when he wasn't.
- I next looked at whether in answering the questions Mr M took reasonable care to not make a misrepresentation. As I said above, the standard of care required is that of a 'reasonable consumer'. So I needed to consider what a reasonable consumer would have done in the circumstances – rather than being too focused on why Mr M answered as he did.
- I thought the questions were clear and unambiguous and made it clear esure wanted to know whether Mr M lived at the property. Mr M said he answered the questions as he did because:
  - he owned and maintained the property and bore full financial and legal responsibility for it (including the mortgage)
  - he treated the property as his family's home
  - he didn't understand that "main residence" was an underwriting distinction rather than a straightforward ownership description – he didn't know that esure's definition of "main residence" excluded properties occupied solely by immediate family members.
- The questions didn't ask whether the property was Mr M's family's main home – they asked whether it was his main residence and who lived there. And they didn't ask (at least as part of these questions) whether there was a mortgage on the property and/or whose name the mortgage was. I didn't think it was credible for a reasonable consumer to confuse questions about main residence and who lives at the property with a question about who holds a mortgage on the property.
- I also didn't think Mr M, as a reasonable consumer, needed to delve into or think about how esure defined 'main residence' or whether it was an underwriting distinction or ownership description. He simply needed to answer the question based on the normal everyday meaning of 'main residence'.
- With the above in mind, I thought it was fair to conclude that Mr M didn't take reasonable care to not make a misrepresentation.

*Was the misrepresentation 'qualifying'?*

- For esure to take any action there needed to be a 'qualifying misrepresentation'. For the misrepresentation to be qualifying esure had to show it would have offered the policy on different terms or not at all if Mr M hadn't made the misrepresentation.
- Esure provided evidence that showed me if Mr M hadn't made the misrepresentation (ie if he'd told it the property wasn't his main residence) it wouldn't have provided a quote (which was effectively the same as it saying it wouldn't have provided the policy). As the misrepresentation led to esure providing insurance cover when it otherwise wouldn't have done so, I was satisfied the misrepresentation was a qualifying one.

#### *What remedy was available to esure?*

- The remedy available to esure under CIDRA depended on whether the misrepresentation was deliberate or reckless, or careless. If it wasn't deliberate or reckless (which esure had to prove) it would be taken to be careless.
- Mr M told us that if he misunderstood the residency questions/requirement it was a genuine and honest mistake rather than an attempt to mislead or deceive esure. To my knowledge esure hadn't alleged that the misrepresentation was deliberate or reckless. That meant it was automatically classed it as careless.
- For a careless misrepresentation the remedy available to esure was to look at what it would have done if it had been given the correct information. As esure wouldn't have offered the policy to Mr M the remedy available is for it to void the policy.

#### *Mr M's comments*

- Mr M said he didn't recall being asked questions about the occupancy of the property. I was satisfied based on evidence esure had provided that the questions Mr M was asked and the answers he gave were as outlined above.
- Mr M said that although he didn't reside at the property full-time it was occupied by his mother, who lived there permanently. He didn't think the property being occupied by a close family member constituted a material change of risk that warranted the voiding of the policy. It's ultimately each insurer's commercial decision on what risks they're prepared to cover, and that's not something I interfere with. In this case, esure decided it didn't want to provide cover for properties that weren't the policyholder's main residence. And, as explained above, the remedy of voidance is determined in CIDRA.
- Mr M also said he didn't recall being warned that the policy would be invalid if an immediate family member lived at the property rather than him. The welcome letter sent to Mr M said *"It's important that you check your documents to ensure that everything is correct, including your excesses, and update us if they're not. Incorrect information could lead to your policy being cancelled or a claim being rejected or reduced. If anything is wrong, please contact us straight away"*. The accompanying policy schedule outlined the information Mr M had provided, including that the property was his main home. Accordingly, I was satisfied Mr M was given sufficient warning of what might happen if the information he provided was incorrect.
- Mr M felt voiding the policy was a disproportionate remedy when there was clear evidence that he acted in good faith. He felt a fairer remedy would be to adjust the policy terms or charge a revised premium. There is a remedy under CIDRA for adjusting the policy terms and the insurer then considering claims under those revised terms – but that only applies if the insurer would have provided cover on different terms (which esure

wouldn't have done). There's no remedy under CIDRA for a consumer to pay a revised premium. That's because if policyholders simply had to pay the premium they should have paid from the start if they're caught making a misrepresentation there's no incentive for them to take reasonable care to not make a misrepresentation in the first place.

### *Summary*

- For the reasons outlined above, I was satisfied esure was entitled to void Mr M's policy in accordance with CIDRA. This was because:
  - there was a misrepresentation in respect of occupancy of the property
  - it was a qualifying misrepresentation
  - had esure known the correct position it wouldn't have offered Mr M the policy.
- As this meant that – in effect – Mr M's policy never existed, esure didn't have to deal with his claim following the fire at the property.
- CIDRA reflects our long-established approach to misrepresentation cases. As such, I thought allowing esure to rely on it to void Mr M's policy produced a fair and reasonable outcome in this complaint.

### **Responses to my provisional decision**

Esure told me it had no further comments to make. I didn't receive anything further from Mr M.

### **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.

As there are no further arguments or comments for me to consider, my final decision remains as outlined in my provisional decision – for the same reasons.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 March 2026.

Paul Daniel  
**Ombudsman**