

## **The complaint**

Ms J has complained that esure Insurance Limited unfairly reduced her total loss payment for her car under her motor policy.

## **What happened**

Ms J's car was stolen so she made a claim to esure. It decided the market value of her car was approximately £47,000, with which Ms J said she was satisfied.

However, during its validation of her claim, esure discovered Ms J had points on her licence from speeding of which it said it was unaware. It said had it known this, her premium would have been higher. Esure said its underwriters said that meant Ms J had only paid 76.59% of her premium. It said that situation consequently entitled it to only pay her 76.59% of her claim, effectively reducing the amount payable for the market value of her car to £35,000, according to Ms J.

Ms J then insured her old car also with esure. She told them about her points on her licence. She said she specifically asked if those speeding points affected her premium amount and was told by esure that it didn't. So, Ms J said that begged the question as to why the speeding points affected the premium for one car but didn't for another, which also meant the deduction of £12,000 from the market value of her stolen car.

Ms J complained to esure, but it didn't change its stance, so she brought her complaint to us. The investigator upheld her complaint recommending that esure pay the full agreed market value of the car namely £47,000. She was of the view that esure hadn't shown sufficient evidence that the speeding points on Ms J's licence did affect the premium price by as much as it said. So, it wasn't clear that the reduction on the market value of her car was fair. The investigator repeatedly asked for the appropriate underwriting information to verify esure's calculations, but it wasn't forthcoming. Therefore, she concluded it was questionable as to whether the premium increase had been calculated reasonable so as to show that under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) entitled esure to make the amount of this deduction from the market value of Ms J's stolen car.

Ms J agreed with the investigator's view. Esure didn't respond. So, on that basis Ms J's complaint has been passed to me to decide.

## **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'm upholding this complaint. I'll now explain why.

Under CIDRA if the consumer makes a misrepresentation in the application for an insurance policy, the insurer needs to decide if the evidence shows that the misrepresentation was

careless or deliberate and reckless. The overarching principle of CIDRA is that the consumer must answer all the questions asked truthfully and honestly. And those questions asked by the insurer must be clear and specific, and the insurer ought to have also made clear the importance of answering these questions.

If like esure did here, the insurer decides the misrepresentation was merely careless - as Ms J said she was unaware of the speeding points and esure appeared to accept that – then the insurer must show what it would have done had it been aware of the correct information. If a claim had been made on the policy, the insurer needs to show any of the following:

- It wouldn't have offered the consumer any policy at all. Then the insurer can avoid the policy, refuse all claims but it must return the premium paid.
- It would have offered insurance but on different terms. Then the insurer can continue to offer the policy but on these different terms.
- It would have charged a higher premium. Then the insurer can proportionally reduce the amount to be paid on a claim.

This last one is what esure felt it was permitted to do with Ms J's claim. It said due to the lack of disclosure of these speeding offences, it would have increased her premium. It said Ms J had only paid 76.59% of the premium it would have charged her, so it was therefore only paying 76.59% of her claim.

When considering complaints of this nature, our role is to ensure these percentages are fully verified by way of the underwriting guide so as to ensure someone like Ms J was treated fairly and not singled out and treated any differently to anyone else in her circumstances. We also need to ensure the questions asked were clear and specific and we need to know what answers Ms J gave to those questions.

We first asked esure for its file on 4 April 2023 which should have included all this necessary information. It responded on 5 April, oddly saying it would send its file if it was still required. Meanwhile it enclosed an undated email to Ms J explaining that an operator error occurred when its operative was calculating the premium on her old car with the disclosure of the speeding points. That operative inputted the wrong year, being in the future, which in turn meant the premium quoted didn't take account of her speeding points. That was why that premium for Ms J's old car wasn't increased like it said her premium for her stolen car would have been increased. I'm of the view that this is a probable explanation of the error made and so explains Ms J's confusion when she was insuring her old car. Esure also demonstrated that Ms J wouldn't be penalised for its operator error and the premium she had paid for her old car would remain as it was with full cover being made. I also consider this is reasonable given the error was esure's fault.

It also enclosed a file or document in a format we couldn't open, and it enclosed an insurance schedule. Crucially it didn't send us any underwriting information to show how Ms J only paid 76.59% of her premium and to show how it rated speeding points and how that would affect other consumers in this situation. And it didn't send us the questions it asked Ms J on application nor the answers she gave.

The investigator responded on 17 April explaining we still required esure's full file. And on 26 April she specifically asked for the underwriting information to show the premium increase. The investigator repeatedly asked esure for the file and the underwriting information on 12 May; 26 May; and 16 June, with no response at all from esure.

A response was received from esure on 4 July, where it again enclosed the final response letter to Ms J, with a follow up email response explaining why the speeding points weren't

taken into account in the premium for her old car, the updated schedule, the schedule of insurance applicable at the point of claim, the policy booklet, and a summary. Again, a document or file was included which we couldn't open. But none of the underwriting or questions asked of Ms J on her application were disclosed.

So, the investigator responded on 2 August asking for screenshots of the underwriting criteria and noting we are unable to accept any written or copy and pasted evidence; a copy of the material facts the customer was asked at point of sale and her responses; and again, explaining a file was sent in a format we couldn't open so we needed it in a different format in order to know what it contained. She chased this information again on 15 August. As there was no response, she issued her view recommending this complaint should be upheld on 7 September.

Esure asked us on 27 September what information we needed. And then on 26 October it said the reference we were using to which it had replied before now wasn't coming up on its system. We responded on 26 October explaining the reference we had used was the same one as on its final response letter to Ms J and we never received a reply after that. I consider we've given ample time to esure to provide the standard information we are duty bound to request to ensure any re-rating and increase of the premium was fair in the circumstances of Ms J's complaint. This is not a new requirement as it's been our established practice for several years now in complaints concerning these sorts of issues since CIDRA was enacted in 2012.

Consequently, in view of the number of times the investigator tried to get this information from esure which should have formed part of esure's file in the first instance, I don't consider it's fair or reasonable to continue to delay any resolution of Ms J's complaint.

Whilst it's not unusual that a failure to disclose something like speeding points on a driving licence might alter the premium payable for a motor policy, there is no information before me from esure to explain and verify its calculations that Ms J merely paid 76.59% of the premium she should have paid for her policy with esure. Therefore, without that information and verification, I don't consider it's fair and reasonable to conclude it might be correct. The consequent reduction in the payment of Ms J's otherwise valid claim for the market value of her car which was stolen is sizeable being £12,000. The market value of Ms J's car was £47,000 and she had only been paid £35,000. That essentially means esure has failed to adequately show its decision that this was such a qualifying misrepresentation under CIDRA. Therefore, I don't consider it's fair and reasonable that Ms J is so penalised by virtue of CIDRA's provisions either.

Consequently, I now consider it's fair and reasonable esure now pays Ms J the additional £12,000 for the market value of Ms J's car which was stolen adding interest of 8% simple per year.

### **My final decision**

So, for these reasons, it's my final decision that I uphold this complaint.

I now require esure Insurance Limited to do the following:

- Pay Ms J the additional sum of £12,000 being the remainder of the agreed total loss for her stolen car.
- Add interest of 8% simple per year from the date it paid the initial £35,000 to Ms J to the date it now pays this additional sum of £12,000. If income tax is to be deducted

from the interest, appropriate documentation should be provided to Ms J for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 12 January 2024.

Rona Doyle  
**Ombudsman**