

## **The complaint**

Mr K complains that esure Insurance Limited (esure) declined his claim and avoided his policy (treated it as though it never existed) following the theft of his car, under his motor insurance policy.

Mr K is represented by his solicitor. I will refer to Mr K in my decision for ease.

## **What happened**

Mr K's car was stolen in July 2022. He made a claim to esure but it declined to provide cover and avoided his policy. Mr K says he'd told esure he was the registered keeper. But the registered keeper was actually a company that Mr K is a director of. He says this was a genuine mistake and esure has unfairly avoided his policy.

In its decline letter esure says its routine checks following Mr K's claim revealed he wasn't the registered keeper as declared in his application. It says he also failed to declare a speeding conviction. Had it known Mr K wasn't the registered keeper, it says it wouldn't have offered cover.

Mr K didn't think this was fair and referred the matter to our service. Our investigator didn't uphold his complaint. She says Mr K provided inaccurate information regarding the registered keeper of his vehicle. Had esure known he wasn't the registered keeper she was satisfied it wouldn't have offered cover.

Mr K disagreed with this outcome and asked for an ombudsman to consider his complaint.

It 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 not upholding Mr K's complaint. I'm sorry to disappoint him but I'll explain why I think my decision is fair.

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 must 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.

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 K failed to take reasonable care not to make a misrepresentation when he stated in his application that he was the registered keeper of the vehicle. I've looked at the questions he was asked when he completed the application. The question about the registered keeper is clear. Mr K told esure he was the registered keeper, which wasn't correct. I note what he says about not being in possession of the V5 logbook at the time of the application. But as per the CIDRA rules he must take reasonable care not to make a misrepresentation. I don't think he did take reasonable care here.

Mr K incorrectly assumed that he was the registered keeper of his vehicle. I've seen the V5 logbook, which confirms a company is the registered keeper. Mr K didn't correct this after he received his policy documentation. I can see this instructed him to contact esure immediately if any information was incorrect. His policy schedule explains that it may reject any claims if this isn't done.

esure has provided evidence from its underwriters that shows if Mr K hadn't made this misrepresentation it wouldn't have provided cover at all. This means that I'm satisfied Mr K's misrepresentation was a qualifying one. I note his solicitor's comments that it's unlikely an insurer would refuse cover purely because the registered keeper was a corporate body and not the policyholder. But as above, I've seen esure's underwriting criteria. This confirms cover wouldn't be provided in these circumstances.

I think Mr K's misrepresentation was careless rather than reckless or deliberate. He's explained why he assumed he was the registered keeper. This is because the vehicle was to be kept at his home address. And that he would be responsible for its upkeep, taxing, and any traffic collision or speeding violations. I accept he genuinely thought he had provided accurate information to esure. But he hadn't and this was his mistake. I think he could reasonably have checked who the registered keeper of his vehicle was.

Having considered all of this I think esure treated Mr K fairly and in line with the CIDRA rules, when declining his claim and avoiding his policy. It's required to provide a refund of Mr K's premium, again in line with the CIDRA rules. But as it's already done so, I can't reasonably ask it to do anymore.

### **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 Mr K to accept or reject my decision before 19 December 2023.

Mike Waldron  
**Ombudsman**