

## **The complaint**

Mr E complains about Soteria Insurance Limited ('Soteria') avoiding his motor insurance policy because he hadn't told them about a wrap on his vehicle. Soteria treated this as a modification he should have told them about.

Soteria uses agents to administer its policies and assess claims. References to Soteria include these agents.

## **What happened**

Mr E took out a motor insurance policy with Soteria in June 2020. He then had an accident in October 2020. Mr E contacted Soteria to make a claim in respect of the accident. Soteria considered his claim but rejected it as they decided to avoid his policy. This was because, from the pictures of the vehicle provided by Mr E when he notified Soteria about the accident, Mr E's vehicle had a wrap applied to it. Soteria said the wrap was a modification that Mr E should have told them about when he took out the policy. Soteria avoided the policy from its inception and refunded the premiums paid in respect of the policy.

Mr E said that he was unaware that the vehicle had a wrap applied, as it was on the vehicle when he acquired it and the colour of the vehicle on the registration document matched the colour of the vehicle (with the wrap applied).

Mr E was unhappy at Soteria avoiding his policy and complained to Soteria. But in their final response letter they maintained their decision to avoid his policy. Soteria said that, had they been told about the wrap, they wouldn't have offered the policy to Mr E. They also noted that Mr E hadn't told the broker he'd used to take out the policy about the wrap. Soteria said they considered a wrap to be a modification and that, regardless of the colour being the same and Mr E having acquired the vehicle with the wrap applied, he should have told them about it when he took out the policy.

Mr E then complained to this service. He said that he was unaware of the wrap on the vehicle, given the colour matched the registration document, and that he wasn't responsible for applying the wrap. Mr E said that he had been affected by the stress of not having a vehicle and financially by not receiving the value of the vehicle as a total loss. That meant he had to obtain a replacement vehicle through finance, as well as having to rely on friends for transport as Soteria also withdrew the courtesy car that they initially provided to Mr E after the accident. He asked that Soteria meet the claim for the loss of his vehicle.

Our investigator didn't uphold the complaint, concluding Soteria had acted reasonably in treating Mr E not telling them of the wrap on the car as a careless misrepresentation and in avoiding his policy and refunding his premiums. She thought Mr E had been asked a clear question about modifications to his vehicle, to which he had replied 'none'. As Soteria had acted reasonably in avoiding Mr E's policy then they didn't need to deal with Mr E's claim arising from the accident.

Mr E didn't accept the investigator's view and requested an ombudsman review the complaint. He maintained that he didn't know the car was wrapped when he applied for his policy and that when he found out it was, he didn't think he needed to tell Soteria as he

hadn't made any changes to his vehicle and the vehicle was registered as the colour it was when he acquired the vehicle.

In my findings I disagreed with the investigator's conclusion that UKI had acted fairly when they avoided Mr E's policy. While I thought Mr E would have realised his car had a wrap, I also thought it wasn't unreasonable for him to conclude that he hadn't made any changes to the vehicle, so he didn't need to inform Soteria about the wrap. Given the importance of wrap on a vehicle to Soteria's appetite to offer cover, I thought they should have asked a specific question about this.

I also concluded that Mr E acted reasonably in the information he gave Soteria, so hadn't made a misrepresentation. I concluded that Soteria acted unfairly when they avoided his policy and so Soteria should remove any record of the avoidance from both internal and external databases. I also thought Soteria should assess Mr E's claim for damage to his vehicle as they would have done had they not avoided his policy. I also thought £150 in compensation for his distress and inconvenience would be fair.

Because I disagreed with the investigator's conclusions and thought Soteria needed to put things right, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below.

#### *What I've provisionally decided – and why*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of Mr E's complaint.*

*The key part of Mr E's complaint is that Soteria shouldn't have avoided his policy because of the wrap applied to his vehicle, so they should meet his claim for the damage to (the loss of) his vehicle.*

*Mr E told us that he acquired the vehicle from a private seller at the time he took out his policy and that he didn't realise the car had a wrap as the colour of the vehicle matched that recorded on the registration document. While this is what Mr E told us when making his complaint (and when disagreeing with our investigator's view) I'm not persuaded that this would have been the case. Having seen photographs of the vehicle it is clear that it has a matt paint finish and this is likely to indicate a wrap had been applied to the vehicle. There's also a comment from Mr E from a recording of a conversation with Soteria after he lodged his claim that indicates he was aware of the wrap on the vehicle (when he bought it). While I've seen the registration document that confirms the colour of the vehicle, matching the appearance of the vehicle, I don't think this changes my view.*

*Mr E also told us that he thought the wrap was to protect the original paintwork, therefore he didn't need to tell Soteria. Listening to the call between Mr E and the broker when he took out the policy, there's no specific mention (from either party) of the vehicle having a wrap (or mention of modifications more generally). From the information I've seen of the details used to provide the quote, there is a question about modifications, to which the answer given is 'none'. The same response to the same question is also included in the policy documents. So I've concluded that Mr E was asked about modifications and clearly answered 'none'.*

*While the answer given by Mr E is clear, I've also considered what the policy documents say about modifications, in terms of the definition of, or detail on, the term. From the documents provided by Soteria, the term 'modification' is not defined specifically. Under the heading of "General Conditions" there is reference (under a heading "Changes in circumstances") to:*

*"You must tell us as soon as possible if there are any changes to any of the details you have provided...Examples of changes are:...*

- Any changes to your car, including engine modification and changes such as fitting alloy wheels, spoilers or skirts".*

*While there is also a reference to these examples not being exhaustive, I can see no other mention of modifications, for example to changes to the appearance of the vehicle. And as Mr E acquired the vehicle and took out the policy at the same time and the vehicle was acquired with the wrap already in place, then I think it's not unreasonable for him to conclude that he hadn't made any changes to the vehicle, and that he therefore didn't need to inform Soteria about the wrap to his vehicle.*

*As Mr E's policy was taken out as a new policy in June 2020, I've also looked at the question he was asked about modifications as part of the quote he obtained (through a comparison website). To the question "Does the car have any modifications?" the answer is "no". I've noted that the pop-up help bubble at this point states:*

*"Modifications are non-standard changes made to the car after manufacture, including new spoilers, alloy wheels etc."*

*Again, there's no mention of wrap to the vehicle, nor to changes in appearance more generally – for example cosmetic changes. I've considered these points carefully. While I don't think Soteria needs to list all the possible modifications and that wrap could be seen to be a 'non-standard change', Mr E wasn't made aware that wrap was something that would mean Soteria wouldn't offer the policy at all (as opposed to offering it on different terms, for example a higher premium).*

*I've seen the evidence that Soteria would not, under its own underwriting guidelines, have accepted the wrap modification had they been told about it by Mr E.*

*I've thought about the points on the clarity of the question about wrap being a modification, as well as the consequences in terms of the policy being avoided. Given the importance of wrap on a vehicle to Soteria's appetite to offer cover, I think Soteria should have asked a specific question about this.*

*I've also considered the applicable legislation, which 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 to be applied is that of a reasonable consumer. Soteria concluded that in not telling them about the wrap to his vehicle, Mr E made a qualifying misrepresentation under CIDRA. They also treated the misrepresentation as careless (rather than deliberate or reckless). Having considered what I've said about the clarity of the question Mr E was asked on modifications, then I've concluded that Mr E acted reasonably in the information he gave Soteria in response to its questions and so hasn't made a misrepresentation. It follows that I think Soteria acted unfairly and unreasonably towards Mr E when they avoided his policy.*

*Having concluded that Soteria acted unfairly in avoiding Mr E's policy, I've considered what Soteria should do to put things right. As I've concluded that the avoidance was unfair, Soteria should remove any record of the avoidance from both internal and external databases. I've also considered Mr E's other main element of complaint, that Soteria should have met his claim for the damage to his vehicle from the accident. Having concluded that Soteria acted unfairly in avoiding Mr E's policy, and thereby treating it as if it had never been in place, I think Soteria should assess Mr E's claim as they would have done under the policy*

*had they not avoided it. From the report produced by Soteria's repairer, the indications are that the vehicle was beyond economical repair and therefore a total loss. In such circumstances, I would have expected Soteria to consider the claim on this basis, subject to any excess under the policy and any other applicable terms and conditions. Given the time that has elapsed since the avoidance of his policy, Soteria should add interest at 8% simple from the date at which it would have been likely to have paid his claim (assuming that it would have been a total loss).*

*In his complaint to this service, Mr E said that he was also unhappy that the courtesy car he was initially provided with was withdrawn by Soteria. However, even had Soteria not avoided his policy, the terms and conditions of the policy would have meant that a courtesy car would not have been provided once his vehicle had been assessed as a total loss. I don't think Soteria acted unfairly in this respect.*

*I've also considered the question of compensation. Mr E has told us about the stress he has suffered from his policy being avoided and, consequently, having to obtain a replacement vehicle on finance, without the benefit of any settlement of his claim that he might have received. Taking all the circumstances into account, I think £150 compensation for his distress and inconvenience is fair.*

*my provisional decision*

*For the reasons set out above, it's my provisional decision to uphold Mr E's complaint. Subject to any information I receive in response to this provisional decision, I intend to require Soteria Insurance Limited to:*

- Remove any record of the avoidance from both internal and external databases.*
- Assess Mr E's claim as they would have done under the policy had they not avoided it subject to any excess under the policy and any other applicable terms and conditions.*
- Given the time that has elapsed since the avoidance of his policy, Soteria should add interest at 8% simple from the date at which it would have been likely to have assessed his claim (assuming that it would have been a total loss).*
- Pay Mr E £150 in compensation for his distress and inconvenience.*

Mr E acknowledged the provisional decision but didn't make any substantive comments.

In their response, Soteria made several points. First, that they're not able to provide a list of all the modifications that they wouldn't accept when a customer takes out a policy. So, they set out to the customer that they won't accept 'non-standard changes made to the car after manufacture', as a general question to include cosmetic changes. Soteria also said they believed a customer reading the question would understand that the wrap was clearly a non-standard change, so Mr E should have been aware that he should have informed Soteria of the wrap. As he was also asked, when he completed the quote and took out the policy, whether any of the information he had supplied had changed, he had ample opportunity to ask Soteria whether the wrap would be considered a non-standard change.

Second, Soteria also noted that Mr E, having initially said that he wasn't aware of the wrap, then changed his position when lodging his claim to indicate that he was aware. Together with the conclusion in my provisional decision that Mr E should have been aware of the wrap, Soteria thought this cast doubt on whether Mr E didn't know about the wrap when he took out the policy.

Third, Soteria also noted that the investigator's conclusion was that the question was clear and that Soteria had acted fairly [in avoiding the policy].

## **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 remain of the view that the complaint should be upheld.

Taking Soteria's points in turn, on the first point, while I concluded that Mr E should have been aware of the wrap, I went on to conclude that it didn't affect my view. While the question asked by Soteria referred to 'non-standard changes' there's no mention of changes to appearance or to cosmetic changes. And while I accept that not all modifications can be listed, it was the absence of any reference to changes in appearance or to cosmetic changes combined with the impact of non-disclosure in terms of Soteria not offering cover at all that led me to conclude Soteria should have asked a more specific question. I haven't changed my view on this point. Soteria didn't comment specifically on my conclusion that Mr E hadn't made a misrepresentation under CIDRA, and I also haven't changed my view on this point. So, I've still concluded that Soteria didn't act fairly when they avoided Mr E's policy.

On Soteria's second point, that they thought Mr E knew about the wrap when he took out the policy, as I noted in my provisional decision, I think Mr E should have been aware of the wrap. But that didn't change my view, for the reasons I set out in my provisional decision. So I haven't changed my view on this point.

On the third point, the role of the ombudsman is to consider all the available evidence and arguments to decide what's fair and reasonable in the circumstances of a complaint and whether the business has acted fairly towards the consumer. While the ombudsman will take note of the views of the investigator, the ombudsman considers a complaint afresh and reaches their own conclusions. It doesn't preclude the ombudsman reaching a different conclusion to the investigator. Where that's the case, that's why a provisional decision is issued, giving both parties the opportunity to consider things further and provide any additional information and evidence, for the ombudsman to consider before reaching a final decision.

Taking all these points into account, then I haven't changed my view and my reasoning and conclusions remain the same as in my provisional decision.

## **My final decision**

For the reasons set out above, it's my final decision to uphold Mr E's complaint.

I require Soteria Insurance Limited to:

- Remove any record of the avoidance from both internal and external databases.
- Assess Mr E's claim as they would have done under the policy had they not avoided it subject to any excess under the policy and any other applicable terms and conditions.
- Given the time that has elapsed since the avoidance of his policy, Soteria should add interest at 8% simple from the date at which it would have been likely to have assessed his claim (assuming that it would have been a total loss)<sup>1</sup>.

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<sup>1</sup> If Soteria consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr E how much they've taken off. They should also give Mr E a tax deduction certificate if He asks for one, so he can re-claim the tax figure from HM Revenue & Customs if appropriate.

- Pay Mr E £150 in compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 October 2021.

Paul King  
**Ombudsman**