

The complaint

Mr F complains that Skyfire Insurance Company Limited (Skyfire) avoided his insurance policy after it found that his car had been modified.

What happened

I issued my provisional decision on this case on 6 December 2021. I planned to come to a different outcome to our investigator, and so I wanted to give both parties the chance to respond with anything additional they wanted me to consider before I reached my final decision. Both parties have now responded, and so I'm now in a position to come to my decision.

I have copied my provisional decision below, which also forms part of this final decision.

"In April 2021, Mr F was involved in an incident which caused damage to his car. The third party was held liable for the incident. Mr F contacted Skyfire who took the car in for repairs. Skyfire's repairers checked the car and said it had been modified with an aftermarket body wrap. Skyfire said it wouldn't have insured the car had it been aware of the body wrap – it said it wouldn't insure any vehicle with this type of modification. Because of this, it avoided Mr F's policy – so treated it as though it had never been in place.

Mr F says he was unaware his car had been modified and so when he took out the cover, he didn't let Skyfire know. He says that he has another vehicle which has been modified, and so he knows that he would have needed to declare any modifications to Skyfire when taking out the cover.

Skyfire responded to Mr F's complaint to say that its decision to avoid the policy was correct. It said that after reviewing pictures of the car, it was clear that it had been modified with a body wrap – and that Mr F should have let it know about this when he took out the cover. It said that it wouldn't have ever insured the car had it been made aware of this. Because of this, it had avoided the policy and treated it as though it never existed – and refunded the premiums Mr F had paid. In addition to this, Skyfire explained that it had taken too long to log his complaint, and so it paid him £75 to say sorry.

Our investigator also looked into what had happened. They explained that Skyfire could avoid a policy if they found that a customer, Mr F in this case, had made a misrepresentation when taking out the cover. Our investigator found that the questions Skyfire had asked Mr F when he took out the cover had been clear, and they thought it was clear that the car had been modified. For these reasons, our investigator didn't uphold the complaint.

Mr F didn't agree. He maintained that he had no idea that the car had been modified with a body wrap. He said he would have declared this to Skyfire had he known. He said he'd now lost out as a result of not having his car repaired, and he would need to declare the avoided policy to future insurers, which would increase any premiums he'd need to pay.

Because Mr F didn't agree, the complaint has been passed to me to make a decision on the matter.

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 this complaint.

Based on everything I've seen so far, I'm intending to uphold Mr F's complaint, and I'll explain why below.

The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA") sets out the respective rights and responsibilities of consumers and insurers when entering into contracts of insurance. CIDRA places the consumer under a duty to take reasonable care not to make any misrepresentations (i.e. to say something untrue or misleading), provided the insurer has asked clear and specific questions. If the consumer doesn't take reasonable care to answer the questions accurately and this adversely affects the insurer's ability to underwrite the proposed risk, this is treated as a 'qualifying misrepresentation', which may entitle the insurer to certain remedies depending on the nature and scope of the misrepresentation, i.e. whether it's regarded as careless, reckless or deliberate.

So firstly, in order for me to agree with Skyfire that Mr F had made a misrepresentation, I'd need to be satisfied that the questions it asked him about the modifications were clear and specific – and I don't currently think they were.

I can see that Mr F purchased his policy online through a price comparison website. Skyfire has provided me with a copy of a screen shot of the questions it says it asked Mr F at the time of sale. This shows that Skyfire had made a number of assumptions about Mr F's car based on its make and model. Mr F was asked to say whether the assumptions it had made were correct or not.

Looking at the screen shot, I can see it states "We've checked with an independent provider and made some assumptions for you". It then goes on to list the assumptions it has made about Mr F's car. There are seven assumptions listed in total, and one of these was "Hasn't been modified"

Mr F was then prompted to say whether these assumptions were correct by selecting "Yes" or "No". It also explains that "If something is not right or you're not sure, select No and you can change any of the details".

Based on the information I've seen, I think it's likely Mr F selected 'Yes' to this question and agreed with the assumptions that had been made. I say this because the statement of fact Skyfire has provided me with doesn't show that Mr F had made any amendments to the assumptions made.

I've thought very carefully about the question Mr F was asked, and I've given particular consideration to whether it was clear and specific. Mr F says that he had no idea his car was modified, and while I accept that it was Mr F's responsibility to know about this, I don't think the question it asked here would have prompted Mr F into checking if his car was in fact modified. There's no specific information in the question that explains what a modification is or gives examples of what it would consider to be a modification. There isn't anywhere on the screen shot it sent me that states that a modification would include any adjustments made to the body work of the car.

If Mr F had answered "No" to the question, so stating that some or all of the assumptions that had been made were incorrect, he would have been asked additional questions. There is a question about modifications, where it was possible to say whether the car had been

modified. There was also a small information icon that could have been selected to provide additional information about what would be considered a modification. The information box here explains that, amongst other things, any changes in the bodywork, including cosmetic changes, would be considered a modification. And would prompt the reader to check with their chosen provider if they're not sure.

I do agree that if Mr F had seen this question, then it ought to have been clear that any cosmetic changes, or changes to the bodywork would need to have been declared. And I think the question being asked here is clear and specific. But I don't think it likely that Mr F would have seen this information. I say this because I think it likely he would have only seen this information if he'd have said that the assumptions weren't correct. As I've explained, I don't currently think there was any reason for him to have answered this question differently.

I don't currently think Mr F was asked a clear question by Skyfire through the price comparison website. And it follows that I'm currently of the opinion that Mr F took reasonable care not to make a misrepresentation when he said the car hadn't been modified.

Therefore, I'm not satisfied Skyfire was entitled to avoid Mr F's policy in accordance with CIDRA. And, as this means that it unfairly avoided his policy, I think Skyfire does have to deal with his claim following the damage to his car. And – as CIDRA reflects our long established approach to misrepresentation cases, I think allowing Skyfire to rely on it to avoid Mr F's policy would be an unfair and unreasonable outcome in this complaint."

Mr F responded to the provisional decision to say he accepted my provisional findings and didn't have anything further to add.

Skyfire also responded to say that it didn't agree, and made the below main points:

- The investigators view stated that they thought it more likely that Mr F knew that his car was modified with a body wrap. This is because Mr F already had cars with modifications. The investigator also found that they thought it was clear that the car had been modified.

Skyfire say that the investigators point concludes that even someone with little knowledge of car would clearly see the car had a wrap. And so, they should have disclosed this when applying for the insurance.

- Mr F's argument was that he didn't know the car was modified, however, my provisional decision states that the question asked didn't prompt Mr F to answer correctly. Skyfire added that *it "could understand if the customer COULDN'T answer the question from a CIDRA perspective, but to then say we don't explain what a modification is (when the customer has admitted having another modified car) we don't feel this is a fair reflection of the problem."* It then went on to provide screenshots of the questions asked again, and stated *"In this case, we could not offer cover if the correct information was submitted at application, therefore the correct processes have been followed."*

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 considered everything again, it is still my decision that this complaint should be upheld. I appreciate this will come as a disappointment to Skyfire but I'll explain my reasons for this below.

Mr F has been consistent throughout in that he didn't know his car had been modified with a body wrap. And this is the reason he didn't answer the questions on the application correctly. While I appreciate that our investigator made a view that they thought Mr F was likely aware of the modification – especially given that he had other modified cars, I'm not necessarily in agreement with this point.

Just because Mr F has modified cars already, this doesn't automatically mean that he knew this car was modified. I asked Mr F to provide me with evidence of the modifications on his other car, which he has done. I can see that Mr F has disclosed a number of different modifications, none of which relate to changes in the body work – I don't think I can find that by having some knowledge of specific types of modifications means that a person would have knowledge of all modifications.

Given that Mr F has a different car with modifications and that he disclosed these modifications to his other insurer, I don't see any reason why he wouldn't have done the same on this policy had he been aware.

As I've said in my provisional decision, Mr F was asked to confirm a number of assumptions that had no explanation surrounding them unless he answered "no" to these assumptions. Given this I don't think Skyfire met its obligation here to make sure it asked Mr F clear and specific questions.

But even if I assumed it had, given that I find it likely Mr F wasn't aware his car had been modified, it follows that I find he took reasonable care when agreeing to the assumptions and so there has been no qualifying misrepresentation here.

So, it follows that it is still my decision to uphold this complaint.

Putting things right

Skyfire's unfair and unreasonable actions have had consequences for Mr F, including that he had to take out new cover at a much greater premium. So Skyfire's going to have to do a number of things to put matters right. Skyfire should:

- Remove the record of the avoidance from its own and any industry database.
- Reinstate Mr F's policy until the date he took out new cover elsewhere, marking the policy, at that time, as cancelled by him, and without charging a cancellation fee.
- Consider Mr F's claim for his damaged car.
- If Mr F has had his car repaired, Skyfire will need to reimburse Mr F the cost he had to pay for the repairs.
- If Mr F has paid for repairs, Skyfire needs to pay interest* on any settlement made to Mr F for repairs in line with the interest rate Mr F was charged. For example, if Mr F has paid for repairs using his debit card, then Skyfire would need to pay 8% simple interest. However, if he has used a credit card for the payment, then it will need to compensate him for the interest he paid at the same rate as his credit card, at a minimum of 8% – subject to proof being provided by Mr F.
- Reimburse, subject to proof from Mr F of his new cover, any additional cost for the new cover compared to the cost of the policy he had with Skyfire, until the current policy expires. Plus interest* at a rate of 8% per year from the date the additional sum or sums were paid by Mr F until settlement is made. When the current policy

expires and Mr F renews he won't have to declare the avoidance so his premium will no longer be negatively affected by it.

- Pay Mr F £250 compensation for the distress and inconvenience caused by its unfair and unreasonable avoidance.

*If Skyfire consider that they are required by HM Revenue & Customs to withhold income tax from that interest, they should tell Mr F how much they have taken off, and give Mr F 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 set out above, I uphold Mr F's complaint. Skyfire Insurance Company Limited should put things right for Mr F by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 March 2022.

Sophie Wilkinson
Ombudsman