

The complaint

Mr L has complained that Skyfire Insurance Company Limited refused to pay his claim on his motor insurance policy following an accident.

What happened

Mr L took out a motor insurance policy with Skyfire through an online price comparison site. When he had an accident, he tried to claim on his policy.

Skyfire declined his claim. When Mr L complained, it said he'd answered the question he'd been asked about how he used his car incorrectly. And that it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to refuse his claim.

our investigator's view

Mr L brought his complaint to us and our investigator thought it shouldn't be upheld. He agreed there had been a qualifying misrepresentation and he thought this was deliberate or reckless. The policy didn't cover commuting. And so he thought Skyfire was entitled to decline the claim.

Mr L didn't agree with the investigator and asked for an ombudsman's decision.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr L and to Skyfire on 9 February 2022. I summarise my findings:

I was satisfied that 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 has to 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.

Skyfire thought Mr L failed to take reasonable care not to make a misrepresentation when he stated in his application via a comparison site that he used his car for Social, Domestic and Personal (SDP) use only. And I looked at the question he was asked when he completed the application and agreed he failed to take reasonable care. This was because he was asked:

“What do you use the car for?”

Social, Domestic and Pleasure Only (SDP)

Social, Domestic, Pleasure and Commuting (SDPC)

SDPC and Business Use.”

Explanations were then provided for each of the categories of use.

And I thought this was a clear question asked by Skyfire through the comparison site Mr L used.

Mr L hadn't disagreed that he chose SDP, as shown by the policy documents. And he'd provided various explanations of how he used his car. But in the call where Mr L notified Skyfire of the claim, he said he was driving home from work and this had been his normal routine since the start of the policy. So I thought it was most likely the car was going to be used for commuting whilst it was insured under his policy with Skyfire. And I thought this meant Mr L failed to take reasonable care not to make a misrepresentation when he said he used the car for SDP purposes only.

Skyfire provided evidence which showed that if Mr L had not made this misrepresentation it would still have offered him cover and it wouldn't have charged him a higher premium:

“Mr L's premium at renewal was £289.95 exclusive of fees and ancillaries, had commuting cover been included the premium would have been £289.95 exclusive of fees or ancillaries.”

As I've said above, for it to be a qualifying misrepresentation under CIDRA the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation. The terms would have been the same if Mr L had chosen SDPC. This meant I was satisfied Mr L's misrepresentation wasn't a qualifying one.

Therefore, I wasn't satisfied Skyfire was entitled to decline Mr L's claim in accordance with CIDRA. And I thought Skyfire did have to deal with his claim. And – as CIDRA reflects our long-established approach to misrepresentation cases, I thought not allowing Skyfire to rely on it to decline Mr L's claim produced the fair and reasonable outcome in this complaint.

When a business makes a mistake, as I thought Skyfire had done here, we expect it to restore the consumer's position, as far as it's able to do so. And we also consider the impact the error had on the consumer.

To put things right for Mr L, I thought Skyfire should stop pursuing him for its outlay, remove any record of the repudiation of the claim and consider Mr L's claim for the loss of his car under the remaining terms and conditions of his policy. As Mr L has been without his money for some time, I thought Skyfire should add interest to any settlement made.

Mr L has been able to borrow money from a family member to replace his car and keep mobile. I thought this was a reasonable step to mitigate his losses. But he has been caused considerable stress and upset over eight months by Skyfire's unfair decision. So I intended to require Skyfire to pay Mr L £500 compensation for the distress and inconvenience it has caused him. This is in keeping with our published guidance.

Subject to any further representations by Mr L or Skyfire, my provisional decision was that I intended to uphold this complaint.

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.

Skyfire replied that it accepted my provisional decision. Mr L had no further comments to make. So I can see no reason to change my provisional decision.

Putting things right

I require Skyfire Insurance Company Limited to do the following:

1. Stop pursuing Mr L for its outlay.
2. Remove any record of the repudiation of the claim from any database where it's been recorded.
3. Consider Mr L's claim for the loss of his car under the remaining terms and conditions of his policy.
4. As Mr L has been without his money for some time, Skyfire should add interest to any settlement made at the rate of 8% simple from the date of repudiation to the date of settlement †.
5. Pay Mr L £500 compensation for the distress and inconvenience it has caused him.

† HM Revenue & Customs requires Skyfire to take off tax from this interest. Skyfire must give Mr L a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Skyfire Insurance Company Limited to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 March 2022.

Phillip Berechree
Ombudsman