

The complaint

Mr K complains that Skyfire Insurance Company Limited (Skyfire) declined a claim for damage to his car, following an accident, and avoided (treated it as though it never existed) his motor insurance policy.

What happened

Mr K's car was damaged when it was hit by a bus. He initially made a claim through the third party's insurer. The insurer didn't agree to the costs Mr K was claiming. As a result, he contacted Skyfire and it agreed to handle the claim.

During its claim investigation Skyfire identified that Mr K's car was modified. It says he didn't disclose this information during his online application despite being asked. Skyfire says that had it known about the modifications it wouldn't have offered cover. It says its underwriting criteria doesn't allow for the modifications present on Mr K's car. As a result, it avoided his policy back to its inception and returned his premiums.

Mr K didn't think this was fair. He says he didn't know the car had been modified and asked our service to consider the matter. Our investigator upheld his complaint. She acknowledged Skyfire's expert report that showed some modifications had been made to the car. But she didn't think it was clear that Mr K was aware that modifications had been made.

Our investigator says she didn't think Mr K had misrepresented the information he provided to Skyfire when taking out his policy. And said it should reinstate his policy, reconsider his claim, remove any record of the avoided policy, and pay £250 compensation.

Skyfire disagreed with this outcome. It says Mr K has a passion for modified cars demonstrated by a photo of a modified car he had on a social media site. It also points out that Mr K bought his car from an online auction house. Skyfire says this platform is used by people with a considerable knowledge of cars. It refers to Mr K's comments when he made his claim that he'd "been around cars all his life". Skyfire also highlights its engineer's comments that the modifications were easily visible.

Because it disagreed with our investigator's view, Skyfire asked for an ombudsman to consider this complaint.

It has been passed to me to decide.

I issued a provisional decision in February 2023 explaining that I was intending to uphold Mr K's complaint. Here's what I said:

provisional findings

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 minded to uphold this complaint. Let me explain.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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.

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. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Skyfire says Mr K failed to take reasonable care not to make a misrepresentation when he told it there were no modifications on his car. The business says it thinks this was a careless misrepresentation on Mr K's behalf. And under CIDRA it is able to cancel the policy and avoid it from inception.

Mr K applied for his policy online. Skyfire has supplied a screenshot of the question he was asked relating to modifications on his car. This asks, "Has the car been modified in any way?" with a yes/no response. A help box is shown that provides the following information:

"What does this mean? If you or a previous owner has made a change from the manufacturer's original specification, such as alloy wheels, air conditioning, bodywork, exhaust system, suspension or tinted windows, add it here.

If you're unsure if your car's been modified, check its previous history to find out."

I've seen a report completed by Skyfire's in-house engineer that identifies Mr K's car has a non-standard aftermarket exhaust system, mirror covers, and drilled brake discs. I note Skyfire had previously identified the rear lights as a modification. However, its engineer subsequently confirmed the rear lights are an optional extra and therefore not a modification under the policy terms.

Mr K says he doesn't have specialist knowledge and wasn't aware the components Skyfire highlights were modifications.

I don't think there can be any dispute that the components highlighted by Skyfire are modifications to the manufacturer's original specifications. I've thought about whether Mr K should've known this.

I've looked at the photos showing the modified parts of Mr K's car and I've thought about whether a reasonable consumer would've known these components were modifications. But I'm not persuaded that a reasonable consumer would know this.

Many different options are available for Mr K's model of car. I can see that his car is a sport model and the modifications reported appear to be designed to further enhance this style. But based on what I've seen I don't think the average person would know that the car had modifications to it.

Skyfire points to Mr K's interest in cars and that he bought the car from an online auction platform. I acknowledge its comments, but Mr K isn't a specialist in this area unlike its motor engineer. He may have an interest in cars, but I don't think this means the modifications

shown would necessarily stand out to him. It's also of relevance that Skyfire initially thought the rear lights were a modification when they weren't. The implication being it's not that obvious what is and isn't a modification.

I've looked at the online auction advertisement to see if there was any information indicating the car had been modified. There isn't.

Our investigator highlighted the contact Mr K made with the manufacturer. It was only after doing this that he says he became aware the rear lights on his car were optional extras. Our investigator says this information is readily available online. She thought this showed Mr K didn't have the level of knowledge that Skyfire suggests. I think this is a fair point.

I've also thought about Skyfire's comments about Mr K's social media account and what he said about being around cars all his life. I acknowledge this shows that Mr K has an interest in cars. But I don't think this is sufficient to say that Mr K, under the CIDRA test of a reasonable consumer, should've known his car had been modified in the way Skyfire's engineer has since highlighted.

Having considered all of this I'm not persuaded that Mr K failed to take reasonable care with the information he gave in his policy application. This means I don't think he made a qualifying misrepresentation under the CIDRA rules. So, I don't think it was fair for Skyfire to decline Mr K's claim and avoid his policy for the reason it gave.

Mr K explains how this matter has caused him a great deal of stress and some sleepless nights. He also says he has incurred costs as a result of the need to arrange alternative transport. Mr K has sent a letter from a company that provides a 'car and courier' service. It says he has a travel account with it, which he has used since 25 May 2022, with an outstanding balance of £7,122.45.

I've read the information Mr K has provided. But this provides little detail show what the service provided was, or that it's reasonable for Skyfire to cover these costs. I think Mr K should be compensated for the loss of use of his vehicle. In these circumstances I think it's fair that Skyfire pays Mr K £10 per day for the period he has been without a car. This is the approach our service takes in similar circumstances.

I've also thought about the distress Mr K experienced because of Skyfire's decision to decline his claim and avoid his policy. He describes how this has been very stressful resulting in sleepless nights. In these circumstances, given the level of financial cost involved, I think Skyfire should pay him £250 compensation for the distress it caused.

In summary, I don't think Skyfire treated Mr K fairly in declining his claim and avoiding his policy for the reason it gave. It should reconsider his claim based on the remaining policy terms. Skyfire should ensure there is no record of the avoided policy and pay £10 per day from the date of the claim up until this is settled. It should also pay £250 compensation for the distress it caused Mr K.

Our investigator thought Skyfire should reinstate Mr K's policy. However, the policy year in question has since elapsed. Because of this I won't be including this requirement.

I said I was intending to uphold the complaint and Skyfire Insurance Company Limited should:

- *reconsider Mr K's claim based on the remaining policy terms;*
- *ensure there is no record of the avoidance;*
- *pay £10 per day from the date of the claim until the claim is settled; and*

- pay £250 compensation for the distress caused to Mr K.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Skyfire responded to say that it accepted my provisional decision. It went on to say it will be conducting a full investigation into the claim before making any settlement.

Mr K responded to say he is content with my findings. Although he says it's only fair for Skyfire to pay the reasonable transport costs he incurred. Mr K has provided a letter from the car and courier service he used. This shows the return trip he made every day between the same two destinations for 170 consecutive days costing just under £42 per day.

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.

I note Skyfire's comments that it will be investigating the claim prior to making any settlement. This doesn't impact on my decision. In my provisional decision I said Skyfire should reconsider Mr K's claim based on the remaining policy terms. So, Skyfire's comments don't warrant a change to my findings.

I've read the letter Mr K provided from the car and courier company he used, in conjunction with the travel cost information he supplied previously. I understand he was without his car, as it had been damaged, so needed to find alternative transport. I've thought about whether the travel costs Mr K is claiming, for the courier service he used, are reasonable. I note the total cost for these services amount to £7,122.45.

We expect customers to take appropriate mitigating action to avoid or prevent losses. When considering Mr K's claim I've thought about whether the mitigating action he took in response to the loss of use of his car was reasonable.

Mr K used a courier service for a long period at a cost of over £7,000. Given the significant cost of this service, I think he could reasonably have bought a temporary vehicle whilst consideration of this matter was ongoing. I think this will have been significantly cheaper than using the courier service.

The journey Mr K took each day was to the same city centre destination and back. I can see that there are good public transport links in place that Mr K could've used as an alternative. I understand his reasoning for using the courier service. But I think a loss of use payment is fair and that this should be set at £10 per day, which is what our service considers reasonable in these circumstances.

Having considered all of this I'm not persuaded that I should change my provision decision, so this will now become my final decision.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that Skyfire Insurance Company Limited should:

- reconsider Mr K's claim based on the remaining policy terms;
- ensure there is no record of the avoidance;
- pay £10 per day from the date of the claim until the claim is settled; and

- pay £250 compensation for the distress caused to Mr K.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 April 2023.

Mike Waldron
Ombudsman