

The complaint

Mr M complains that Skyfire Insurance Company Limited (Skyfire) avoided his motor insurance policy and refused to pay his claim.

Mr M is represented in this case by a solicitor but for ease of reading, in this decision I will refer mainly to Mr M.

What happened

I issued my provisional findings on this case on 9 May 2023. I planned to uphold Mr M's complaint and invited both parties to respond with anything they thought was relevant for me to consider.

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

What happened

Mr M took out a motor Insurance policy with Skyfire in December 2021. In January 2021 he bought a second car and on the same day he purchased it he called Skyfire to insure it. The purchase price of the car was £86,891.

A month later in February 2022 Mr M's car was stolen, he tried to make a claim for this, but Skyfire declined the claim and avoided Mr M's policy.

Skyfire said he'd answered the question it asked about the value of his car incorrectly. And it considered this to be a qualifying misrepresentation. Skyfire don't provide insurance for cars with a value of more than £80,000 and so say a policy would never have been offered to Mr M had he declared the true value of his car. And so, this entitled it to avoid his policy and decline his claim. Skyfire refunded his full premium to him.

The question Mr M was asked and answered during the call was:

Q: What would you say the current value in the car would be?

A: Uumm £80,000

Mr M brought his complaint to us, and our investigator didn't think it should be upheld. They agreed there had been a qualifying misrepresentation. They believed it was careless, but they thought Skyfire was entitled to avoid Mr M's policy and decline his claim.

Mr M doesn't agree with the investigator and has asked for an ombudsman's decision. In summary the arguments put forward by his solicitor were:

- Skyfire did not make it sufficiently clear that £80,000 was the absolute sum it could insure, and in that case, it would have been appropriate for it to ask him to*

check the value is not a penny more. If they had asked, he would have checked his answer was accurate.

- As the car was purchased through hire purchase with a balloon payment at the end of the agreement, he wasn't focussed on the retail price only on the monthly repayments.*
- Skyfire agreed to provide insurance up to £80,000. And it would be unfair to deny him cover for that amount.*
- If its accepted, which Mr M doesn't, that £86,000 was the correct value at the time then he was within 7.5% of that value when he said £80,000 and this is well within the margin in which different reasonable people might value a vehicle at.*

The matter has now been passed to me to decide.

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.

I realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean that I've not considered everything that both parties have given to me.

The relevant law where there is a misrepresentation 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.

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

Under CIDRA, for Skyfire to be able to avoid paying Mr M's claim it needs to show it was entitled to avoid the policy.

Skyfire thinks Mr M failed to take reasonable care not to make a misrepresentation when he told it his car had a value of £80,000. But I don't agree that Mr M did do this. I say that because I've looked at the question Mr M was asked by Skyfire, and I think he was asked for a statement of opinion here, rather than a statement of fact – What would you say the current value in the car would be? which means Mr M can't have made a misrepresentation as he was only giving his opinion on the value of the car, rather than stating it as a matter of fact.

But I still need to consider if the answer Mr M gave to the question, he was asked, was a reasonable one in the circumstances. And what the remedy should be either way. In cases where the answer isn't considered to be a reasonable one then our

approach would be to put both parties back in the position they would have been in before the mistake occurred.

To decide if Mr M's answer was reasonable in the circumstances I've listened to the call where Mr M was asked the question about the value of his car. I have also considered what information Mr M had available to him to be able to answer the question, and what he has told us about why he gave the answer he did.

I've also thought about Skyfire's actions here too and whether it needed to do more when Mr M said his car was worth £80,000, when it knew this was the upper limit for cover.

Mr M does accept he had information available to him at the time showing the purchase price of the car. But he has explained there were a number of factors that informed his answer:

- It's his understanding that a car depreciates as soon as its collected from a forecourt and so he thought £80,000 was about right to reflect this.*
- When he bought the car, he went through the calculations online with his focus being on what was an affordable monthly payment, rather than thinking about the total purchase price of the car.*
- There was also a balloon payment due at the end of the three year finance agreement of approximately £35,000 which he never intended to pay as he was planning to trade the car in at the end of the finance agreement.*

Overall, I'm satisfied that Mr M gave what he thought to be a reasonable opinion based on his understanding of the question he was asked and the factors surrounding it. I'm not concerned that he thought his car was worth £80,000 given his explanation of his thought process. It therefore follows that I'm satisfied that Mr M gave a reasonable answer to the question he was asked. In addition, based on the question, I don't think Mr M made a statement that is capable of being described as a representation, as opposed to a statement of opinion.

Moving to Skyfire's actions here, Mr M didn't call Skyfire to make a change on his existing policy he called to take out a new one, but the application declined when he told Skyfire his car's value, in his opinion, was £80,000. It was Skyfire's telephony agent that suggested he switch this onto his existing policy as it was more likely to accept this way— had they not done so, Mr M would have taken out a new policy with another insurer.

Skyfire was the expert in this transaction and knew there was an upper value limit to the risks that its willing to cover. So, I think it needed to make clear to Mr M the importance of being accurate when answering that question and it needed to do so before offering to get around the value issue by making the change to Mr M's existing policy. It was in a position to do so as Mr M was open telling Skyfire he had purchased the car on the same day – so it could have probed him for the purchase price of the car on that day as this seems to be the answer it is suggesting Mr M should have provided.

Taking everything into account, I don't think Skyfire can rely on CIDRA here, as I don't think Mr M made a statement that is capable of being described as a representation, as opposed to a statement of opinion. And I don't think Skyfire did

enough to make him aware of the importance of answering that question accurately or the possible consequences if he didn't. So, if I were to allow Skyfire to rely on CIDRA here it wouldn't produce a fair and reasonable outcome.

This means Skyfire will need to reinstate this policy, removing any record of the avoidance from any internal or external databases, and consider Mr M's claim in accordance with its terms. The terms say that the maximum amount payable in the event of a total loss claim is the market value of the insured vehicle at the time of the loss. There isn't a clause in the policy that limits the payment to the value shown in the schedule of insurance and so Skyfire shouldn't limit the claim here to £80,000 but should consider the claim at its full value at the time of the loss.

The policy says the settlement amount due on any finance agreement will be paid to the finance provider, with the balance being paid to Mr M. However, Skyfire is also entitled to deduct the excess from any claim it pays. As Skyfire refunded the policy premiums to Mr M it can deduct those from any claim settlement too.

It's not appropriate for me to award interest at this stage as I can't say what the outcome of the claim will be when Skyfire considers the claim in line with the policy terms. Although there is nothing from its file to suggest there is any reason it won't settle the claim, but I cannot be sure of this.

However, I do think that Mr M should receive something for the distress and inconvenience of having his policy incorrectly avoided. He has told us he hasn't been able to afford to replace his car, as much of his money was tied up in the insured vehicle. So, he has had to rely on public transport and using a push bike for getting around. This combined with the upset of having his policy avoided and his claim turned down would have caused significant upset, worry and inconvenience to him. He has also had to continue with the monthly finance payments on the car without actually having it to use, which would also have been very distressing for him.

As I've said I can't be sure that Skyfire would have settled Mr M's claim if it hadn't incorrectly avoided his policy, but what I can be sure of is that the avoidance meant Mr M couldn't take action to replace his car, whether this was by having his claim settled or by some other means. Therefore, while I don't think Skyfire should pay for loss of use of his car, I do think they need to pay a significant compensation payment for distress and inconvenience. And having considered the overall impact of the avoidance on Mr M I've provisionally decided £650 is appropriate.

My provisional decision

For the reasons set out above, my provisional decision is that I intend to uphold this complain and will require Skyfire Insurance Company Limited to:

- Remove any record of the avoidance of Mr M's policy from their records and any central databases it was placed on.*
- Reinstate Mr M's policy and consider his claim for theft in accordance with the policy terms. The policy terms say that Skyfire will pay the market value of the car in the event of a total loss, minus any excess. And while I note that Skyfire doesn't normally insure cars with a value greater than £80,000 this should not have any impact on any settlement amount due to Mr M.*
- Pay Mr M £650 in compensation for distress and inconvenience.*

Both parties responded to my provisional findings as follows:

Mr M accepted the findings.

Skyfire said:

“ We understand that when Mr M contacted us to insure his vehicle, we originally did this as a new quote, which declined because the value was more than £75k. This was communicated to Mr M during the call, and we then amended his existing policy as MTAs allow a vehicle value of up to £80k. The FOS decision states that we should have made it clear to Mr M that we don’t insure/accept vehicles with a value over £80k, we believe this should be defended as a point of principle as we don’t tell customers what our acceptance criteria is.

Whilst CIDRA sets out that we should ask clear questions. The customer also has a duty to answer them openly and honestly. From what was said on the call, we believe that Mr M would have had an understanding that the value of his car was either at the limit of what we accept, or beyond this. He said £80k, knowing that he had paid £86k earlier that day, and that if he had said anything over £80k, we would have declined cover.

We feel the FOS are setting this out as though we had asked a hypothetical/theoretical question, we asked what the value of the vehicle was, and this was set out in the customer’s lease agreement by the manufacturer’s finance arm”.

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’ve given thought to Skyfire’s response and having done so; it hasn’t changed my mind for reasons I’ll explain below.

Skyfire are under the misconception that I had said it should have made it clear to Mr M that Skyfire doesn’t insure/accept vehicles over the value of £80,000. But that’s not what my provisional decision said or intended. It said Skyfire should have made it clear to Mr M the importance of answering the question correctly, as it was in a position to know that the value Mr M had given, as his opinion, was at its upper limit of acceptance. Skyfire were also aware of the possible consequences for Mr M if the car was valued at even £1 more.

I don’t agree with Skyfire’s comment that when Mr M answered the question, he knew his car was either at the upper limit of acceptance or beyond it. Having listened to the call I can’t say here is anything that supports this. Mr M answers the question he was asked and its only when the new cover quote declines, later in the call, and the agent suggests a mid-term adjustment on Mr M’s existing policy that a limit for new policies is discussed.

Skyfire have argued that Mr M purchased the car on the same day, and so should have answered the question he was asked by giving the figure that he purchased the car for. This brings me back to Skyfire not asking a clear question at the outset. Mr M was asked:

“What would you say the current value in the car would be?”

I’m satisfied the Mr M was asked for his opinion here and he gave what he thought - in his opinion – was a reasonable answer, which he has justified his thinking for. And as I’ve

already explained – his answer isn't capable of being described as a representation as its not a statement of fact – it's a statement of opinion. If Skyfire wanted to know what Mr M purchased the car for on that day (which is what its argument seems to be here) – it should have specifically asked that.

Taking into account all of the above I remain satisfied that Skyfire didn't ask a clear question which required a statement of fact in answer, but asked Mr M his opinion about the value of his car. So, Mr M couldn't have made a misrepresentation when giving his answer. So, I don't think it's fair to allow Skyfire to rely on CIDRA in this case as it would not result in a fair and reasonable outcome here.

Putting things right

To put things right here for Mr M Skyfire should:

- Remove any record of the avoidance of Mr M's policy from their records and any central databases it was placed on.
- Reinstate Mr M's policy and consider his claim for theft in accordance with the policy terms. The policy terms say that Skyfire will pay the market value of the car in the event of a total loss, minus any excess. And while I note that Skyfire doesn't normally insure cars with a value greater than £80,000 this should not have any impact on any settlement amount due to Mr M.
- Pay Mr M £650 in compensation for distress and inconvenience.

My final decision

For the reasons set out above, my final decision is that I uphold Mr M's complaint about Skyfire Insurance Company Limited and now require it to carry out the actions as set under the "putting things right" section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 June 2023.

Amber Mortimer
Ombudsman