

The complaint

Mr D is complaining Skyfire Insurance Company Limited has avoided his car insurance policy and declined a claim he made.

What happened

In August 2022 Mr D bought a car and took out an insurance policy – provided by Skyfire – to insure it. In December 2022 Mr D was involved in an accident with a third party's vehicle where his car suffered significant damage. So he contacted Skyfire to claim for the damage on his insurance policy. Skyfire inspected his car and said it had been modified from its original form. But it said Mr D hadn't told it about any modifications and it said it wouldn't have insured him had it known about them. So it avoided his insurance policy, declined to cover Mr D's claim and said he needed to repay the amount it had paid to the third party for their claim.

Mr D didn't think Skyfire were being fair as he said he didn't know the car had been modified. He thought it was unfair for it to decline his claim and he said he was around £55,000 out of pocket as a result, so he referred his complaint to this Service.

Since then, Skyfire provided this Service with the original advert for the car which it said showed the car wasn't modified when it was sold to Mr D. The investigator discussed this with Mr D and he then admitted he'd modified the car himself, but panicked when Skyfire raised this.

Our investigator upheld this complaint. She acknowledged that Mr D had given false and misleading information to Skyfire when it raised the issue about the modifications. But she said she needed to think about whether this had ultimately impacted on Skyfire liability – i.e. would Mr D still be in the same position if he'd been open and honest at the start. She didn't think it had.

The investigator said Mr D only needed to tell Skyfire about things that fundamentally changed the risk Skyfire were being asked to insure. She said Mr D had added a lower front bumper spoiler, tinted the fog lights and added a vinyl wrap behind the number plate. She thought the addition of the bumper spoiler would have made the car more stable, but she essentially thought the changes were cosmetic. She didn't think they'd changed the risk Skyfire were insuring, so she didn't think Mr D needed to tell it about the changes he'd made.

Skyfire didn't agree with the investigator as it said the terms of the insurance policy set out that Mr D needed to tell it about any modifications. And it said it had shown it wouldn't have insured Mr D had he done so. So it maintained it was entitled to have done what it did.

As Skyfire didn't agree with the investigator, the complaint's been passed to me to decide.

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 decided to uphold this complaint and I'll now explain why.

As it's now been established that Mr D added the modifications after he bought the car and during the policy term, I need to think about whether he should have contacted Skyfire to advise of the changes he'd made.

The Consumer Insurance (Representations and Disclosures) Act 2012 set out that a consumer needs to take reasonable care not to make a misrepresentation when entering into or varying the contract with an insurer. But importantly there's no ongoing duty for the consumer to advise an insurer of any changes in their circumstances once the contract begins. However insurers will generally add a policy condition requiring them to do so.

In this case, the terms of the policy set out the following:

“Changes which may affect your cover

As some changes will affect your cover, you should tell the insurer immediately about any change to the details you have previously declared on your Statement of Fact, for example:

- *a modification to your car which improves its performance or handling, including over the air updates from your vehicle manufacturer. Any modification which improves the value or increases the chances of it being stolen or someone breaking into it to steal what is inside”.*

However, I think this is a significant ongoing duty towards Mr D and, if Skyfire wishes to rely on such a term, I would expect it to have highlighted this outside of the terms of the policy. Insurers will generally do this in a policy summary, or an “insurance product information document”. But I can't see that Skyfire has brought this term to Mr D's attention. So I don't think Skyfire has done enough to ensure Mr D was aware he needed to disclose material changes that affected the performance, value or desirability of the car.

However, I am also acutely aware that Mr D lied to Skyfire about how the modifications came to be on the car. Clearly Mr D should have been honest with Skyfire at the start about the modifications and I've thought about whether this should have an impact on whether I can reasonably require Skyfire to settle his claim. In thinking about this, I'm conscious of the Supreme Court ruling in *Versloot Dredging v HDI Gerling Industrie Versicherung AG*. In this case, the Court ruled that, to be able to decline a claim on the grounds of fraud, the lie needs to:

- Make a claim that wouldn't normally be paid under the policy appear to be one that would be; or
- Increase the amount the consumer could claim for, to more than they're entitled to.

So, the question for me to ask is, by not being honest about the modifications, has Mr D hidden something that would have impacted Skyfire's liability on the claim – in short, would Skyfire still have had to pay the claim under the terms of the policy anyway had he said at the start that he'd arranged for the car to be modified himself.

The policy conditions required Mr D to let Skyfire know about anything that changes the details Mr D previously declared on his Statement of Fact. However, I don't think it's fair for an insurer to require a consumer to have to disclose every single thing that changes and particularly where it doesn't actually change the risk that the insurer is insuring. When an insurer enters into an insurance contract it effectively promises to cover the policyholder

against certain insured perils. And in many cases, if the consumer's circumstances change during the term of the policy, that is generally just part of the risk the insurer agreed to take on – so long as it doesn't change the *actual* risk.

So, what this means, is that I'd generally think it's only fair that an insurer can require a consumer to tell it about something that fundamentally changes the *actual* risk their insuring – i.e. something that changes the likelihood of loss or damage occurring. And I think this is supported by the examples of what Skyfire has set out about what it would expect consumers to tell it about.

Ultimately, the question for me in this case is whether I think the modifications Mr D had carried out to the car have changed the actual risk Skyfire was being asked to insure. I don't think they did and I'll explain why.

I think tinting the fog lights and adding a vinyl wrap to the area behind the number plate were purely cosmetic, so I'm satisfied they don't change the risk. The key issue here is the front spoiler. However, this Service has done a lot of research regarding this and I'm not persuaded it makes the risk higher. Generally, I understand the effect of a front spoiler is to redirect the air flow and helps make the car more stable. So, if there is any effect on performance, it arguably makes it less likely that an accident will occur. But I don't believe this was a particularly expensive addition and it seems to me that the effect of the spoiler was large aesthetic. And I'm not persuaded it's changed the performance of the car in any form.

I've also thought about whether the additions make the car more valuable or likely to be stolen. But, as I said, I don't believe that these additions have materially changed the car. So I'm not persuaded it changed its desirability or value.

Taking everything into consideration I'm not persuaded the modifications have fundamentally changed the risk Skyfire has been asked to insure. I'm aware Skyfire has said it's shown it doesn't cover vehicles that have certain modifications. So it thinks it has shown the risk has changed. I do not dispute what its risk assessment criteria says, but this goes to how Skyfire assesses a risk – i.e. it *perceives* a car that is modified is a risk it doesn't want to insure, but it doesn't mean the risk has actually changed.

In short, the crux of this is whether there was an actual increased risk to Mr D suffering loss or damage immediately after he added the modifications and, for the reasons I've set out above, I don't think it did.

So, it follows that I don't think Mr D needed to disclose these modifications until it came to renewing the insurance policy. As a result, I think Skyfire would have still had to settle the claim even if Mr D had been clear and honest at the outset. So I can't reasonably say that Mr D's dishonesty could have had any impact on Skyfire's liability. I'm not saying I excuse Mr D's actions. Clearly he should have been clear and honest throughout. But I have to take into account what the terms of the policy say and the law.

Putting things right

For all the reasons I've set out above, I don't think it was fair for Skyfire to have avoided the policy, declined Mr D's claim and looked to recover what it paid out on the third party's claim. And I think it should do the following to put things right:

1. Remove all record of the policy's avoidance/cancellation from internal and external insurance databases;
2. Settle Mr D's claim in line with the terms of the insurance policy. It can deduct any

- premium refund it gave from any settlement it made; and
3. Cease any recovery action regarding anything it paid out on the third party's claim.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Skyfire Insurance Company Limited to settle Mr D's complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 December 2023.

Guy Mitchell

Ombudsman