DRN-4487410

The complaint

Mr S has complained about his car insurer Skyfire Insurance Company Limited in respect of the valuation it applied and resultant settlement it made for his car which, following an accident, was found to be a total loss.

What happened

Mr S's car was damaged. He made a claim. Skyfire felt it wouldn't be economic to repair it so declared it a total loss. An initial settlement figure was given to Mr S, which he disagreed with. Following review by an engineer, Skyfire said it would pay Mr S £3,700, less £994 because Mr S was keeping the car. It said £3,700 was in the range of the average (£4,675) of three valuations it had obtained from some industry trade guides used for valuing cars, less a 20 per cent deduction because Mr S's car was a total loss previously.

Skyfire and Mr S settled the claim on an interim basis. But Mr S remained unhappy. He complained to the Financial Ombudsman Service saying he believed a fair market value for his car was £5,500. He presented some adverts in this respect.

Our Investigator felt that the market value of £4,675 relied upon by Skyfire was reasonable. He explained that was because, based on valuations returned from four guides that figure fell within the range of values returned. But he felt Skyfire couldn't reasonably deduct 20 per cert for the previous total loss status of the car. He explained he felt the current competitive market for second-hand cars didn't suggest such a generalised deduction was likely fair. So he said Skyfire should return £935 to Mr S, being the 20 per cent deduction it had applied.

Mr S was pleased by the outcome. Skyfire said it disagreed with it. It provided comment from its engineer, explaining why he thought car sales are usually affected by total loss markers. Essentially that if the insurer couldn't fix the car, declaring it a total loss, the car now being sold is likely to have been repaired in an unsafe manner. Meaning they're automatically viewed with caution, as unknown propositions, by prospective buyers. Such that applying a deduction of 20% is fair. And Skyfire referenced comment from our website referring to such a deduction being reasonable.

The complaint was referred to me for an Ombudsman's consideration. I wasn't persuaded that the market value relied upon by Skyfire was fair in the circumstances. I felt an uplift was reasonably required. I also felt, as did our Investigator, that with the current car sales market being so competitive, it wasn't fair for Skyfire to deduct 20 per cent for the previous total loss of the car. So I issued a provisional decision to explain my views. My findings were:

"Previous total loss deduction

When Mr S bought his car it was a previous insurance total loss. Skyfire, when settling Mr S's accident claim as a total loss paid him net of a 20 per cent deduction applied because of the previous total loss. Skyfire thinks that the car, if now sold, would attract a lesser value on the second-hand market than other similar non-total loss cars. And I thank Skyfire for referencing guidance taken from the Financial Ombudsman Service's website in this respect.

I appreciate that our guidance does say that we “may” find such a deduction is fair. And I accept that, historically, and generally, it’s been the case that a total loss car would likely attract a significantly lower price than a similar car for sale which had not been so damaged. But the point made by our Investigator, which I think both Skyfire and its engineer missed, is that the market for second-hand cars has changed. Also so has the repair environment for insurers. The market is now very competitive and fast moving. And insurers are often finding cars to be total losses even where relatively minor damage has been caused due to not just the price of parts and labour but also availability of parts. It’s often not that they can’t fix the car, but that they choose not to. Such that it’s not fair to assume that all total loss cars would be viewed by potential buyers as unsafe propositions (because the insurer couldn’t fix them). I don’t think it’s fair, in the current climate, to say that it’s most likely that, Mr S’s car, if sold, would sell for 20% less than other similar non-total loss cars. I’ve seen no specific argument in this respect from Skyfire. Nothing Skyfire or its engineer has said has persuaded me it would be fair to say that’s likely the case.

I’d add that my analysis below casts further doubt on the idea that the value of Mr S’s car would likely be so affected. In short the sample of adverts provided by Mr S contain two cars flagged as previous insurance total losses. Neither are for sale at anywhere near the sum Skyfire settled for with Mr S, which was net of the 20% deduction. In fact, at around £5,500 they are both nearly 50% more than the £3,700 Skyfire paid.

Taking everything into account, I’m not satisfied that the value of Mr S’s car, in the current market, would be most likely to be impacted by 20% on account of the car having been a previous total loss. So, in my view, it’s not fair for Skyfire’s claim settlement to have been paid net of such a deduction.

Market value

The following values from four industry trade guides have been validated by our Investigator:

- *£5,231*
- *£5,195*
- *£4,264*
- *£3,970*

From this it can be seen that the sum relied upon by Skyfire, of £4,675 does fall within the range of those values, roughly in the middle. But in reviewing those values I’ve noted that they aren’t all of a similar spread across their range. Rather there are two similar prices at just over £5,000 and two much lower, by about £1,000, at around £4,000. Such a large gap between the two pairs of figures might suggest one or the other is not presenting a reliable reflection of the market. So I need to review the other data available to see if this is the case.

Mr S provided some adverts for cars similar to his. I reviewed them. I note the make and model, as well as year of registration are the same. But also that the mileage of the cars advertised does differ quite significantly. Across the six adverts the mileage differs on every car, from 104,000 to 248,000. And there is only one whose mileage is similar to Mr S’s car (179,000 against Mr S’s car’s 180,000). What is significant to me though is that all of them, including a couple which are flagged as previous total losses, have asking prices of over £5,300. Only one asks for a significantly higher price of around £7,000. With that detail set against the four guide valuations returned its difficult for me to say with any degree of confidence that the lower pair of values are likely to be reliable indicators of a fair market value of Mr S’s car.

The lower pair of values being unreliable means they fairly have to be discounted from the market value assessment. As does the highest of the advert values at around £7,000. That leaves me with two guide values at £5,231 and £5,195, and five adverts for varying mileage cars ranging from £5,300 – £5,750. With the one which has very similar mileage to Mr S's having a sum in the middle of £5,500, and being flagged in the advert as a previous total loss. So I think it's reasonable to factor that sum of £5,500 into the market value assessment. It falls right in the middle of a fairly evenly spread range of figures and it is being asked for a car very much like Mr S's. But, because the sample it comes from is small, and the trade guides take into account much more data, I think it's fair to set the sum alongside the upper pair of values returned from the trade guides and use an average of the three to determine a fair market value for Mr S's car. The three to consider are; £5,231, £5,195 (the upper pair of guide values) and £5,500 (the advert value). The average of those three is £5,308.

From the sum of £5,308, the salvage value (£994) would normally need to be accounted for by making a deduction. That £994 represents about 20 per cent of Skyfire's originally applied market value figure. That percentage is not dissimilar to that applied by insurers across the industry in similar circumstances. It represents what they are likely to gain in scrap value from selling damaged, total loss vehicles. So I'm satisfied it's fair that Skyfire charged Mr S this sum to keep his car. But here, due to the way the claim was initially settled, Mr S paid £994 to Skyfire. So it has the benefit of that sum. Which means I don't need to deduct it now. Also, in the circumstances of the accident, I understand that there was no excess to be taken. Further, as I've said above, Skyfire can't fairly make a deduction for the previous total loss. So the fair and reasonable settlement figure for Mr S is £5,308.

Skyfire previously paid Mr S £3,700. Taking that from the fair and reasonable figure I've set out above, leaves a sum of £1,608. I intend to require it to pay this sum now, plus interest applied from the date the £3,700 payment was made until the sum of £1,608 is paid.*

<u>Compensation</u>

I can see Mr S has been a bit worried by all of this. And he's had to put in some degree of effort to challenge Skyfire. I think that's been more difficult in his particular situation as he struggles with some written documentation. I think £200 compensation is fairly and reasonably due."

Mr S accepted the decision. Skyfire said it disagreed with it. Its response focused on the findings made in respect of the 20% deduction it had sought to apply for Mr S's car having been a previous total loss. It did not object to my findings made about the market value or paying Mr S compensation.

Skyfire said if the Financial Ombudsman Service's view on a 20% deduction for previous total loss vehicles is changing that will affect the industry. Skyfire sent an industry newsletter which commented on previous total loss cars for sale often being marked at a lower price. It quoted various internet sources making similar comments. It said a deduction like this is supported by a court case.

It said it totally disagreed with the idea that a buyer would not be put off by a previous total loss vehicle. In this case, Skyfire said, it was relevant, in its view, that the previous total loss on Mr S's car pre-dated the covid-19 lockdown and the current market conditions for repair. Skyfire said it had structural damage which, at that earlier time, had simply been too costly to repair. Skyfire believes that when the car was then sold in 2020, it would have faired less favourably, by at least 20%, than a similar car which had not been a total loss. Any repair would then, Skyfire says, have been done cheaply and would likely have been sub-standard.

Skyfire also stated that currently the second-hand car market is in decline, it's not as competitive as it was a while ago.

Skyfire also presented two adverts of comparable cars for sale – one being a previous total loss and with an asking price £1,000 less than the comparison car. Looking at the adverts provided by Mr S it said one was over-priced as it had much higher mileage than a similar car in another of the adverts which was for sale for less. It said another of the cars for sale, which had a total loss marker on it, was for sale at the low price it was (£5,750), lower than others with higher mileage, because of the marker. Skyfire said the valuation guides price that car at over £7,000.

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 appreciate Skyfire's concerns about the industry. I appreciate there is likely a wealth of generic data available which references previous total loss cars likely selling for less than non-total loss competitors. But there's no telling how up to date that detail is or on what data it is based. I've noted the court case Skyfire has quoted. It seems to centre on an alleged loss between two private individuals in respect of a car which when sold did so at a loss, seemingly due to damage which had been sustained. I'm not persuaded that's relevant to a complaint about an insurer's settlement for a car which was a previous total loss but which had been repaired.

Clearly when an insurer repairs a car, it does so using manufacturer approved parts and methods. It's true that can often be more costly than if generic or reconditioned parts are used. But I don't think it's fair to say that any repair not carried out by an insurer will likely be sub-standard. I bear in mind that Mr S's car passed its MOT in the year before the accident. Also that he did take the car back – which I don't think he'd have done had it been 'sub-standard'. I can see from MOT data available on-line that he had the car fixed quite quickly as it passed another MOT in June 2023 (with Skyfire having settled with him in late May 2023). So I'm not persuaded by Skyfire's hypothesis that it was fixed in a cheap manner in 2020 which would likely have affected its market value at the time of Mr S's accident.

I note the two advert Skyfire's provided. They are for similar cars, to each other and Mr S's, although a year younger than his. But I also note that there might be a reason for their difference in price (other than the previous total loss) – they are for sale in two very different areas of the country. And whilst I note Skyfire has then gone on to offer some analysis of the adverts Mr S provided, I note it chose not to comment on the advert which I said provisionally was for a car very similar to Mr S's. That car was also a previous total loss and for sale at £5,500. I still think that, set alongside the uppermost pair of valuation figures (£5,231 and £5,195) shows that Skyfire's settlement of £3,700 (being a starting market value of £4,675 less a 20 per cent deduction) was not a fair and reasonable total loss settlement for Mr S's car.

Which means that my view on Skyfire applying a 20% deduction has not changed. Skyfire did not object to the other points I made provisionally, and Mr S accepted my findings. So I've no need to review what I said in those respects. My provisional findings then, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require Skyfire to pay Mr S:

- £1,608, plus interest* from the date £3,700 was paid until this settlement is made.
- £200 compensation for distress and inconvenience.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Skyfire to take off tax from this interest. If asked, it must give Mr S a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Skyfire Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 January 2024.

Fiona Robinson
Ombudsman