

The complaint

Mr C has complained about Skyfire Insurance Company Limited. He isn't happy that it avoided his policy (treated it like it never existed) and refused to pay his claim under his motor insurance policy.

For ease of reading, any reference to Skyfire includes its agents and I will only refer to Mr C, as opposed to his representative, throughout this decision.

What happened

Mr C took out a motor insurance policy with Skyfire through a comparison website. And when he made a claim under the policy it turned down the claim and avoided his policy (treated it as if it didn't exist). This was because when it looked into the claim it realised that Mr C's car had a number of modifications and had it been made aware of these when he took the policy out Skyfire wouldn't have insured Mr C's car. In effect, Skyfire felt Mr C was careless in not telling it about the modifications that had been made to his car and this was a qualifying misrepresentation which allowed it to take the steps it had in turning down the claim and avoiding the policy. Skyfire refunded Mr C's premium as it didn't think Mr C hadn't told it about the modifications deliberately, but he was careless, and explained that he didn't need to tell future insurers about the cancellation.

Mr C wasn't happy about this, so he brought his complaint to this Service. Our investigator looked into things for him, but she didn't uphold his complaint. Although she sympathised with the position Mr C had found himself after being involved in a serious accident she didn't think Skyfire had acted unfairly. She thought Mr C was asked a clear question about modifications to his car and that he carelessly misrepresented. And Skyfire has shown it wouldn't have insured him had it been made aware, so she didn't think it had acted unfairly. She acknowledged that Skyfire did make an offer to Mr C for the value of his car before finalising the avoidance of his policy. But as Mr C hadn't been prejudiced by this she didn't think Skyfire had acted unfairly by offering £150 in acknowledgment of its error.

As Mr C didn't agree the matter has been passed to me for review.

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.

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.

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.

Skyfire Insurance thinks Mr C failed to take reasonable care not to make a misrepresentation when he took out his insurance policy for his car. It identified a number of after sales modifications to the car that it felt Mr C should have disclosed after he was asked about this on the comparison website and when he was sent the covering policy documentation that outlined that his car hadn't been modified, when it had.

I've looked at the questions Mr C was asked when he took out the policy and I think it was fairly clear that modifications, including cosmetic changes like those made to Mr C's car, needed to be disclosed. And from what Mr C has told us he would always have answered this question negatively as he simply thought a sporty car like his was likely to have been manufactured that way. However, I think he ought to have been aware that his car had been modified or, at the very least, taken steps to check this before continuing with his policy.

Mr C has suggested he just attended the car dealership where he bought his car from and wasn't aware that it specialised in his particular brand of car and made modifications or upgrades to these cars as part of its sales process. But the dealership was quite a distance from his home address, and he has said he was looking for this particular model, so I find it difficult to believe that he didn't access any website or undertake any research before attending the dealership. And had he have done so I think he ought to have realised his car was modified by the dealership given the way it advertises its cars.

Mr C has highlighted that the car dealership does sell cars which haven't been enhanced and has provided adverts for other brands in support of his position. But he clearly paid more for his particular car as it had been modified which is why he looked to negotiate a higher market value from Skyfire when it looked to settle the claim initially. Plus, I'm surprised to hear that the dealership didn't mention the significant and expensive modifications it had made when Mr C viewed the car. I say this as it looks to enhance his particular brand of vehicle and the dealership clearly takes a great deal of pride and an enhanced price by doing so.

Given all of this I don't think Mr C took reasonable care when he took out the policy not to make a misrepresentation about the modifications on his car. Skyfire has accepted he didn't do this deliberately and acted carelessly meaning that it has fully refunded his premium which feels fair. Indeed, I note it has provided confirmation to Mr C that he doesn't have to declare he has had a policy cancelled as a gesture of goodwill.

As I agree Mr C failed to take reasonable care I've moved on to consider whether his misrepresentation was a qualifying one – in effect did it make a difference to the insurer – and I think it did. I say this as Skyfire has provided a copy of its underwriting criteria showing what modifications it would allow and it is clear it wouldn't have provided cover had it been made aware of these. I can't tell insurers what they can and can't cover and I'm satisfied that Skyfire wouldn't have insured Mr C's car so I can't say it has acted unreasonably in taking the steps it has taken in declining the claim and avoiding the policy.

This means I'm satisfied Mr C's misrepresentation was a qualifying one. Plus, as outlined above, I'm satisfied Skyfire has acted fairly in classifying this as careless. And I feel that this offers the most favourable outcome to the consumer as the premium has been refunded.

Given all of this, and despite my natural sympathy for the very difficult position Mr C has found himself in, I don't think Skyfire has done anything wrong. I don't think Skyfire has

acted unreasonably in declining Mr C's claim and refunding his premium after the qualifying misrepresentation.

Finally, I can understand why Mr C wanted the claim paying after Skyfire made an offer initially to settle the claim and he has pointed to other decisions this Service has made in support of his position. But each case is decided on its own merits and in this instance negotiation was taking place and Skyfire was still advancing the claim. I don't think the offer adversely affected Mr C here as he hadn't acted on the offer by buying another car for example. And I can't say Skyfire's decision to decline the claim was unreasonable even if it was slightly delayed. So, I think its offer to pay Mr C £150 for its failing here, seems fair.

My final decision

For the reasons set out above, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 February 2024.

Colin Keegan
Ombudsman