

complaint

Mr M complains Skyfire Insurance Company Limited (Skyfire) unfairly refused his motor insurance theft claim.

background

I issued a provisional decision in January 2019. I've attached a copy. It forms part of this final decision. In it I said why I intended to decide that Skyfire should pay Mr M's claim. I also asked for any further information Mr M or Skyfire would like me to look at before I made a final decision. Skyfire responded to say it would pay the claim in line with what I'd outlined in my provisional decision. Mr M accepted its findings.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both Mr M and Skyfire accepted my thoughts on how this complaint should be resolved. So I've no reason to change my mind. That means Skyfire will need to settle Mr M's claim in the way I outlined in my provisional decision.

my final decision

For the reasons given above, Skyfire Insurance Company Limited needs to pay Mr M the market value of a car of the same model, specification and condition of the one stolen and with an unblemished history (less any policy excess). It can deduct the value of any premiums returned to Mr M. It will need to add simple interest at 8%, to what it's due to pay Mr M, from the date of the theft to the date of settlement*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 February 2019.

Daniel Martin
ombudsman

*HM Revenue & Customs may require Skyfire to take off tax from this interest. If Mr M asks for one Skyfire must give him a certificate showing how much tax it's taken off.

PROVISIONAL DECISION

complaint

Mr M complains Skyfire Insurance Company Limited (Skyfire) unfairly refused his motor insurance theft claim.

background

In September 2017 Mr M bought a used car. It was stolen about two months later. So he claimed on his Skyfire motor insurance policy. It investigated the claim and discovered the car was a clone. That means it was a car that had been stolen and then made to look like another car of a similar model by using its registration and vehicle identification number (VIN). So Skyfire refused to pay the claim.

Skyfire accepted Mr M had gone to some lengths to verify the authenticity of the car before buying it. But it said it was never actually his. So he didn't have an 'insurable interest' in it. It said at some point the car would have been identified as a clone and returned to its actual owner. And it said Mr M was the victim of deception at purchase by being sold stolen property. It added that his policy specifically excludes loss by deception.

Our investigator said it wasn't reasonable for Skyfire to rely on the policy's 'loss through deception or fraud' clause. She said the loss of the car wasn't through deception or fraud. And she said Mr M had bought the car in good faith and had taken reasonable steps to confirm its authenticity. So she felt Skyfire should pay him the full market value of the car less any policy excess. Mr M accepted that but Skyfire didn't. It made a number of points. I've responded to these, where I think necessary, below.

my 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 intend to decide that Skyfire will need to pay Mr M's claim.

It's accepted Mr M bought a cloned car. This means it was stolen and didn't legally belong to the person who sold it to him. As a result it seems Mr M didn't legally own the car. His policy does cover him for theft but only of cars he lawfully owns and so has an 'insurable interest' in. I accept Skyfire's point that as Mr M didn't own the car he didn't technically have an insurable interest in it.

But sometimes in these situations, depending on the circumstances, this service decides it would be fair and reasonable for an insurer to pay the claim. We usually only decide this where a policyholder took all reasonable steps when buying the car to make sure it was genuine. I think Mr M did that, so Skyfire will need to pay the claim.

I won't go into detail about every step Mr M took. I'll outline the significant ones. There are a few matters that perhaps could have raised concern for Mr M. I'll also outline them. And explain why, despite those, that overall he took all reasonable steps to make sure the car was genuine.

Before travelling to view and buy the car Mr M requested, and was provided, photos of its registration document. The registration number on it matched that on photos of the car. He used it to do a HPI check. I've seen the results. I can't see anything that should have concerned Mr M. And the market valuation the HPI provided was in line with what he had agreed to pay. So he wasn't buying the car for a suspiciously low price. Mr M was also provided with a service history for the car. He says the manufacturer confirmed to him that it was genuine.

When he travelled to view the car he says he went to the address on the car's registration. He checked the seller's driving licence. The photo matched. The name and address matched those on the registration and the location of the sale.

Mr M says he checked the VIN on the registration document matched those on the car. He says he checked the VIN on both the windscreen and the frame by lifting the bonnet. He's provided a 'car buyer's/sellers contract' signed by himself and the seller. It's a standard receipt and checklist produced by a third party business. A VIN match check is marked as 'yes', supporting his claim that he did the checks. It also notes the car's mileage. This supports Mr M's claim that he also checked it was in line with that shown on the HPI and service history. And Mr M was given a buyer's slip from the registration document.

There are a few things that perhaps should have concerned Mr M. He didn't actually go in the seller's house. The seller told him it wasn't possible as he had guests. But he did see the seller go into the property to get the car's documents. The account Mr M paid the majority of the payment for the car into wasn't in the seller's name. The seller told Mr M it was his wife's and was being used for tax purposes. The seller also refused to allow Mr M to take a photo of his driving licence. Privacy was the reason given.

Also only one key was provided with the car. The seller said it came with only one when he'd bought it. Lastly the service history showed the car was covered by a manufacturer warranty. Mr M wasn't given anything, like a policy document or certificate, to confirm this. He says he wasn't concerned as his friend in the motor industry had told him that sort of thing is usually recorded online now.

Perhaps all these issues should have made Mr M concerned about the sale. But each of them had an explanation. Some perhaps weren't completely reassuring, but they were mostly plausible. And Mr M had been given what must have seemed like genuine documentation. He'd undertaken thorough checks. They hadn't caused him any reason for concern. So overall he took all reasonable steps to ensure the authenticity of the car.

Skyfire has drawn attention to the fact Mr M bought the car through an auction website. It hasn't explained why that fact is significant. I don't think in itself that was reason for concern. It seems likely that many genuine vehicles are sold each year through the website.

Mr M's policy excludes loss through deception or fraud. But I agree with the investigator that Skyfire can't fairly rely on that to refuse the claim. Mr M did buy a cloned car. But as Skyfire has pointed out the fraud and deception took place before he asked it to insure the car. And he isn't claiming for the loss of the money he used to pay for it. The loss he's claiming for is the theft of that car a few months later. It's possible that was a later step in the same fraud or deception. Although it isn't known who stole the car from Mr M. But even if was stolen back by the person that sold it to him, I still wouldn't say it was fair and reasonable for Skyfire to apply the exclusion. That's because Mr M bought the car in good faith and took all reasonable steps to ensure it was genuine.

According to Skyfire it was inevitable that the cloning would have been revealed at some point, probably during its next MOT. The car would then have been returned to its true owner. So, Skyfire says, Mr M would always have found himself out of pocket for what he'd spent on the car. I accept that might have happened. But ultimately it accepted the risk by taking Mr M's premium. And an insured event happened, the theft, so I think it's fair and reasonable for Skyfire to meet Mr M's claim.

Skyfire has said its possible police investigations might result in some of Mr M's payment to the seller being returned to him. If that happened and it paid his claim he'd be better off a result of the theft. But from what I've seen it seems unlikely any of that money will be returned to him. And – if it was, I think he'd be obliged to pass this on to Skyfire.

So I think the fair and reasonable outcome to this complaint is for Skyfire to meet Mr M's claim by paying him the market value of a car of the same model, specification and condition of the one stolen and with an unblemished history - less any policy excess. Skyfire can also deduct the value of any premiums returned to Mr M. It will need to add simple interest at 8% to what it pays him from the date of the theft to the date of settlement.

my provisional decision

For the reasons given above, I intend to decide that Skyfire Insurance Company Limited will need to settle Mr M's claim as outlined above.

Daniel Martin
ombudsman