DRN-4151008

The complaint

Mr A says Skyfire Insurance Company Limited wrongly decided to avoid his motor insurance policy (to treat it as though it had never existed) and not to deal with his claim.

What happened

Mr A's car was damaged in an accident that wasn't his fault. In investigating the claim, Skyfire noted that there were modifications to the car that he hadn't told it about. The windscreen had been tinted and a 'splitter' had been added to the front bumper. Skyfire said had it known about the changes it wouldn't have offered a policy to Mr A.

Mr A said he bought the car from a relative and didn't know it had been modified. Later, he said he'd told Skyfire about the modifications and it had said they were acceptable. And at one point, Mr A's brother told Skyfire that he'd fitted the modifications shortly before the accident and that he could remove them. Mr A said he had no idea what his brother was talking about. He said Skyfire had treated him unfairly and that it had acted in a racist way.

One of our investigators reviewed Mr A's complaint. She said Skyfire had followed the relevant law – the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). She referred to the images of Mr A's car and a standard model, which showed the difference the modifications made. She thought Mr A knew the car was modified. The investigator noted that Skyfire had decided the misrepresentation was careless, as opposed to reckless or deliberate, and had returned Mr A's premiums. She thought it had treated him fairly. Mr A said he'd be sending us further information, but he hasn't done so.

As there was no agreement, the complaint was 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.

Was there a misrepresentation?

Mr A said the car wasn't modified, but that wasn't correct, so there was a misrepresentation of the facts. The question is whether Mr A took reasonable care to avoid making a misrepresentation, and the standard of care is that of a reasonable consumer. I think the blue-tinted windscreen and the attachment to the bumper are obvious, so the car looks different to the standard model. Mr A says no changes were made to the car after he bought it (despite his brother's comments). That means the changes had been made and were there to be seen (or queried) when he purchased it. Mr A says he didn't ask the seller if the car had been modified, so when he answered "No" to the question asked about modifications when he bought the policy, he didn't know whether that was accurate or not.

When Mr A got the policy documents, there were several clear warnings about taking care to ensure that all the information provided was correct. The warnings said the policy may be cancelled or avoided if inaccurate details had been given to Skyfire. At the top of the

Statement of Fact there's a paragraph pointing out that the details set out in it were provided by Mr A. It says they should be checked carefully and if anything is incorrect, he should contact Skyfire immediately, otherwise, the policy may be invalidated, and any claim made on it not paid. Below the details provided by Mr A (under the heading '*Important Information'*) is another warning about ensuring that the details set out are correct. So Mr A had another chance to check whether there were any modifications to the car, but he didn't do so.

There's no evidence that Mr A told Skyfire about the modifications, and his assertion that he did so conflicts with what he said about not knowing about the modifications. Taking everything into account, I think it was reasonable for Skyfire to decide that Mr A didn't take reasonable care to avoid making a misrepresentation to it.

Was there a qualifying misrepresentation?

Under CIDRA, an insurer must show not only that there was a misrepresentation, but also that it made a difference to the insurer. It has to show that it wouldn't have offered cover to the consumer or would only have done so on different terms. In this case, I think Skyfire has shown that had it known the true facts, its underwriting criteria would have prevented it from offering cover to Mr A at all. The underwriting rules allow for *some* modifications, and the tinted windscreen *may* have been acceptable to Skyfire. As it wasn't made aware of the tinting, it couldn't be assessed. And in any event, a splitter isn't an acceptable modification to Skyfire, so cover would have been declined based on that alone.

Was the policy avoidance fair and reasonable?

CIDRA provides that if an insurer can show that there was a qualifying misrepresentation, and it wouldn't have offered cover to a consumer, it has the right to avoid the policy. I think Skyfire has shown there was a qualifying misrepresentation in this case, and that it wouldn't have offered cover had it known the facts. So I think it acted reasonably, and in line with CIDRA, by avoiding the policy. That meant any claim on it wasn't covered.

If an insurer decides to avoid a policy, under CIDRA it must decide whether it thinks the misrepresentation was careless, as opposed to reckless or deliberate. Skyfire decided that Mr A's misrepresentation was careless, so it returned his premium. Had it decided he acted recklessly or deliberately, it would have been entitled to retain the premium.

Did Skyfire act unreasonably in any other way?

Mr A has told us he just wanted to be treated fairly by Skyfire. I think in dealing with the misrepresentation, Skyfire followed the rules set out by CIDRA and treated Mr A fairly, and in the way it would have treated any other consumer in similar circumstances.

Mr A says Skyfire's advisors had acted in a racist way and discriminated against him. He thinks they treated him less favourably than they would have treated others, on racial grounds. It isn't our role to decide if an insurer has acted unlawfully (which would mean deciding whether it had breached the Equality Act 2010) as that's the role of the courts. Instead, we look at whether an insurer seems to have acted fairly and reasonably, taking into account the relevant law.

Mr A didn't provide us with any specific examples of less favourable treatment when he made his complaint to us, although the claims notes show that he told one advisor she'd acted in a racist way by pronouncing his name incorrectly. I think errors in pronunciation are fairly common, and that they happen with names across all racial groups. So although Mr A was offended by it , I don't think it shows he was treated less favourably by the advisor on racial grounds – and Mr A didn't tell us he thought it did. To clarify the issue, we asked Mr A

why he thought he'd been discriminated against, and whether there were any specific examples of racist treatment that he wanted to raise. Mr A didn't respond to our query.

We also asked Skyfire how it had dealt with Mr A's concerns. It seems he didn't make a formal complaint about being treated less favourably on racial grounds. But Skyfire provided a call recording in which he told an advisor that he was being racist and that he had discriminated against Mr A. The advisor disputed it strongly and asked Mr A why he had made those accusations. Mr A said it was because the advisor had refused to allow him to speak to the policy validations team and had refused to put him through to a manager.

In fact, the advisor had explained several times to Mr A that the policy validations team no longer had any reason to discuss anything with Mr A (and had said they would not speak with him) as the decision had been made to avoid his policy. The advisor said the complaints team would be in touch instead, but Mr A wouldn't accept what the advisor was telling him. In my opinion, the call became difficult, mostly because Mr A continually spoke over the advisor and raised his voice. When he asked to speak to a manager, the advisor agreed to transfer him, but he said the manager would only repeat what he had been saying. Whilst I can see that Mr A may have been frustrated that Skyfire wasn't giving him the answers he wanted, I can't agree that means it was treating him unfairly. I don't think there's anything to show that the advisor would have treated another consumer with different racial characteristics differently.

When Mr A was put through to a manager, he didn't mention anything about racism or having been discriminated against. But that conversation also became difficult, as the manager had to ask Mr A to stop interrupting him constantly and to stop shouting. Mr A then asked to speak to a more senior manager, but there wasn't a customer-facing more senior manager available. Mr A continued shouting and the call ended. I think Mr A thought the advisors had acted unreasonably by resisting his arguments. He may have assumed that was based on racial grounds, but when differing viewpoints are being debated, conversations are often difficult. I don't think there's any evidence that Mr A was treated less favourably than he otherwise would have been by Skyfire's advisors.

Although I know Mr A is very unhappy with the way his claim was handled, and suspects it was on racial grounds, I hope it will assist him to know that someone independent and impartial has reviewed his concerns carefully before deciding not to uphold his complaint.

My final decision

My final decision is that I don't uphold this complaint. Under the Financial Ombudsman Service's rules, I must ask Mr A to accept or reject my decision before 6 October 2023.
Susan Ewins
Ombudsman