

## **The complaint**

Mr and Mrs P are unhappy Skyfire Insurance Company Limited (Skyfire) have continued to take payments for their car insurance policy after their vehicle was a total loss following an accident.

## **What happened**

Mr and Mrs P have a car insurance policy underwritten by Skyfire, which was due to run from 5 November 2022 to 4 November 2023.

In March 2023 Mr P was involved in an accident, and Mr and Mrs P's vehicle was declared a total loss. They received a total loss settlement from Skyfire.

After the total loss settlement, Skyfire has continued to take monthly payments of £57.95.

Mr and Mrs P complained about this, as they say they should no longer be paying for the policy. They want a refund of the payments they've made since the total loss settlement, along with compensation. Skyfire said the full policy premium was due as a claim was made under the policy.

As Mr and Mrs P remained unhappy, they approached this service.

One of our investigator's looked into things but she didn't uphold the complaint. She said the policy terms outlined the full policy premium would be due. Therefore, whilst she said Skyfire could have deducted the amount due from the settlement paid, the amount was due either way. So, she said Skyfire had acted fairly in continuing to charge Mr and Mrs P for the policy.

Mr and Mrs P didn't agree and asked for a final decision from an ombudsman.

## **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.

Having done so, whilst I appreciate it'll come as a disappointment to Mr and Mrs P, I've reached the same outcome as our investigator.

Mr and Mrs P say all payments for the policy should have ceased at the point they received a total loss settlement. Skyfire says the full annual premium is due, and either the policy could be cancelled in which case the full payment would need to be made at that time, or the policy could be left to run its course, with monthly instalments continuing to be taken.

Mr and Mrs P's policy outlines:

*"If any of the following apply, you may not receive any refund and you may still have to pay the balance of the full yearly premium. This applies in all circumstances no matter what payment method you use.*

- *You have made a claim in the policy year or a claim has been made against your policy.*
- *You have been involved in an incident which may give rise to a claim under the policy."*

So, this outlines that if the policy was cancelled before the end date, as a claim has been made, the full premium is payable at that time. The alternative would be to leave the policy to run its natural course, but the premiums would still be payable.

The policy terms also say what may happen in the event of a total loss:

*"Total loss*

*If your car is considered a total loss, it will become the insurer's property. Any unpaid premium owed may be taken from the settlement paid to you."*

And:

*"If you have not paid your entire premium, the insurer may take off any unpaid premiums from any claim they pay you."*

And unpaid premium is defined as:

*"Unpaid premium*

*Any part of your premium that you have not paid including any unpaid instalments."*

The policy is an annual policy, which means there is a specific price for the year, and here, Mr and Mrs P are paying for that annual amount in instalments, spread over a year, rather than a lump sum at the beginning. Therefore, this is the 'unpaid premiums' owed – the rest of the premiums for the annual contract that haven't yet been paid. And being required to pay the full premium in the event of a total loss or claim isn't unusual or uncommon across the motor insurance market.

I agree with the view of our investigator that the terms here say Skyfire *may* deduct the outstanding premium from the total loss settlement payable as a way to obtain the unpaid premium. But even if it's not deducted from the settlement, it still remains an unpaid premium – as defined above. So would still be payable either way.

Mr and Mrs P have pointed to the following terms in their insurance policy:

*“The insurer will do one of the following*

*....*

- *Settle your claim by paying you money if your car is a total loss or stolen*

*The insurer will not pay more than the market value of your car at the time of the loss or damage, less the total excess and any unpaid premium.”*

Mr and Mrs P say the premium should have been deducted from the total loss settlement before it was paid to them, instead of asking them to now pay it. They say Skyfire has breached the terms by now saying they need to pay it, rather than deducting it. But following that logic, Mr and Mrs P are essentially agreeing that they have received a higher settlement than they should ever have received. So, the remedy would be for Mr and Mrs P to return some of that ‘overpayment’ to Skyfire, instead of paying what is owed until the annual policy ends.

When reaching my final decision on the complaint, I need to consider what is fair and reasonable to both parties. But I don’t think it would be fair or reasonable for me to say because Skyfire didn’t deduct the unpaid premiums from the settlement, and therefore a higher settlement was paid than should have been, Mr and Mrs P can now benefit both ways from this.

If Mr and Mrs P think Skyfire should have deducted the unpaid premiums from the settlement, rather than continue to take monthly instalments, they could contact Skyfire to pay the outstanding balance in one lump sum from the ‘overpaid’ settlement they’ve already been given. Or alternatively, they have the option to allow monthly payments to run their course instead as they already have been.

But I can’t agree with Mr and Mrs P that they have been caused financial detriment by Skyfire continuing to take monthly payments, as the alternative would have been them receiving a much lower total loss settlement with the same amount being deducted in a lump sum instead. So, either way, they aren’t in a worse position overall, and benefitted from having a higher settlement at the outset to use towards purchase of another vehicle (or for any other purpose they chose).

### **My final decision**

It’s my final decision that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P and Mrs P to accept or reject my decision before 12 October 2023.

Callum Milne  
**Ombudsman**