

The complaint

Miss P has complained about how her claim was handled by Skyfire Insurance Company Limited under her motor policy following her claim for damage to her car after an accident.

What happened

The named driver on Miss P's policy was driving her car when another driver allegedly caused the accident which in turn caused damage to Miss P's car. So, Miss P made a claim to Skyfire.

Skyfire said in an effort to keep her mobile and based on the circumstances of the accident including the other driver admitting causing the accident, it passed her to a credit hire company. This is a separate entity from Skyfire where the intention is the credit hire company will recover the cost of the hire car charges from the other driver's insurers. Miss P said she had bought an older car in excellent condition and had spent a considerable sum of money maintaining it in the 11 months she had owned it. Given the damage to her car plus its age, her car was deemed a total loss.

Skyfire then paid Miss P the sum of £6,816 as the total loss valuation of her car. Given the negotiations were protracted it added interest of 8% simple per year to this sum. It also acknowledged Miss P had had a poor claims journey, so it paid her £500 compensation.

Miss P remained dissatisfied and raised complaints about the hire car company, the delay in sorting out liability, the valuation of her car and the lack of service she received. Skyfire was of the view it had done all it needed to do.

Miss P didn't agree so she brought her complaint to us.

The investigator didn't think Skyfire had to do anything more. Miss P didn't agree but other than not agreeing with the investigator's view, she didn't provide any further details. Her complaint was now passed to me to decide.

I issued a provisional decision on 27 November 2023, and I said the following:

'Miss P has raised several issues throughout her complaint with us, some of which I can deal with in this decision and some of which I can't. I can't deal with any new complaints which Skyfire hasn't first dealt with, as the investigator explained to Miss P. All businesses must have the opportunity to resolve the complaint issue first before it's brought to us.'

So essentially there are three parts to Miss P's complaint that I can look at. The total loss value of her car, the liability issues for the accident and in particular the refund of her excess, and the credit hire element. Throughout all of these runs varying lack of service issues.'

First, I'll explain about the liability issue. Even though the other driver might have admitted fault at the scene of the accident, that doesn't mean his motor insurers will follow that. Furthermore, motor insurers can also dispute the value of the claim to include the total loss value of Miss P's car, and other associated costs like the hire car costs.

So, unless or until the other driver's insurers both accept liability and/or repay Skyfire and the hire car company its costs, the liability aspect of the accident isn't complete. Much of that doesn't involve Skyfire frankly, as it's down to the other driver's insurers to admit liability and agree the costs incurred by Skyfire and Miss P to include the car hire charges. More so here as there appears to be no allegations against the named driver of Miss P's car in relation to causing the accident. Therefore, as paying an excess isn't an insured item under any motor policy to include Skyfire's policy, that means Miss P won't be refunded her excess payment until the liability aspect is concluded. That's not something Skyfire can decide on its own, without the cooperation of the other driver's insurers. Ultimately if no agreement is reached, then the matter gets decided by a court. So, the delay Miss P has experienced in resolving liability is fairly standard in such cases involving a road traffic accident and such delay here isn't the fault of Skyfire either.

There's no evidence to show me that Skyfire has failed to do anything it should have done as regards liability. It is maintaining its defence of Miss P and her named driver, so it follows that I don't consider the delay in sorting out the liability aspect and indeed refunding Miss P the excess payment is Skyfire's fault.

Turning now to the valuation of Miss P's car. I can see this was somewhat protracted. However, whilst I note how much Miss P spent on the maintenance of her car, more often than not, such things don't affect the market valuation of the car. Obviously if the car is badly maintained the market valuation will be slightly lower, but if it is coherently maintained the market valuation is as per the valuation guides in most instances. There is no concept of also refunding anyone any additional costs of maintenance either, whether that's new tyres or anything else. Skyfire's liability under the policy terms is to pay Miss P the market value of her car and nothing more.

I consider the eventual valuation of Miss P's car to be generous, given the values in the valuation guides as detailed in the investigator's view. Skyfire's policy terms state (in line with every other motor insurer's policy) that 'the insurer will not pay more than the market value of your car at the time of loss or damage'. After Miss P disputed the valuation, Skyfire applied a straight-line depreciation. As the investigator explained it wasn't obligated to do this and it was to Miss P's advantage also, given the age of her car. Consequently, I consider that Miss P received a much better settlement, and more than what Skyfire was required to pay under the terms of the policy.

Lastly turning to Skyfire sending Miss P off to a car hire company. This is classically called credit hire and it's completely outside the terms and conditions of the policy. It tends to occur when it's clear the accident wasn't the policyholder's or the named driver's fault.

Miss P's testimony does show she wasn't fully aware she was in a credit hire car agreement notwithstanding the agreement she signed with the credit hire company which clearly details the credit hire terms at some length.

This service has little or no jurisdiction to deal with any complaints concerning actions of the credit hire car company in the handling of the credit hire agreement. So, I can't consider Miss P's issues with the cars and replacement cars she was given, nor the costs involved when she was involved in an accident with one of them.

Our stance on what we expect motor insurers to do when they are recommending their policyholder to deal with a credit hire company has been established for several years now and isn't something new which Skyfire should be well aware of. We expect the credit hire referral to be substantially explained to the policyholder with the risks and benefits of doing so clearly outlined and discussed. It should also consider the circumstances of the incident to assess whether giving the policyholder the option to use credit hire is suitable or not. This didn't happen between Miss P and Skyfire sadly, as Skyfire can't provide any evidence of what it said to Miss P about going to a credit hire company, other than it was 'to keep her mobile'. I don't consider this was giving Miss P any information to make an informed choice about whether she wanted to go in a separate agreement with a credit hire company which was outside the terms of her policy with Skyfire.

There's no evidence which Skyfire has shown me that it explained what it was doing in 'keeping Miss P mobile' and essentially passing her to a credit hire company. Credit hire is outside the terms of the policy and effectively in signing the credit hire agreement Miss P ensured the costs of the hire car she was given by the hire car company must be repaid in full by the other driver's insurers or Miss P is then responsible for those costs instead. So, whilst it did keep 'Miss P mobile' (as Skyfire said), it comes with risks to Miss P, which this service considers Skyfire is duty bound to explain to her. If Miss P had been told these risks by Skyfire, we don't know if she would have still gone ahead with a hire car. Certainly, she was glad of a substitute car but I'm not sure she would have wanted to take on the risk of being responsible for the hire costs given issues Miss P has raised concerning money issues and her own ill health.

Given Miss P's car was always likely to be deemed a total loss, given its age and the damage sustained, it's clear from the policy terms that she would not have been entitled to a courtesy car as her car was not going to be repaired by Skyfire. And given the other driver's insurers haven't yet settled the case in favour of Miss P and her named driver, along with the fact the hire car company told her it was now taking the other driver's insurers to court, it's likely the risk to Miss P in having to pay some or all of the hire car charges remains possible.

So, I consider it's fair and reasonable that Skyfire should indemnify Miss P in the hopefully unlikely event that the costs of her hire car are not met in full by the other driver's insurers, or any 'after the event' insurance Miss P may have taken out. I must emphasise this indemnity is limited to the costs the hire car company are expecting the other driver's insurers to pay. It does not include any other issues Miss P had with the hire car company as it's too likely those issues are too remote to hold Skyfire to account for them. Therefore, if Miss P wants to pursue those issues, then she must do so with the car hire company direct.

As Miss P hasn't yet been asked to pay any of the car hire charges, she hasn't suffered any detriment. And indeed, on the basis of this provisional decision, she is now unlikely to suffer any such detriment. So, I consider any possible compensation payable here beyond the indemnity to be minimal. Consequently, I consider Skyfire should pay Miss P the sum of £100 compensation for this failing in addition to the £500 it already paid her for her poor claims journey.

I also consider the initial £500 compensation paid to Miss P by Skyfire is fair and reasonable for the poor claims service she received. It's in line with our approach and would have been the amount I would have required Skyfire to pay, had it not already done so.'

Miss P agreed with my provisional decision. Skyfire didn't respond.

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 again I'm continuing to uphold this complaint.

This is because there has been no further information submitted for me to consider changing my mind.

My final decision

So, for these reasons it's my final decision that I uphold this complaint.

I now require Skyfire Insurance Company Limited to do the following:

- Provide an indemnity for Miss P in the event all the hire costs claimed by the credit hire car company against the other driver's insurers isn't paid by the other driver's insurers. The indemnity is to be limited to only this risk.
- Pay Miss P a further £100 compensation for Skyfire's failure to adequately or at all explain the risks of Miss P engaging with a credit hire company.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 9 January 2024.

Rona Doyle
Ombudsman