

The complaint

Mr H complains that Skyfire Insurance Company Limited (Skyfire) avoided his motor insurance policy (treated it like it never existed) and refused to pay his claim.

What happened

Mr H took out a motor insurance policy with Skyfire after obtaining a quote for a new car through an online price comparison site. The policy started in October 2022 and the documents were sent to Mr H for his review. In the same month Mr H updated the vehicle registration number to his personalised number plate.

When his car was damaged in an incident, he tried to make a claim on his motor insurance policy.

Skyfire said he'd answered the question it asked about modifications to his car incorrectly. He had said there were no modifications. And it considered this to be a careless/reckless qualifying misrepresentation, which entitled it to avoid his policy and refuse his claim because of this. It refunded his remaining premiums.

Mr H brought his complaint to us, and our investigator thought it should not be upheld. They said Skyfire's decision that Mr H made a qualifying misrepresentation was reasonable. And they thought it had acted reasonably by treating his misrepresentation as serious. They said as Skyfire avoided his policy, returned his remaining premiums and aren't taking responsibility for the claim this was in line with Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA), so they did not think Skyfire should take any further action.

Mr H doesn't agree with the investigator and has asked for an ombudsman's decision. He said the parts fitted to his car were not modifications. He said his car had no engine or mechanical modifications and the front grill and rear bumper had been upgraded with the approved main dealer and passed all their preparation standards. He said the main dealer told him this would not affect his insurance.

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.

As our investigator has said, the relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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 thinks Mr H failed to take reasonable care not to make a misrepresentation when he failed to disclose his car was modified.

I saw when Mr H entered the details of his car into the online comparison website he was asked *"Has the car had any additional modifications"* and Mr H answered *"no"*. I saw that at the side of this question the help tab said;

"Modifications are non-standard changes made to the car after manufacture, including new spoilers, alloy wheels etc."

I saw in Mr H's policy documents it is clearly stated the car was not modified.

I saw the evidence from Skyfire's engineers that said the car was modified and Skyfire said this should have been disclosed when Mr H ran the quote to change his car.

I looked at evidence from the main dealer that says Mr H's car had no mechanical modifications. However it says the front grill and rear bumper had been upgraded. It said the car had passed all the main dealer preparation standards.

I do not think Mr H took reasonable care to answer the question accurately. I think this is a qualifying misrepresentation

Skyfire has provided evidence of its underwriting criteria which shows it only accepts certain modifications made to vehicles. The list does not include upgrades to the front grill or rear bumper. It said had it known the vehicle had been modified it would not have offered cover at the mid-term adjustment stage, as these modifications are not in its acceptability table.

This means I'm satisfied Mr H's misrepresentation was a qualifying one.

Skyfire Insurance has said Mr H's misrepresentation was serious. When asked to clarify this it said it was careless/deliberate.

I don't agree Mr H's misrepresentation can be both careless and deliberate. It has to be one or the other.

Mr H still maintains the car is not modified because he said the parts were genuine main dealer parts fitted by the main dealer. However these are still modifications to the car. I therefore think the misrepresentation was careless.

As I'm satisfied Mr H's misrepresentation should be treated as careless, I've looked at the actions Skyfire can take in accordance with CIDRA. It can avoid his policy, decline any claim, and should return any unused premiums.

Skyfire avoided Mr H's policy from 14 October 2022, declined his claim and returned his unused premiums to him.

Therefore, I'm satisfied Skyfire was entitled to avoid Mr H's policy in accordance with CIDRA. And, as this means that – in effect – his policy never existed, Skyfire does not have to deal with his claim following the incident with his car. And – as CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Skyfire to rely on it to avoid Mr H's policy produces the fair and reasonable outcome in this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 August 2023.

Sally-Ann Harding
Ombudsman