

The complaint

Mr P complains that Skyfire Insurance Company Limited (Skyfire) unfairly avoided his policy and declined his claim.

What happened

In February 2021 Mr P took out a motor insurance policy with Skyfire through a price comparison website and renewed it the following year. In March 2022, a claim was made against the policy as Mr P's wife (a named driver) was unfortunately involved in an accident.

Skyfire then said Mr P had answered the question they asked him about modifications incorrectly. Specifically, they said he hadn't disclosed the fact his car had an aftermarket performance exhaust fitted. And they considered this to be a careless qualifying misrepresentation, which entitled them to avoid the policy, refuse all claims and refund the policy premium

Mr P brought his complaint to us, and our investigator thought it should be upheld. He didn't agree with Skyfire that a qualifying misrepresentation had taken place and believed Mr P when he said he wasn't aware of the modified exhaust. He reached this conclusion as he said Mr P had disclosed other modifications, so there was no reason he wouldn't have also disclosed the performance exhaust.

Skyfire didn't agree with the investigator's opinion and asked for a final decision. In doing so, they said the exhaust on Mr P's car appeared significantly different to the standard version, so it should have been apparent to a reasonable consumer. They also said it was likely the car had a noticeable sound difference due to the modification. And they were concerned Mr P hadn't been able to provide a copy of the most recent MOT certificate. They also clarified that the items Mr P had described as modifications were actually accessories and therefore not disclosed as per the policy schedule.

The investigator then apologised for his oversight in relation to the accessories, but said his opinion remained the same.

Mr P then provided some additional information about the circumstances surrounding the sale of his car and the policy. In summary he said:

- He purchased the car from his local mechanic on the same day as his previous car was declared uneconomical to repair.
- He was happy to buy the car straight away as his wife drives the estate version of the same car and he didn't wish to be without a vehicle.
- He'd driven cars with dual exhaust systems before including his wife's, but this was the first car where the exhaust pipes were separated from each other.
- The mechanic didn't disclose any information about the exhaust, and he didn't ask any questions as he thought it was factory fitted.
- The mechanic has since said he wasn't aware of the modification, and he would have needed to complete a full inspection of the exhaust to determine this.
- None of the paperwork he received with the car including the logbook and service

- history mentions the modified exhaust.
- He didn't notice anything unusual in relation to the sound of the car and no concerns were raised about this as part of the MOT.
- He disclosed a towbar, dash cam and satnav on the price comparison website and can only assume they aren't shown on the policy schedule as Skyfire didn't treat them as modifications.
- He's aware of other cars that have a similar exhaust system to his car, and he highlighted the adverts he'd previously provided our service.

I then asked Skyfire if they could provide any additional information about the sound difference they'd mentioned. In response, Skyfire explained that Mr P's car no longer runs so they were unable to test the sound or provide any additional information. They also explained that the price comparison website didn't list any accessories at the time Mr P applied for the policy and confirmed that Mr P answered "no" to the modifications question.

On 12 June 2023 I issued a provisional decision explaining that I didn't intend on upholding the complaint. I said:

I would firstly like to thank Skyfire and Mr P for their patience while I've been considering this complaint. I appreciate this decision will come as a huge disappointment to Mr P and I'm aware of the impact it will have on him. In reaching this decision, I've considered all the submissions from both sides, but I won't comment on everything. This isn't meant as a discourtesy but is simply a reflection of the informal nature of this service.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) 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 P failed to take reasonable care not to make a misrepresentation when he applied for the policy on a price comparison website and answered the question about modifications. I've therefore looked at the question Mr P was asked and note that it says:

"Does the car have any modifications?"

A help icon next to this question also explains that "modifications are non-standard changes made to the car after manufacture, including new spoilers, alloy wheels etc".

I'm satisfied this was a clear and specific question. So, Mr P should have taken reasonable care not to make a misrepresentation when answering it. Skyfire have said Mr P didn't do so, as he should have declared the modified performance exhaust. To support this conclusion, they've said the exhaust looks significantly different to the factory fitted version and it's likely there would have been a noticeable sound difference.

Based on the illustration I've seen of the standard version, I'm satisfied Mr P's car was fitted with a modified performance exhaust. I've therefore carefully considered if Mr P failed to take reasonable care by not disclosing it.

Skyfire's engineer has said the modified exhaust could have resulted in a noticeable sound difference. I accept this is a possibility, as a difference in sound is a feature often associated with modified performance exhausts. However, as Mr P strongly disputes this and because there is no way to verify this possibility, I'm not satisfied Mr P should reasonably have known his car was modified based on sound alone.

I've therefore considered a photograph of the back of Mr P's car and compared it to a similar car fitted with the standard exhaust. Having done so, I agree with Skyfire that the exhaust systems look significantly different. I say this as the two exhaust pipes on Mr P's car are considerably larger, separated from each other and extend past the car's bumper. They therefore have an unusual appearance and stand out significantly from the exhaust pipes that are typically fitted on most cars.

Mr P has explained that his car was purchased suddenly as his previous car couldn't be repaired. His wife drives the estate version of the same car and he's driven other cars with dual exhaust systems before. Due to these specific circumstances, I can understand to a certain extent, why Mr P may have overlooked the unusual appearance of his car's exhaust.

However, as mentioned above, the standard of care I'm required to apply is that of a reasonable consumer. I've therefore carefully considered this standard, and I think most consumers (without any expert car knowledge) would reasonably have identified and disclosed the modification based on the car's appearance alone. I say this as the exhaust pipes stand out as unusual and look significantly different to those fitted on most cars including those with a dual exhaust system. This therefore means, I'm satisfied Mr P didn't take reasonable care not to make a misrepresentation when he applied for the policy and answered the above question.

Mr P has asked how he could be expected to identify the modification if the mechanic who sold him the car couldn't. I empathise with his position, but it's not my place to question his mechanic's skills or knowledge. And for the reasons I've explained, I'm satisfied most consumers without any expert car knowledge would reasonably have identified the modification. I'm also aware of the adverts Mr P has provided that appear to show cars with dual exhaust systems that are similar to his. However, the adverts aren't many in number and only contain limited information. So, it's possible the cars in those adverts also have modified exhausts. In any event, I don't think they impact the outcome of this complaint, or the reasoning I've detailed above.

Skyfire have provided their underwriting criteria which explains what they would have done if Mr P had disclosed the modification. This shows they wouldn't have offered him a policy. So, I'm satisfied Mr P's misrepresentation was a qualifying one.

Under CIDRA, a misrepresentation can be deliberate or reckless, or careless. Skyfire have said Mr P's misrepresentation was careless. As this offers the most favourable outcome for Mr P (compared to it being categorised as deliberate or reckless) I see no reason to interfere with this decision.

As I'm satisfied Mr P's qualifying misrepresentation was careless, I've looked at the actions Skyfire can take in accordance with CIDRA. These include avoiding the policy and refusing all claims. However, they must also refund the policy premium. This reflects Skyfire's actions here, so I'm satisfied they have treated Mr P fairly, and I see no grounds for directing them to do anything more.

Skyfire accepted my provisional decision and didn't wish to add any further comments.

Mr P asked me to reconsider and in summary said:

- Based on a recent conversation with the manufacturer, he now accepts his car was fitted with an aftermarket performance exhaust. However, the manufacturer also explained they offer dual performance exhausts of a similar nature (as an optional extra) for some of their cars. He also provided photographs of two car manuals to support this.
- He's looked at a few car forums and now understands that dual exhaust modifications are quite popular and genuine parts are frequently used. He also noticed that these modifications are often made simply for aesthetic reasons and thinks this is likely to be what happened with his car. He also said the exhaust on his car was fitted to a professional standard, so he doesn't agree it looks like an obvious modification.
- He agrees his car was purchased suddenly. However, he also carried out a lot of research before his wife bought her car and this included looking at cars with similar dual exhaust pipes. So, he didn't have any reason to think his car had been modified.
- He still maintains that he disclosed other modifications when he applied for the policy, and he would have shared accurate information about the modified exhaust if he'd been aware of it. He also provided evidence which suggests a different business may have been involved in the sale of the policy. So, he strongly feels this matter needs further investigation and the complaint should be upheld.

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.

I'm glad Mr P has now accepted his car had an aftermarket performance exhaust fitted, so he can have some peace of mind in relation to this. I also appreciate the additional reasons he's given for overlooking the modification. However, the standard of care I'm required to apply is that of a reasonable consumer, and I don't think Mr P's additional comments or evidence changes my decision. I'll now explain why.

Mr P has suggested the modification could be easily overlooked as it was completed to a high standard, but I respectfully disagree. I don't think the exhaust pipes look like they were factory fitted or that they appear to belong with the rest of the car. I think they stand out significantly and look unusual. I've also considered the two car manuals Mr P has provided and have no reason to doubt what he's said about the manufacturer. However, this additional information doesn't change my thoughts about the appearance of his specific vehicle.

I'm also still convinced most reasonable consumers would have identified the modification based on the car's appearance, or at the very least checked with the manufacturer before answering the relevant question. In which case, they would have received confirmation (as Mr P has now done) that the car was fitted with a modified performance exhaust. So, while Mr P is likely to strongly disagree with me, I'm satisfied he failed to take reasonable care when he applied for the policy and answered the clear and specific question I've previously detailed.

I'm also satisfied that based on the evidence I've seen (the policy schedule and a screen shot from Skyfire) Mr P didn't disclose any accessories or other modifications when he applied for the policy. I would also have reasonably expected Mr P to have contacted Skyfire upon receiving the policy schedule, if he thought it contained incorrect information. In any event, the outcome of this complaint would still be the same even if there was evidence

Mr P declared other modifications. As Skyfire acted reasonably by avoiding the policy due to the aftermarket performance exhaust and there is no dispute this specific modification wasn't disclosed.

I can also confirm that the additional business Mr P has mentioned is a cashback company, and Skyfire have provided evidence of the price comparison website Mr P used to purchase the policy. So, I'm satisfied I don't need to look into the circumstances surrounding the sale any further.

My final decision

For the reasons I've explained here and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 July 2023.

Claire Greene
Ombudsman