

The complaint

Mr A complains that Skyfire Insurance Company Limited rejected a claim on his motor insurance and said the policy was void.

What happened

Mr A took out his motor insurance policy in September 2022. In February 2023 he made a claim on the policy after he was involved in an accident.

After looking into the claim, Skyfire said it wouldn't pay the claim and was declaring the policy void because Mr A had made a misrepresentation when he bought the policy. Skyfire said Mr A should have said that the car had been modified but failed to disclose this. It treated the misrepresentation as being careless and returned the premium Mr A had paid.

Mr A complained but Skyfire didn't change its position.

When he referred the complaint to this Service our investigator agreed that Mr A had made a misrepresentation and said Skyfire's decision to reject the claim and treat the policy as void was fair.

Mr A disagrees and has requested an ombudsman's decision. He says he didn't make any modifications to the car and had no reason to disclose that it had been modified.

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.

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 an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care and makes a misrepresentation, the insurer has certain remedies if there is a qualifying misrepresentation, as defined in CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would either have offered the policy on different terms or not offered it 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. One of these is how clear the question asked was.

When Mr A bought his policy he was asked whether the car had any modifications and answered "No".

I think the question asked was clear. I've considered whether the answer Mr A gave was correct. The evidence shows the car had a number of modifications; it had been fitted with a performance body kit with additional items including side skirts, rear diffuser, rear spoiler and a different size of alloy wheels. I'm satisfied Mr A was aware the car had these items.

Mr A's comments are not entirely consistent. He says he didn't know the car had been modified, but in a call with Skyfire admitted he knew it had been changed – but said he didn't make any modifications himself and thought, as the modifications were done before the car was sold to him, he didn't have to disclose them.

Mr A wasn't asked whether he had made any modifications himself – only whether the car had been modified. The information about the car when he bought it referred to the body kit. And he's provided a link to a video from the company that sold the car to him which refers to changes made to the car with the body kit. I'm satisfied he was aware of the modifications.

In these circumstances, I don't think he took reasonable care when answering the question, or that it was correct for him to say the car had not been modified.

Skyfire has provided evidence which shows if it had been aware of these modifications, it would not have agreed to provide insurance to him. I'm satisfied this was a qualifying misrepresentation.

The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless. Skyfire has treated this as a careless misrepresentation and I think that's fair. That means it may treat the policy as void – in other words as if it had never existed – since it wouldn't have sold the policy if there hadn't been a misrepresentation. But it should return the premiums to Mr A. That's what it decided to do and in the circumstances it was fair.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 March 2024.

Peter Whiteley
Ombudsman