

## The complaint

Mrs C and Mr T complain that Skyfire Insurance Company Limited (Skyfire) declined a claim and avoided Mr T's motor insurance policy, following an accident they had when driving abroad.

I'll refer to Mr T in my decision for ease.

## What happened

In April 2023 Mr T was involved in a car accident when driving in France. He contacted Skyfire but says it refused to assist with returning to the UK despite having cover in place for this. Mr T says he paid for the recovery of his car and family back to the UK himself. Skyfire later acknowledged he had European cover in place and sent a compensation cheque for £250.

Mr T says Skyfire subsequently declined his claim and avoided his policy back to inception. He says this was because of a sticker and front grille that Skyfire said were modifications to his car, that he hadn't declared.

In its final complaint response Skyfire apologised for its error regarding European cover. It confirmed the compensation payment for £250 it had sent by cheque. It says that when it examined photos of Mr T's vehicle it identified modifications, which would've had an impact on its decision to provide cover. It refers to its policy terms that allow it to decline his claim and avoid his policy in these circumstances.

Mr T didn't think he'd been treated fairly and referred the matter to our service. Our investigator didn't uphold his complaint. She says the relevant law here is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). She says Mr T hadn't taken reasonable care not to make a misrepresentation when taking out his policy.

Our investigator says Skyfire acted fairly when taking the action it had in line with CIDRA. This included refunding Mr T's insurance premiums as it considered the misrepresentation was careless, as opposed to reckless or deliberate.

Mr T disagreed and asked for an ombudsman to consider his complaint.

It has been passed to me to decide.

I issued a provisional decision in January 2024 explaining that I was intending to uphold Mr T's complaint. Here's what I said:

### *provisional findings*

*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, I'm upholding Mr T's complaint. Let me explain.*

*In its decline letter and complaint response Skyfire doesn't specifically refer to CIDRA. But it confirms Mr T's claim was declined and his policy avoided because he failed to declare the modifications to his car when the policy was taken out. So, CIDRA is the relevant law in these circumstances.*

*The CIDRA rules say that a consumer must take reasonable care not to make a misrepresentation when applying for an insurance policy. In this case Skyfire has shown that Mr T was asked, "Does the car have any modifications" when he applied for his policy via an online comparison website. Some further information was provided that says:*

*"Modifications are non-standard changes made to the car after manufacture, including things like new spoilers or alloy wheels. For the insurance to be valid you must include all modifications."*

*The statement of fact document Skyfire sent to Mr T shows no modifications were declared when the policy was put in force in June 2022.*

*I've looked at a photo of the front of Mr T's car that he provided to Skyfire after the accident. I don't think it's obvious that the front grille is a modification from the factory fitted grille. I don't dispute Skyfire's inspector's report that says the front grille is a modification. But I must consider whether Mr T reasonably knew it was.*

*In his submissions to our service Mr T refers to the grille as, "very standard". I've not seen information that shows he knew this was a modification or that he reasonably should've. So, I don't think he failed to take a reasonable level of care when answering the question about modifications in relation to the grille.*

*I can see from the photo supplied that Mr T's car bonnet is covered by a sticker. This stands out from the rest of the car, which is painted white. Skyfire's inspector refers to this as, "Bonnet sticker specialist artwork". I've seen the underwriting criteria Skyfire provided to show what modifications are considered an acceptable risk for it to provide cover. This doesn't include bonnet stickers. I've thought about whether Mr T should reasonably have known that this was a modification. I think he should. The sticker was clearly added after the car left the factory, which Mr T accepts.*

*I can see from the email exchanges between Mrs C, Mr T and Skyfire that the sticker was added after they bought the car. I think this clearly was a modification. It significantly changes the appearance of the car and is very noticeable. I think this should've been declared to Skyfire as a modification. If Mr T wasn't sure whether this was a modification, I would expect a reasonable person to have queried this point. His policy documents, including his statement of fact, make clear the importance of ensuring accurate information is provided. In not doing so it could invalidate his insurance and result in a claim not being paid.*

*That said, the testimony Mr T provided states that the bonnet sticker wasn't in place when the policy was agreed in June 2022. I have no reason to disbelieve what he said. This means Mr T didn't make a misrepresentation, because as far as he was aware the grille wasn't a modification and there was no sticker on the bonnet of his car at this time. As there was no misrepresentation under CIDRA, the remedies under these rules don't apply. So Skyfire can't decline the claim or avoid the policy on these grounds.*

*I've read Mr T's policy terms and conditions to understand what is expected if he makes a modification whilst the policy is in force. The terms say:*

*“Changes which may affect your cover*

- *a modification to your car which improves its performance or handling, including over the air updates from your vehicle manufacturer. Any modification which improves the value or increases the chances of it being stolen or someone breaking into it to steal what is inside”*

*A sticker doesn't improve performance or handling. Although it could be argued that it impacts on the car's value and/or increase the chances of it being stolen.*

*That said our service has a long-standing approach to these circumstances, which is that unless the change or modification made mid-term is fundamental to the risk, an insurer shouldn't alter or cancel its cover. We don't think it's fair for an insurer to rely on a term to vary a contract unilaterally, after it has been agreed, unless the change is fundamental to the risk.*

*An example of where a modification made mid-policy term might be considered fundamental to the risk posed by the insured, is if the vehicle is modified so that it completely alters the specification. This could be by incorporating a new and more powerful engine. But I don't think the sticker Mr T has on the bonnet of his car reasonably qualifies as a fundamental change to the risk here.*

*Having thought about all of this, I don't think Skyfire treated Mr T fairly. It should now settle his claim, without relying on the undeclared modification reasoning it gave not to. I think it's fair that Skyfire offered £250 compensation for the error it made about the European cover Mr T had in place. But this doesn't acknowledge the distress, hassle, and inconvenience it caused in declining to cover the damage to his car.*

*Mr T wasn't provided with a courtesy car as a result of the declined claim. I note that his car was undriveable. This was clearly a very stressful time for Mr T and his family which was made worse as a result of Skyfire unfairly declining his claim. In these circumstances I think it's fair that it pays a total of £750 in compensation. If Mr T has paid for the repairs to his car Skyfire should pay 8% simple interest on this amount from the date it was paid until the costs are reimbursed.*

I said I was intending to uphold this complaint and Skyfire should:

- settle Mr T's claim without reliance on the modification exclusion;
- pay Mr T a total of £750 compensation for the distress and inconvenience it caused; and
- pay Mr T 8% simple interest on any repair costs he's incurred that should've been paid under his policy cover, from the date of payment until these costs are reimbursed to him.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mr T accepted my findings but wanted to be clear that in settling his claim, this including the European Cover aspect.

Skyfire responded to say its underwriters view is that a specialist sticker presents a significant additional burden to any insurer at claims stage. It says it hasn't seen evidence to show when the sticker was added. The sticker covers the bonnet and significantly alters the appearance of the car.

Skyfire says if the sticker was added after inception of the policy, it would have cancelled from the date it was added. This is because the modification is an unacceptable risk.

I wrote to both Mr T and Skyfire in response to Mr T's comments about his European Cover. I said the intention in my provisional decision was that Skyfire should settle the claim Mr T had made under his European Cover, as well as the damage claim. On review I thought I could've made this clearer in my provisional findings.

I invited Skyfire to provide any further comments it wished to make on this point and gave it the opportunity to send additional information.

In its response Skyfire says its view regarding the European Cover remains the same as the points it had already made in response to my provisional findings. Namely that because of the modifications to the car there was no cover in place at the time of the incident.

### **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 my opinion hasn't changed.

I acknowledge Skyfire's comments that it considers the grille and bonnet sticker on Mr T's car to be unacceptable modifications that allowed it to take the action it did. But as I set out in my provisional findings I don't think Mr T reasonably knew that the car's grille was a modification. So, I don't think he misrepresented the information he provided when taking out the policy with Skyfire.

I acknowledge Skyfire's comments that it hasn't been shown when the bonnet sticker was applied. However, in my provisional decision I referred to email exchanges between Mrs C, Mr T and Skyfire when it was confirmed the sticker was added after they bought the car. At this juncture Skyfire had decided to decline their claim as the sticker was an unacceptable modification under its underwriting criteria. Mr T wasn't aware that the timing of when the sticker was added would make a difference to the outcome of his claim. This point was only highlighted when I issued a provisional decision.

Based on this evidence I have no reason to doubt Mr T's testimony that the sticker was added after the policy incepted. Any modifications after inception should be reported to Skyfire. But our service's long-standing approach to these circumstances is that unless the modification is fundamental to the risk posed by the insured, then Skyfire shouldn't alter or cancel its cover. I don't agree that the application of a bonnet sticker, mid-policy term, represents a fundamental change to the risk Mr T posed.

I don't think it was fair for Skyfire to avoid Mr T's policy, as he didn't make a qualifying misrepresentation under CIDRA. It follows that it wasn't fair to decline his claim under his European Cover either. Because of this Skyfire should settle the damage and European Cover aspect of his claim and pay a total of £750 compensation for the distress and inconvenience it caused.

### **My final decision**

My final decision is that I uphold this complaint. Skyfire Insurance Company Limited should:

- settle Mr T's claim, including the European Cover aspect, without reliance on the

- modification exclusion;
- pay Mr T a total of £750 compensation for the distress and inconvenience it caused; and
  - pay Mr T 8% simple interest\* on any costs he's incurred that should've been paid under his policy cover, from the date of payment until these costs are reimbursed to him.

*\*If Skyfire considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr T to accept or reject my decision before 4 April 2024.

Mike Waldron  
**Ombudsman**