

The complaint

Miss N's unhappy Calpe Insurance Company Limited have turned down her claim on her motor insurance policy – and have avoided the policy as well.

A representative has been used to help bring this complaint, but for simplicity I'll just refer to Miss N in this decision.

What happened

In November 2020 I issued my provisional decision, setting out the what had happened in the complaint, and my proposed outcome to resolve it:

In April 2019 Miss N's car was unfortunately stolen from her property. The police recovered it sometime later, and after inspection Calpe offered a settlement figure of around £20,000. But Calpe also said, after completing further investigations following the offer, that Miss N's car had been modified. They explained Miss N hadn't declared this when taking out the insurance in 2015, so avoided (cancelled) her policy.

After receiving the letter about cancelling her policy Miss N complained to Calpe. She said she'd always paid her premiums over the last four years and thought when she gave over her vehicle registration it'd come up with the make and model of her car. She said she now knew her type of car had been modified – but only because Calpe told her about this while cancelling her insurance. She also complained about not being given a courtesy car. And she also said English wasn't her first language – but she didn't explain this point further.

In July 2019 Calpe responded to Miss N's complaint. They said she hadn't told her broker about the modifications – which were worth around £20,000. And had she done so, then they wouldn't have insured her. Because of this, they've said her failure to say the car was modified when she was taking out the insurance was a deliberate or reckless act. This means under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) they have cancelled her policy and retained her premium. They said any excess is still due.

Unhappy with this Miss N asked us to look into things. One of our investigators did so, and initially thought Miss N seemed to understand the questions asked, and because of that felt she should have known to disclose the modifications. As a result of that, he felt Calpe had acted fairly by cancelling her policy and keeping the premiums.

Miss N didn't agree though. She said she didn't understand the car had been modified when she bought it. And when she bought the car in April / May 2015, it was subsequently damaged, and repaired by Calpe in August 2015 – so she questioned why this wasn't picked up then?

Having considered these points, and gathered some further information, our investigator felt it was appropriate to uphold the complaint. He felt it was reasonable for Calpe to have realised when completing substantial repairs in August 2015 that the car was modified. Because of these points he felt Calpe should pay the claim and refund any premium on a pro-rata basis.

Calpe though didn't agree with this, so the complaint's been passed to me to decide.

What I've provisionally 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.

It might help if I explain that when taking out an insurance policy the consumer is required to take reasonable care to answer an insurer's question to the best of their knowledge. If the consumer doesn't do so that's known in the insurance industry as a qualifying misrepresentation. And there's some helpful legislation, CIDRA that I mentioned above, which sets out what insurers may consider to be a misrepresentation and what they may do when a policyholder has made one.

CIDRA says that where a consumer has carelessly, or deliberately or recklessly made a misrepresentation then the insurer may cancel the policy and refuse to pay claims against it. So, in the normal order of things I'd need to decide whether I think Miss N did make a misrepresentation, and if so, whether it was "careless", or "deliberate or reckless". If it was careless, then Calpe would need to repay the relevant premiums, and if it was deliberate or reckless then Calpe would most likely be acting fairly by keeping the premiums.

But, I also need to factor in that Calpe paid out on a claim in August 2015, and the implications of this.

I've looked at the invoice produced in August 2015. This shows around £18,000 worth of work was done following Miss N's car being vandalised – so a very substantial repair. It shows that work was needed to be done to each part on the outside of the car. And, crucially, this invoice spells out the type of parts needed in the first line of the new parts that have been added to the car. These parts were modified parts – and it's clear from the information recorded by Calpe's approved repairer they're modified parts. In addition, photos have been provided by the repairer to Calpe – and it's very clear this car has been modified from the pictures provided.

This really was Calpe's opportunity to raise their concerns about what Miss N had told them when taking out the policy. By Calpe paying out on the claim, they've affirmed the contract. This means there's no reason for Miss N to have realised she needed to declare this in later policy renewals – and this fits in with her understanding the car wasn't modified.

Because of that, I don't think Calpe's concerns about CIDRA are relevant – Miss N continued to provide the same information year after year. And given Calpe had previously paid out on a claim, there's no reason for her to have thought she needed to provide any new information about her car itself.

So, I think Calpe need to pay out on the claim she made in 2019 – because if they'd told her earlier they weren't going to insure her then she'd most likely have taken out insurance with someone who would. I also think Calpe need to add 8% interest to this, because this should have been paid previously, and Miss N has since bought a new car. And she's been without the money owed since the date of the claim.

Calpe deemed the car a total loss when initially reviewing it – and I've seen evidence to show this is fair from the engineer's reports. This means in paying out on the claim I'm satisfied it's fair for Calpe to keep all the premiums – on the basis they've fulfilled the insurance contract by paying out for the total loss of the car. They're also entitled to ask Miss N to pay the original excess – as this would always be payable when a claim is made.

The policy is currently showing as cancelled but I don't think this is fair on Miss N because Calpe affirmed the contract. So, they'll need to correct this, and I think it's appropriate for Calpe to refund any difference in premiums Miss N has experienced as a result of this if she can produce evidence. I might suggest Miss N speaks to her insurers to see if the cancellation being revoked means they're prepared to refund her any monies first.

In addition, I think it's appropriate for Calpe to pay Miss N some compensation. As Calpe affirmed the contract in 2015 it should have settled the claim in 2019 without undue delay. Instead Miss N has experienced 18 months of waiting to know what was going to happen. She's had the worry of not knowing whether she was going to be paid out for her car, and the stress of dealing with all these issues. Because of that, I think £250 is a fair amount.

Based on the information I've got, it seems that Miss N did make an error in 2015 when she didn't explain her car was modified even though I don't think this was intentional – which Calpe and their investigators agree with. But, as Calpe have since affirmed the contract, I don't think it'd be appropriate for them to take any further action in relation to this mistake.

Responses to my provisional decision

Miss N said she accepted the decision, and also asked for the exact amount she'd receive.

Calpe didn't reply by the deadline.

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 amount Miss N will receive will depend on a number of factors – so I can't give her an exact figure. But, I'd usually expect Calpe to provide a breakdown once they'd completed the settlement.

As Calpe didn't reply by the deadline, and Miss N accepted the decision, I've seen no reason to change the outcome I previously reached and still uphold this complaint.

Putting things right

In order to put things right for Miss N Calpe need to:

1. Calculate the total loss amount they owe Miss N for the 2019 claim – Calpe should deduct the excess from this figure
2. Pay 8% interest on the figure calculated in point 1 from the date it should originally have been paid, to the date of settlement*
3. Revoke the cancellation of Miss N's policy, and mark internal and external databases accordingly
4. Upon receiving appropriate evidence from Miss N's previous insurers, repay any additional costs Miss N has paid because of the cancellation being incorrectly applied
5. Pay 8% interest from the date Miss N made those payments to other insurer's, to the date of settlement – if evidence has been provided for point 4 above*
6. Pay Miss N £250 compensation

*HM Revenue and Customs requires Calpe to deduct tax from the interest payment referred to above. Calpe must give Miss N a certificate showing how much tax they've deducted if she asks them for one.

My final decision

It follows I uphold this complaint, and order Calpe Insurance Company Limited to carry out the actions I've set out in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 20 January 2021.

Jon Pearce
Ombudsman