

The complaint

Mr D complains that Calpe Insurance Company Limited (Calpe) have settled a claim against him without his consent and without giving him the opportunity to defend it, and he is being asked to pay £835.14 excess for an accident that wasn't his fault.

What happened

Mr D held a motor insurance policy with Calpe, which he had purchased through a broker.

Mr D was in a road traffic accident in March 2019 which he says wasn't his fault. He didn't report it to his insurers at the time. Mr D's policy lapsed in August 2019 as he switched insurer.

In July 2020 Calpe were contacted by the third-party insurer about the accident in March 2019, making a claim against Mr D. They had tried to make previous contact but had received no response.

Calpe's claims administrators tried to contact Mr D about the accident. Mr D says that at first he didn't respond as he thought it was a scam caller. He didn't think it related to the accident as it was so long ago.

As Mr D didn't respond, Calpe settled the claim and tried to recover the excess from Mr D. This has now been passed to a debt collection agency.

Mr D complained to Calpe in October 2020 asking for the details of the claim. He told Calpe that the accident was not his fault.

Calpe issued a final response in December 2020. They said that Mr D had a £3000 excess on the policy for all sections, including a third-party claim. They advised that the third-party claim was as a result of an accident in which Mr D was in the right-hand lane at a roundabout and turned left cutting across the third party.

Calpe said that Mr D had not reported this accident, which was in breach of his policy conditions. They said they tried to contact Mr D but were unable to get a reply and so they had no option but to settle the claim.

Mr D was unhappy with this outcome and brought his complaint to us.

One of our investigators has looked into Mr D's complaint and decided that Calpe have acted fairly.

Mr D disagreed with our investigators' view, and so the case has come to me to review.

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 have decided not to uphold Mr D's complaint, and I will explain why below.

In this case I have to decide whether Calpe have acted fairly and reasonably and within the terms and conditions of the policy when deciding to settle this claim without Mr D's agreement.

Mr D has admitted that he did have contact from Calpe's claims administrators but at first he thought it was a scam and so didn't respond. So, I have looked at what contact was made and what information was provided to Mr D in those contacts to consider whether this was enough for Mr D to have been reasonably aware of the claim, and whether he was given sufficient opportunity to respond before it was settled.

Calpe have provided me with their system notes and copies of the correspondence. These records show that they tried to contact Mr D by phone and e mail on 17 July 2020, by phone several times on 18 July, and by phone and text on 20 July. They were unable to leave a message as there was no voicemail facility, but the call on 20 July was answered and then terminated by the person who answered.

Calpe's claims administrators sent a text message following that call saying:

"Just called you and you hung up the phone. We act on behalf of (your insurance) broker. (We) are the claims handler on behalf of (your broker). We received a claim from (a third party) insurer that you collided with their vehicle on a roundabout at A4037 on 25.3.2019 – The reg of the other car was xxxxx".

They then sent out a letter with an accident report form on the same day advising that:

"Your policy carries an all section excess of £3000. This means that you have agreed to contribute to any cost (settlement/fees) incurred in settling or defending any claim (fault/non fault) made against you, up to the value of your excess. We now require your full co-operation in this matter."

And

"If you fail to supply all of the requested documentation, you could become personally liable for claim expenses. (The claims administrators) may be legally required to settle a third-party claim made against this policy, on your behalf. Therefore, it is essential that you provide us with your documentation so that we can provide you with the best possible outcome. If you do not reply within the above timeframe, we will instruct your broker to issue a 7-day cancellation notice on any active policy you hold through (the claims administrators). We will have no choice but to settle the claim(s) presented on the best possible terms available. You will be liable for the entire cost of the claim(s) where the above requested documents are not supplied."

The letter provides a direct dial phone number and direct e mail for the claims handler and it was sent to Mr D's correct address.

I consider that the information in the text message and the letter with the specifics of the accident are clear enough to show Mr D that this is a genuine claim and not a scam, especially as Mr D was himself aware of the incident on 25 March 2019 and had stopped, taken photographs and had the registration number of the car involved.

Having heard nothing from Mr D, Calpe sent a further notice on 27 July 2020 that the policy would be cancelled if Mr D didn't reply and that they would settle the claim as they had no information upon which to defend it.

The letter sent included the incident date and the registration of the car. It detailed the previous attempts at contact, and said:

“As previously advised, failure to co-operate in the settlement of a claim is in breach of the terms and conditions of your policy, as per Conditions 1 Due Observance – Claim(s) located on page 23 of your policy booklet. Due to this breach, we are left with no option but to instruct your broker to issue you with a 7-day cancellation notice on your motor policy for non-cooperation relating to the above. They will contact you directly under separate cover. Should you continue to fail to communicate with us within this time period, your broker will proceed with the cancellation of your policy. Upon cancellation, XS Direct will have no option but to settle the Third-Party claim(s) made against you, on the best possible terms, based on the information presented to us, as you have failed to provide us with documentation to allow us to defend the above claim.”

On 27 July 2020 the third-party insurer also threatened Calpe with legal proceedings if the cheque was not received in 14 days.

Having heard nothing from Mr D, Calpe proceeded to settle the third party claim on 3 August 2020 for £884.35. As this was less than the £3000 policy excess, it was recoverable from Mr D.

Calpe are entitled to settle third party claims under the terms of the policy, even if Mr D disagrees with their position. The policy booklet says:

“The Underwriters can conduct the defence, admit negligence for any accident on your behalf... If there is a dispute between the Underwriters and the Insured Person, the settlement of the claim shall be as if it were made with the agreement of the Insured Person, regardless that such settlement may be made without admission of liability. We will settle all claims on the best terms available and keep the claim payment to a minimum as much as is possible. You will be liable to pay/repay Your Excess amount on the basis of such settlement notwithstanding that you may not agree with the level of third-party damage or injury which has been incurred, claimed and paid for.”

On 10 August Calpe made payment to the third party insurers and wrote to Mr D advising him of the settlement and asking him for payment of the £884.35.

I appreciate that Mr D thinks he wasn't given enough time to respond, and I can see that it was a short time frame of only three weeks from first contact to the settlement payment being made. However, I have balanced this against the fact that Mr D was aware of the accident but had not reported it to his insurers himself, together with the intensive attempts made by Calpe during the three-week period to make contact. Calpe's correspondence was clear and included sufficient detail of the accident for Mr D to have recognised it, and it contained enough information about timescales and the consequences of not making contact for Mr D to have been on notice of what would happen.

In view of that I consider that Calpe have acted fairly and reasonably and in line with the terms and conditions of their policy when settling this claim. Mr D had ample opportunity to respond by phone, e mail or by returning the accident report form, but didn't do so. I note that Mr D says that he did telephone and leave messages, but he has not been able to provide any evidence of this, and he could still have made contact by direct e mail to the claims handler if he had been unable to make phone contact.

Mr D has also sent in pictures of the damage to the cars following the accident for me to consider, and whilst these are noted, it is not for me to determine who was at fault in the accident, only whether Calpe have acted reasonably in settling the claim and so I have not been able to take account of them.

My final decision

My decision is that I am not upholding this complaint, and Calpe Insurance Company Limited need not do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 January 2022.

Joanne Ward
Ombudsman