

## **The complaint**

Mr P complains that Calpe Insurance Company Limited (“Calpe”) accepted liability for an accident despite him asking it not to do so, so that he could pursue the matter in court.

## **What happened**

In August 2019 Mr P was involved in a collision at a roundabout. Mr P says his car was stationary at a roundabout and another driver lost control of their moving vehicle and collided with the driver’s side of this car.

The third party’s insurer disputed Mr P’s version of events, stating that Mr P had passed the ‘give way’ line at the roundabout which caused the collision.

Mr P appointed solicitors to represent him throughout his claim. In November 2019 the solicitors wrote to Calpe requesting that it didn’t accept liability for the accident, thus prejudicing Mr P’s ability to take the matter to court.

In December 2019 Calpe accepted liability for the accident. It explained that it did this based on the higher probability of Mr P’s case losing in court. Calpe referred to its terms and conditions, which explain that it’s able to settle the matter in any way it sees fit, including without the policyholder’s agreement.

Mr P made a complaint to Calpe, but the complaint wasn’t upheld so he referred it to this service. Our investigator reviewed everything and explained that it’s not for our service to comment on liability – as that’s a matter for a court. But he thought that Calpe had prejudiced Mr P’s ability to take the matter to court by accepting liability against Mr P’s wishes – so he thought Calpe should recognise this inconvenience by paying Mr P £300 in compensation.

Mr P’s representative explained that they agreed in principle with the investigator’s findings. But they said that the £300 compensation was minimal given that Mr P is now liable for over £15,000 in credit hire, storage, and recovery charges.

As the matter hasn’t been resolved it has been passed to me to make a decision.

## **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 considered everything, I broadly agree with the investigator’s findings. So I don’t require Calpe to do anything more than has already been recommended. I’ll explain why.

As our investigator explained, it’s not for this service to make a finding on the liability of an incident. My remit as an ombudsman doesn’t extend to that – as it’s more appropriate for a court to look into that matter. But I can consider whether an insurer treated a consumer reasonably overall in the circumstances.

I've started by looking at Mr P's insurance policy terms and conditions. Under the conditions related to claims it states:

*"(iii) The Underwriters can conduct the defence, admit negligence for any accident or claim on Your behalf. The Underwriters will also exchange information with other parties involved with the incident or claim and to settle any claim or part of the claim without reference to the Insured Person. 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."*

In effect, this means that Calpe didn't need permission or agreement from Mr P before settling a claim, even if Mr P didn't agree with the way in which it was settled. This doesn't mean the insurer has a free hand to flagrantly act as it pleases, but it's a common feature in insurance policies and standard in the insurance industry, so I don't think this is an unfair or onerous term that means Mr P has been treated unfairly.

Turning to whether Calpe acted reasonably in the circumstances, I'm satisfied that it did. The third party provided photos of the scene of the collision, as well as a statement from an independent witness. And without any further evidence to support Mr P's claim, I think it was reasonable for Calpe to make the decision that Mr P would be unlikely to win in any litigation process. So I think it was reasonable and rational for Calpe to settle the claim by accepting liability for it. I should add that this doesn't necessarily mean that Mr P is to blame for the accident – it simply means that Calpe hasn't recovered its total outlay. So in the circumstances it's correct for the claim to be logged as an at-fault claim against Mr P.

I do however note that Mr P's representative says that accepting liability for the collision has prejudiced Mr P's ability to take the matter to court. And they've also highlighted that they also let Calpe know that Mr P would be pursuing legal action against the third party, and so asked that Calpe didn't accept liability. I do understand why they've raised this. But it's important to bear in mind that there's no guarantee that the court would've ruled in Mr P's favour – so I can't say that Mr P has lost out on the full value of the claim as a result of this. I do, however, agree that Calpe has caused Mr P to lose out on the opportunity to take the matter to court by accepting liability and so I think it's fair that Calpe compensates Mr P for this.

I should note that Mr P's representative disagreed with the investigator's recommendation of £300 compensation as they said this was minimal in the circumstances of Mr P being liable for over £15,000 in charges related to the claim. But I haven't seen anything to suggest that's the case. Whilst Mr P would be liable to pay his policy excess, which I believe is £3000, he wouldn't be liable for the overall claim outlay. That's the responsibility of the insurer, and ultimately the purpose of the insurance. So I think the £300 compensation is a fair reflection of the loss of opportunity that Mr P faced, and I'm satisfied that it wouldn't be fair for me to direct Calpe to pay Mr P anything else.

### **Putting things right**

I require Calpe Insurance Company Limited to pay Mr P £300 compensation to reflect the loss of opportunity to pursue his claim in court.

**My final decision**

I uphold Mr P's complaint against Calpe Insurance Company Limited and I require the business to do what I've said above to put things right and settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 26 April 2022.

Sam Wade  
**Ombudsman**