

The complaint

Mr L is unhappy with how Calpe Insurance Company Limited handled a third-party claim made against his motor insurance policy.

Calpe's agents handled the claim on behalf of Calpe, but for ease I will refer only to Calpe throughout this decision and this will mean Calpe or their agents.

What happened

On 16 September 2016 Mr L was in a road traffic accident with a third party (TP) who was carrying a passenger (TPP).

Based on what Mr L told them and their investigator's report, Calpe disputed liability with the third-party's insurer (TPI). But as there was no engagement from the TPI, Calpe assumed the matter settled and closed their file in January 2017 recording the incident 'non-fault'.

Mr L asked if Calpe would cover the repair costs for his car, but Calpe told him as he'd already had the car repaired he would need to seek help elsewhere to recover his costs. Mr L therefore made his own claim against the TPI which was successful as the TPI accepted liability on a without prejudice basis and paid Mr L around £4,000. The sum related to costs for general damages, repair costs, body mop for the car, some policy excess and physiotherapy.

In May 2018 the TPP made a personal injury claim against Mr L's insurer. Calpe responded to say in light of the TP's description of events and the damage to the cars, liability was disputed and they noted the TP had made no injury claims at the time of the incident or claimed for damage to their car.

Towards the end of December 2018, Calpe's solicitors confirmed proceedings had been issued by the TPP's solicitors.

Calpe's solicitors spoke with Mr L on 2 January 2019 and exchanged emails with Mr L on 8 January 2019. Mr L confirmed he had signed and posted the defence document to Calpe's solicitors and said he was happy to attend court if needed to dispute the claim. After 8 January 2019 no further attempts were made by Calpe's solicitors to contact Mr L. And Mr L did not contact Calpe's solicitors.

In April 2019 Calpe's solicitors instructed the same investigation company used previously by Calpe in 2016 when the incident first occurred. Calpe's solicitors sought to obtain a more detailed report from Mr L about the incident. On 18 May 2019 the investigator attempted a cold call at the address Calpe's solicitors had given them for Mr L, but later reported to Calpe's solicitors they'd been unsuccessful in making contact with Mr L.

In June 2019 Calpe's solicitors told Calpe that due to failed attempts in making contact with Mr L, they recommended Calpe settle the claim to resolve the matter.

In February 2020 Calpe wrote to Mr L to say they'd settled the claim and paid out £14,454 and Mr L was now required to pay the outstanding excess. Mr L then raised a complaint.

Our investigator's view was that Mr L's complaint should be upheld. They said that not enough had been done by Calpe to engage with Mr L so that Calpe could continue the defence, and they highlighted the address Calpe's solicitor had shared with their investigator was in fact incorrect. Our investigator also said the submissions showed Mr L appeared to always engage with Calpe and they concluded Mr L had not been given a fair opportunity to put forward what appeared to be a robust defence. Our investigator therefore said Mr L did not have to pay the policy excess being requested and also said Calpe should pay Mr L £150 compensation for the distress and inconvenience the matter had caused.

Mr L accepted our investigator's view, but Calpe disagreed as they said Mr L had accepted the terms of his policy which included his responsibility to meet all costs up to his policy excess. Calpe said they'd acted reasonably when Mr L stopped co-operating. As a resolution couldn't be reached the case has been passed to me to decide.

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, I'm broadly in agreement with our investigator's conclusions and I'll explain why. It's not the role of this service to decide which party was liable for the incident, but it is for our service to decide whether Calpe have treated Mr L fairly in this matter.

Calpe took the decision to settle the claim because they said Mr L stopped engaging with them. However, this is difficult to accept. The submissions show Mr L engaged fully at the start of the claim and met with Calpe's investigator in September 2016 to complete a report about what happened. He also completed Calpe's Accident Report Form when asked. Mr L chased Calpe about the claim until Calpe confirmed they'd closed their file and Mr L then pursued his own claim separately. Mr L also engaged with Calpe's solicitors in January 2019 by discussing the matter with Calpe's solicitors, signing and returning the defence document, providing details of his own solicitors that helped him reclaim his costs and confirming to Calpe's solicitors that he was happy to defend the claim in court.

As our investigator noted, Calpe's solicitors gave their investigator the wrong address to contact Mr L. And despite Calpe's solicitors having had contact with Mr L, and noting Mr L's clear engagement to defend the claim when they first contacted him, it seems no concerted effort was made to contact Mr L to follow things up. Mr L himself has said he believed he had provided everything he had been required to in order to defend the claim – which I find reasonable. I am also mindful that when it was time to ask Mr L to pay the excess, there didn't appear to be a problem in contacting him.

Until the recommendation from Calpe's solicitors in June 2019, Calpe had accepted Mr L's version of events and disputed liability with the TPI. They then refused to make an offer to the TPP's solicitors and continued to dispute liability noting the TP hadn't claimed for or reported any injuries or repairs. Calpe noted the TP's version of events did not corroborate the images of the damage to the two cars.

I think it is also worth noting that at least Calpe's solicitors, if not Calpe as well, were also aware the TPI had already paid out a reasonable sum to Mr L in respect of the incident. While the payment was made on a without prejudice basis, the TPI had accepted liability to pay Mr L.

It's not now possible to know what would have happened in court, and it is not for this service to decide. However, from the available submissions and the actions Calpe and Calpe's solicitors took prior to the settlement, Mr L did appear to have reasonable grounds to defend the claim. I think it's fair to say Calpe would not have defended the claim to this degree if they hadn't believed there was a case to do so. And it seems the matter was only dropped because Calpe's solicitors said Mr L was not co-operating with them, when in fact he was and it was just that Calpe's solicitors had given an incorrect address to their investigator.

Taking this all into account, I think it's difficult to say Mr L has been treated fairly here. Mr L engaged with Calpe and I think Calpe's decision to no longer defend the claim is at odds with everything they already knew about the incident and their actions prior to June 2019. Calpe's and their solicitors' attempts to contact Mr L when needed also appear to have fallen short so I think Mr L and Calpe lost the opportunity to defend the matter in court. Because of this I think Mr L's complaint should be upheld.

Putting things right

In view of the above, I don't think Mr L should pay the policy excess Calpe Insurance Company Limited is asking him to now pay. And I think Calpe Insurance Company Limited should pay Mr L £150 to reflect the distress and inconvenience this matter has caused.

It's not clear how the claim has been recorded more recently, and I note Mr L has not raised any concerns on this point; however, in view of the above it seems fair for Calpe Insurance Company Limited to record the claim as 'non-fault'.

My final decision

For the reasons above, I uphold Mr L's complaint and Calpe Insurance Company Limited should follow the direction I have given in the above section, *Putting things right*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 March 2022.

Kristina Mathews
Ombudsman