DRN-3555001

The complaint

Mr B complains that Calpe Insurance Company Limited ("Calpe") declined a claim under his motor insurance policy.

What happened

Mr B had a motor insurance policy with Calpe when he was involved in an accident with a third party in December 2020. Both Mr B's car and the third party's car were written off and fault was admitted by Calpe on Mr B's behalf.

The accident happened when Mr B had left a car park near his place of work and was driving to some shops before going home. Calpe declined his claim because it said that Mr B wasn't covered by his policy. It said he'd bought a policy covering him for social only use, and because he was commuting on this journey, he wasn't covered.

Calpe wouldn't deal with the claim, apart from doing what it was required to do by road traffic legislation. It said that it had adopted "Article 75" Insurer status and that it didn't have to meet the claim.

Mr B complained to Calpe as he thought it should deal with the claim. He said his journey to the shops was for social reasons so it shouldn't be considered commuting. Mr B's job involves him working away from home sometimes for extended periods. He'd parked his car in a public carpark, rather than a work one, and was on his way to buy a gift. Calpe continued to decline Mr B's claim because it said that he had driven from his workplace and his journey was continuing home.

As Mr B remained unhappy, he brought his complaint to this service. Our investigator looked into his case and said he thought Calpe had acted fairly in declining Mr B's claim. Mr B had bought cover for social only use and had suffered a loss while travelling from work. So our investigator thought there was no cover under the policy, and that Calpe had acted correctly.

As Mr B didn't agree with the view, his complaint has been passed to me for a final decision.

I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

The accident happened when Mr B was on part of a journey home from his place of work, so Calpe said that Mr B had breached the terms and conditions of his policy and that it was entitled to decline the claim. It's clear to me that Mr B had chosen the wrong option, so his policy didn't cover commuting and that he didn't have adequate cover in place for his journey home. Calpe has agreed that it considered Mr B's journey to be a commute.

But it's for me to consider whether Calpe declined the claim on a fair and reasonable basis. I don't consider that it did for the reasons which follow.

Calpe hasn't said whether it considered Mr B to have made a misrepresentation about the type of use of his car. It didn't appear to have addressed the claim in this way. It considered

that it was entitled to rely on its rights as 'Article 75 insurers'.

The Financial Ombudsman Service's approach is that Article 75 of the Motor Insurance Bureau Articles of Association can apply automatically if the use of the vehicle is other than that permitted under the policy, as in this case. Article 75 has to be interpreted in accordance with the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') provisions however, and the Act therefore 'trumps' Article 75 in these circumstances.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer. If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation.

Firstly, I have to decide if there has been a misrepresentation and this is judged by looking at the question asked of a policyholder and considering what a reasonable response would be. The question asked of Mr B was "What do you use the car for?". It had buttons with choices which included "Social only" and "Social & commuting" and there was additional clarification of these points available to Mr B. Calpe said that Mr B selected "Social only" which it further clarifies as "normal day-to-day driving, but not driving to or from a place of work".

It appears clear to me that Mr B misrepresented the use of his car in omitting to obtain commuting use. So I am satisfied that he has misrepresented his circumstances.

For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms, including the price, or not at all if the consumer hadn't made the misrepresentation.

When I examine the evidence supplied I can see that Calpe say it would have provided cover for Mr B's commuting for a small additional premium of £36.63, so I am persuaded that Mr B did make a qualifying misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless. It is for the insurer to show that a policyholder has caused a deliberate or reckless misrepresentation.

Mr B has told this service that he thought his use was social as he would park away from his place of work, in public car parks and often at places like hotels. He hasn't tried to hide the fact that he was commuting. Calpe haven't provided any evidence to say whether it thinks Mr B's actions were deliberate or reckless, so it follows that I think Mr B made a genuine but careless mistake when he selected the button saying "Social only" use.

CIDRA says that if the insurer would still have sold the policy but would have charged a higher premium, it may reduce proportionately the amount paid on a claim. I can see from the evidence I have that the proportion of the correct premium Mr B had paid was 98.35%. So it follows that I think Mr B should be covered for this proportion of settlement of the claim and that Calpe should deal with it subject to the rest of the terms and conditions of its policy.

I understand that Mr B has already paid out for some parts of his claim, such as vehicle storage. Calpe should also refund Mr B the proportionate parts of payments he's already made that Calpe would normally pay for in a claim like this.

It's also important that I say even if I didn't think Mr B had made a mistake in selecting the correct type of use and applied CIDRA, then I don't think Calpe's position in rejecting Mr B's

claim would be fair and reasonable either given that the additional premium for commuting is so small compared to the price Mr B was already paying for cover.

Mr B has also explained how distressed he feels by Calpe's handling of his claim which he says has been affecting his health. It's clear to me that Calpe should have looked at Mr B's claim more sympathetically than it did, and more in line with this service's approach to CIDRA, so I think it's fair that it pays Mr B £100 compensation for its poor service.

Responses to my provisional decision

Mr B said he agreed with my provisional decision. Calpe said it agreed with the majority of it. But Calpe also said it thought Mr B lied about the accident circumstances and provided inconsistent versions of events. Calpe disputed that Mr B was treated unfairly and didn't accept my decision that it needed to pay him £100 compensation.

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 carefully considered Calpe's response to my provisional decision.

I think it's clear from it that Calpe didn't handle Mr B's claim in line with this service's approach to CIDRA. Calpe's acceptance of the rest of my decision is, I think, a statement that Calpe understands it should have handled Mr B's claim differently.

By failing to do this, Calpe have caused distress and inconvenience to Mr B, so it's my decision that Calpe should pay the £100 compensation.

In regard to Calpe's other point about Mr B being inconsistent and lying, where an insurer makes an accusation like this about its policyholder I think it needs to base that accusation on robust evidence. I say this because it is a serious accusation to make and can have consequences that reach beyond the claim itself.

If Calpe had robust evidence that Mr B had committed fraud then it should have acted differently during its claim process rather than at this stage of its complaints procedure, some 18 months after the incident occurred.

Because Mr B accepted my provisional decision, and because Calpe hasn't provided further evidence to change my thinking, my final decision and reasoning remains the same as in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I direct Calpe Insurance Company Limited to

- Deal with Mr B's own car damage on a proportionate basis as if Mr B had been covered for commuting under his policy.

- Deal with the third-party claim on a proportionate basis as if Mr B had been covered for commuting under his policy.

- Pay Mr B £100 compensation in total for his distress and inconvenience caused by Calpe's handling of his claim.

- Add interest, at the annual rate of 8% simple*, to any amounts already paid by Mr B on proof of payment, calculated from the date of Mr B's payment to the date of settlement.

*If Calpe considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this 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 Mr B to accept or reject my decision before 22 July 2022.

Richard Sowden
Ombudsman