

## **The complaint**

Mr A and Miss E complain that Calpe Insurance Company Limited (Calpe) avoided Miss E's car insurance policy (that is, treated it like it never existed) and turned down her claim.

Mr A is a named driver on Miss E's policy.

## **What happened**

Miss E took out a car insurance policy with Calpe in April 2019 and renewed it in April 2020. In May 2020, Mr A was involved in a road traffic accident in the car and so Miss E made a claim on the policy.

Calpe turned down Miss E's claim and said she was liable for all costs connected with the claim. It said Miss E didn't disclose a TT99 motoring conviction Mr A had to the broker through whom she took out the policy, both when she took it out and when she renewed it. Calpe said this was deliberate or reckless and so it turned down Miss E's claim and kept her policy premiums.

Unhappy with this, Mr A and Miss E complained to us. In her second view on Mr A and Miss E's complaint, the investigator who looked at it upheld it. She thought Miss E's failure to disclose Mr A's motoring conviction was careless rather than deliberate or reckless.

Calpe disagrees and maintains Miss E's failure to disclose the conviction was reckless. So Mr A and Miss E's complaint has come 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've decided to uphold Mr A and Miss E's complaint. I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This 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 doesn't do this, the insurer has certain remedies, as long as the misrepresentation is what CIDRA calls a "*qualifying misrepresentation*". For it to be a qualifying misrepresentation, the insurer has to show it would've offered the policy on different terms, or not at all, if the consumer hadn't made the 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.

Calpe thinks Miss E failed to take reasonable care not to make a misrepresentation when she didn't disclose that Mr A had been given a TT99 motoring conviction in March 2017.

I've looked at the questions Miss E was asked, both when she first bought the policy and at renewal, about driving bans and disqualifications. I think these questions were clear and specific. Miss E didn't disclose Mr A's motoring conviction, so I don't think she took reasonable care.

Because I don't think Miss E took reasonable care, I now need to look at what Calpe would've done if Miss E had answered its questions correctly and disclosed Mr A's motoring conviction.

Calpe has shown us its underwriting guidance on this. It says a TT99 motoring conviction might've been acceptable on referral to its underwriting team. Calpe says that, on receipt of a breakdown of what Mr A's TT99 was made up of, its underwriting team would have assessed whether to accept or decline the risk. Mr A says his TT99 motoring conviction is made up of speeding offences. Calpe says if this was the case, it would've accepted the risk with a 20% loading – that is, Miss E's policy premiums would've increased by 20%.

Since I don't think Miss E took reasonable care when she took the policy out or when she renewed it and since Calpe has shown it would've entered into the policies on different terms if Miss E had disclosed details of Mr A's motoring conviction, I think Miss E's misrepresentation was a qualifying misrepresentation for the purposes of CIDRA.

So, in line with CIDRA, I now need to look at whether Miss E's misrepresentation was deliberate or reckless, as Calpe says it was. If Miss E's misrepresentation isn't deliberate or reckless, under CIDRA it will be classed as careless.

Miss E says she didn't know Mr A had a TT99 motoring conviction either when she bought the policy in 2019 or when she renewed it in 2020. That's because she says she wasn't in a relationship with Mr A in 2017, which is when he got the motoring conviction. Calpe says it doesn't think it's acceptable for a policyholder *"to simply state they were not aware of the named driver's details and that this wouldn't be treated as reckless"*. Calpe goes on to say:

*"The policyholder should have been aware and details a policyholder provides on behalf of their named driver should not be treated with a different standard than the details the policyholder provides about themselves."*

In the specific circumstances of this complaint, I don't think it's fair and reasonable of Calpe to treat Miss E's misrepresentation as reckless (or deliberate). I think the reason Miss E has given for not knowing about Mr A's motoring conviction is plausible and reasonable. Despite what Calpe says, I don't think it has shown, as it needs to under CIDRA, that Miss E either knew the information she gave at the time she took the policy out and at renewal was untrue or misleading or that she didn't care if it was untrue or misleading.

From this it follows that I think Miss E's misrepresentation should be classed as careless under CIDRA, not deliberate or reckless. CIDRA reflects our long-established approach to misrepresentation cases and I don't think Calpe has acted fairly and reasonably by treating Miss E's policies as if they never existed and not paying her claim. But Calpe has shown that, although it would've given Miss E cover had she disclosed Mr A's motoring conviction and had it been shown that it was made up of speeding offences, it would've increased her premiums for the policies by 20%.

CIDRA says that, where there has been a careless misrepresentation and there has been a claim, if an insurer would still have sold the policy but would have charged a higher premium,

it may reduce proportionately the amount it pays on the claim (as set out in Schedule 1 to CIDRA). I think that's the fair and reasonable outcome here. So Calpe should reinstate Miss E's policies and pay her claim in line with the other terms and conditions of her policy in 2020. But Calpe can reduce proportionately the amount it pays on the claim by the percentage of the higher premium it says it would've charged. Mr A must, though, first give Calpe evidence that his TT99 motoring conviction is made up of a build-up of points from speeding offences.

I understand Miss E and Mr A have started making payments towards the cost of the claim. Calpe should pay them simple interest on each of the payments they've made at the rate of 8% per year from the date they made a payment to the date of settlement, subject to a proportionate deduction.

Calpe should also remove all references to Miss E's two policies being voided from all internal and external databases. And Calpe should confirm to Miss E in writing that neither of her policies have been avoided or cancelled.

### **My final decision**

For the reasons I've given, I uphold Miss E and Mr A's complaint and, provided Mr A gives proof that his TT99 motoring conviction is made up of a build-up of points from speeding convictions, I direct Calpe Insurance Company Limited to:

- Reinstatement the policy Ms E took out in May 2019 and remove any reference to it being avoided from any internal and external databases.
- Reinstatement the policy Ms E took out at renewal in 2020, remove any reference to it being avoided from any internal and external databases and settle Miss E's claim under it proportionately using the formula set out in Schedule 1 to CIDRA for proportionate settlements (and in line with the remaining terms and conditions of Miss E's policy).
- Pay Miss E and Mr A simple interest on each of the payments they've made so far to settle the claim at the rate of 8% per year from the date they made each payment to the date of settlement, subject to a proportionate deduction using the formula set out in Schedule 1 to CIDRA.
- Write to Miss E to confirm that neither of her policies from 2019 and 2020 has been voided or cancelled, so that she can show this confirmation to future insurers, if needed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss E to accept or reject my decision before 27 September 2022.

Jane Gallacher  
**Ombudsman**