DRN-3736618

The complaint

Mrs H and Mr W complain that Calpe Insurance Company Limited unfairly avoided their commercial vehicle insurance policy, didn't deal with their claim and didn't return any premium paid.

Reference to Calpe includes its agents.

What happened

Mrs H holds a commercial vehicle insurance policy with Calpe and Mr W is a named driver on that policy. When Mr W was involved in a road traffic accident, they made a claim to Caple for the damage.

Calpe didn't pay the claim. Instead, it avoided the policy from inception, effectively acting like it didn't exist. It refused to deal with the claim on the basis there was no valid policy in place. And, it kept the premium Mrs H paid it. It said it did this because Mrs H and Mr W made a deliberate or reckless qualifying misrepresentation when she took out the policy. It said it did what it thought the relevant law, the Consumer Insurance (Disclosures and Representation) Act 2012 (CIDRA) allowed it to do.

Mrs H and Mr W complained but Caple didn't change its stance. So, they brought their complaint to us.

One of our investigators recommended it be upheld in part. She thought the relevant law wasn't CIDRA, but the Insurance Act 2015 (the IA). She thought under the IA, Calpe was entitled to avoid the policy and not deal with the claim. But she thought it needed to return the premium to Mrs H and Mr W.

Mrs H and Mr W agreed. Calpe didn't. It maintained the relevant act was CIDRA and maintained it had acted in line with it. So, it asked for an ombudsman's decision and the case has come to me.

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 also upholding the complaint in part. I'll explain why:

- Calpe says this is a consumer policy and so the relevant law is CIDRA. It says it doesn't sell commercial polices, so this can't possibly be one. But I disagree. Looking at the policy document, the type of policy is listed as "Goods/Commercial Vehicles" and the type of uses is listed as "Hire & Reward". Based on this, I'm satisfied the policy is a commercial one, and the relevant law is the IA.

- Ultimately though, whether the relevant law is CIDRA or the IA makes no difference in this case. While the acts differ in many ways, there are similarities too. And the

point of contention here is whether or not Mrs H and Mr W's qualifying breach of the act (or qualifying misrepresentation if looking at CIDRA) was deliberate or reckless.

- When taking out the policy, Mrs H was asked who the registered owner and keeper was. She answered this by telling Caple it was her. But it wasn't. Mr W was the registered keeper, and the car was on finance meaning the finance company was the owner. Mrs H has said this was just a mistake. But that being so, I'm satisfied it constitutes a failure to make a fair presentation of the risk (or that it constitutes a failure to take reasonable care not to make a misrepresentation to Calpe if looking at CIDRA)

- Calpe has shown that had it known the true facts – that Mr H was not the register keeper or owner and it was in fact Mr W – then it wouldn't have offered cover. This means it's shown that Mrs H's failure to make a fair presentation of the risk constitutes a qualifying breach of the IA (or constitutes a qualifying misrepresentation if looking at CIDRA)

- Calpe thinks this was a deliberate or reckless breach (or a deliberate or reckless misrepresentation under CIDRA). But I'm more persuaded that this was a neither deliberate nor reckless breach of the IA (or a careless misrepresentation under CIDRA). I say this because I'm persuaded by Mrs H's testimony that this was just a mistake. I don't find Calpe has done enough to show it was any more than this.

- The IA (and CIDRA) sets out remedies for insurers where there's been a qualifying breach (or qualifying misrepresentation). And those remedies depend on how the breach (or misrepresentation) is treated.

- Calpe has acted in line with the IA (and CIDRA)'s remedies for a deliberate or reckless breach (or misrepresentation). But as set out above I don't think treating the breach (or misrepresentation) as deliberate or reckless is fair in this case. So, it should treat the breach (or misrepresentation) as neither deliberate nor reckless (or careless).

- The remedy for a neither deliberate nor reckless breach of the IA (or a careless misrepresentation) where the insurer wouldn't have offered the policy on any terms is to avoid the policy – which would allow it to not deal with any claim made against it – and to return the premium.

- So, in line with the IA (and CIDRA), Calpe are entitled to avoid Mrs H's policy and not deal with hers and Mr W's claim. But it needs to return the premium she paid for the policy.

My final decision

For the reasons set out above, I uphold this complaint in part. To put things right, I require Calpe Insurance Company Limited to:

- Return the premium Mrs H paid it for the policy it's avoided. Any payment should include 8% interest to be calculated from the date Caple avoided the policy, to the date it pays Mrs H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr W to accept or reject my decision before 18 November 2022.

Joe Thornley
Ombudsman