

## The complaint

Mr W complains that Calpe Insurance Company Limited mishandled his claim on a motor insurance policy.

Where I refer to statements by Mr W, I include statements by his mother on his behalf.

Where I refer to Calpe, I refer to the above-named insurance company and I include its broker or policy administrator, claim investigator and others insofar as I hold Calpe responsible for their acts or omissions.

## What happened

The subject matter of the claim and the complaint is a saloon car dating from about 2013.

In about 2017, Mr W acquired the car. Mr W was living in Northern Ireland.

He bought a policy for the year from early October 2017. The policy was comprehensive, so it covered accidental damage to Mr W's car. Any claim was subject to an excess of £1,500.00.

The policy was branded with the name of the broker or policy administrator. Calpe was the insurance company that was ultimately responsible for dealing with any claim.

The policy had "*General Exceptions*" including the following:

*"1 The Company shall not be liable in respect of any claim arising while Your Car is being used or driven:*

*...*

*(1) If You or any appropriate driver is negligently in breach of the Road Safety Act 2006, except where the Underwriters are required to provide this cover under the Road Traffic Acts or any other legislation applicable to motor insurance."*

I will refer to that as "general exception (1)".

In June 2018, Mr W's car hit an oncoming vehicle, killing its driver. Mr W was injured. There was damage to Mr W's car, the other car and some roadside property.

Police began an investigation.

Mr W made a claim to Calpe. On 10 September 2018, Calpe said Mr W's car had a pre-accident valuation of £15,300.00 but was a write-off. Calpe didn't pay Mr W for his damaged car.

Calpe settled claims from third parties for their damage and loss.

In January 2022, a court sentenced Mr W to a term of imprisonment for the offence of causing death by dangerous driving in June 2018.

In February 2022, Calpe said it wouldn't pay his claim for his damaged car.

Mr W complained to Calpe that it should pay his claim. By a final response dated late March 2022, Calpe turned down the complaint. Mr W brought his complaint to us in late April 2022.

*our investigator's opinion*

Our investigator didn't recommend that the complaint should be upheld. He thought that it was fair and reasonable for Calpe to apply general exception (I) and not pay for Mr W's accidental damage.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr W and to Calpe on 9 September 2022. I summarise my findings:

I didn't find it at all clear that general exception (I) excludes liability for negligent (or careless) driving.

There was an exception for damage to Mr W's car as a result of racing against another motorist.

From a newspaper report, I'd seen some evidence that Mr W had been racing.

Subject to any further information from Mr W or from Calpe, my provisional decision was that I upheld this complaint in part. I intended to direct Calpe Insurance Company Limited:

1. not to decline Mr W's claim in reliance on general exception (I); and
2. to reconsider Mr W's claim in line with the policy terms (including the exception for racing) other than general exception (I).

Mr W disagrees with the provisional decision in part. He says, in summary, that:

- The newspaper report quoted a motorist, who didn't say he saw Mr W's car racing or showing any sign of road rage, but merely an overtaking manoeuvre.
- He has sent us a power point presentation which shows critical points of the road layout.
- He overtook the hatchback car and travelled a further distance of approx. 320 metres before he crashed his car on a left-hand bend.

Calpe disagrees with the provisional decision in part. It says, in summary, that:

- The policy clearly excludes any claim where the customer breaches the Road Safety Act 2006.
- Mr W breached the Road Safety Act 2006 section 2B Causing death by careless, or inconsiderate, driving.
- Mr W also breached the exception for damage to his car as a result of racing against another motorist.

## 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.

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules ("DISP"). One of those rules has the effect that – before a consumer can bring a complaint to us - he must first have made that complaint to the regulated firm and waited for up to eight weeks for a final response.

The main legislation relating to driving in the UK is the Road Traffic Act 1988 (as amended by various later Acts).

So, for example, the offence of causing death by "dangerous" driving is an offence under Section 1 of the Road Traffic Act 1988 as amended by another Act from 1991.

The policy terms contained the following definition:

***"Road Traffic Act means any Acts, laws or regulations, which govern the driving or use of any motor vehicle in Great Britain, Northern Ireland, the Isle of Man and the Channel Islands."***

But my reading of general exception (I) is that it applies where the policyholder is driving *"negligently in breach of the Road Safety Act 2006"*. And that exception wouldn't apply where *"Underwriters are required to provide this cover under the Road Traffic Acts or any other legislation"* – which I think is a reference to the Road Traffic Act liability of insurers to meet claims from third parties.

I've looked at the Road Safety Act 2006. It contains over 60 sections including sections on, for example, fixed penalty notices and vehicle examinations.

One section (section 20) created a new offence of causing death by "careless or inconsiderate" driving. And I consider that "careless" has much the same meaning as "negligent".

However, Road Safety Act 2006 Section 20 created that offence by inserting a new section – Section 2B – in Road Traffic Act 1988. So causing death by careless or inconsiderate driving is an offence under Road Traffic Act 1988 section 2B as inserted by Road Safety Act 2006 Section 20.

General exception (I) refers to Road Safety Act 2006 but not specifically to Section 20. And general exception (I) doesn't refer specifically to Road Traffic Act 1988 Section 2B.

So I don't find it at all clear that general exception (I) excludes liability for negligent (or careless) driving causing death.

So I don't find that Calpe treated Mr W fairly by declining his claim in reliance on general condition (I). I've thought about whether it would be fair and reasonable to direct Calpe to meet Mr W's claim.

However, I've noted another exception as follows:

*"The Underwriters shall not be liable for*

*...*

*(y) for damage to Your Car as a result of racing against another motorist, "road rage"*

*or a deliberate act caused by You...”*

So there was an exception for damage to Mr W's car as a result of racing against another motorist.

And from a newspaper report, I've seen some evidence that Mr W was racing.

Both Mr W and Calpe invite me to make a finding as to whether he was racing or not.

But I don't consider that the rules allow me to make a finding on that point before Calpe has investigated further and made a decision, and Mr W has had an opportunity to complain to Calpe about that decision.

### **Putting things right**

Rather, I find it fair and reasonable to direct Calpe:

1. not to decline Mr W's claim in reliance on general exception (I); and
2. to reconsider Mr W's claim in line with the policy terms (including the exception for racing) other than general exception (I).

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Calpe Insurance Company Limited:

1. not to decline Mr W's claim in reliance on general exception (I); and
2. to reconsider Mr W's claim in line with the policy terms (including the exception for racing) other than general exception (I).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 November 2022.

Christopher Gilbert

**Ombudsman**