

## The complaint

Mr M, represented by his mother, Ms M, has complained about his motor insurer, Calpe Insurance Company Limited because it avoided his cover and, by association, declined his claims made following an accident.

## What happened

Mr M's policy with Calpe renewed in May 2021. Shortly after he was involved in two accidents. The second incident occurred in the early hours of the morning and Calpe had some concerns about the circumstances of it. It interviewed Mr M and during that interview Mr M said his occupation was a basketball coach at a school and that he also worked privately as a director of his own company which is a basketball training business. He clarified that he had no part-time occupation.

Calpe noted that its policy systems had recorded Mr M as having declared that he was a supervisor, working in local government – with “supervisor” recorded as his occupation on the renewal documents. It asked Mr M when his job had changed and he said it hadn't. He said he is officially a basketball coach and his mother clarified that he works for her in a voluntary capacity, supervising children in her business (which is linked to the local authority). She said he had been paid until shortly before renewal and payslips from April 2021 were provided to Calpe.

On review Calpe said it wouldn't have offered cover to Mr M if it had known he was working as a sport's coach, rather than as a supervisor. So it said it was avoiding the policy and wouldn't be dealing with the claims. It also said it was retaining the policy premiums as, in its view, legislation allowed it to. Mr M complained to us.

Our Investigator felt Mr M hadn't given Calpe incorrect information at renewal. He felt it was reasonable for Mr M to have focused on the basketball element of the work he does – but that that doesn't preclude that work also comprising a supervisory role.

Calpe wasn't minded to agree with our Investigator's findings. The complaint was passed to me for an Ombudsman's review. I felt Calpe's avoidance had been fair and reasonable. But that it shouldn't have retained the policy premium. I issued a provisional decision to share my views on the complaint with both parties. My provisional findings were:

*“There is legislation which governs the sale and purchase of insurance – The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA sets out the rights and obligations of both parties when entering into and renewing policies of insurance. One of the really important points for policyholders is that the legislation requires them to take reasonable care when answering questions. They are expected, to the best of their ability, to give accurate answers. If they don't then the insurer may be able to treat their policy as void (as though it has never existed). In some cases the insurer may also be able to retain the premium that was paid for cover – but in most cases the premium will have to be refunded. In this case, Mr M's policy renewed in May 2021, carrying forwards occupation details that had been amended and updated by Ms M in 2019. In 2019 Ms M had told Calpe that Mr M was a “supervisor/team leader in local authority”. So the renewal documents after that,*

*including in 2021, showed Mr M's occupation as "Supervisor". Under the legislation it was up to Mr M to make sure that detail, which accurately reflected his main employment role, was given to Calpe at renewal. If the detail given was wrong, with Mr M not having taken care to get it right, and Calpe can show that it wouldn't have offered cover if it had been given accurate information, then that would likely mean Calpe can avoid the cover.*

*Calpe believes that Mr M's main occupation is a basketball coach. And it has shown that it will not offer cover to anyone with an occupation of "sports coach". So if Mr M's occupation can reasonably said to be basketball coach, and he didn't take care to ensure Calpe knew that at renewal, instead leaving the occupation detail recorded as "Supervisor", it is likely Calpe can fairly and reasonably avoid the policy.*

*I don't doubt that in teaching basketball, there is some element of supervision of the participants involved. But a job role of supervisor is generally held to denote someone who oversees other, usually more junior, employees/work colleagues. But its most important for me to think about what the evidence to hand shows me Mr M believed his occupation was. Mr M told Calpe in his first call with it after the accident that his occupation was basketball coach. In the interview which took place a few weeks later Mr M reiterated this. And was, arguably, in a situation that allowed him to give more detail about his role. In that respect he did not refer to supervising children. Also, and importantly for me, he did not mention working for his mother's business at all. He said he had two jobs related to basketball coaching and training and that he had no part time job. So I think that Mr M's occupation as of June 2021 was, in his mind, basketball, or sports, coach.*

*The policy had only renewed a few weeks before, at the end of May 2021. I've thought about whether things had maybe changed for Mr M in just those few short weeks – such that before renewal, if Mr M had been asked then what his occupation was, he would likely have said supervisor. But I don't think that is most likely. His last wage slip from his mother's business was dated 21 April 2021, and as of early May 2021, Mr M had taken decisive action regarding his private basketball business. In early May that business, which is limited, had been facing compulsory strike off, but Mr M acted in May – after he had last been paid by his mother's business and before renewal, to prevent that from happening. So I think it's reasonable to say that as of May 2021, Mr M viewed his occupation as basketball coach. As such I think inaccurate occupation information was detailed on the renewal which neither Mr M, nor Ms M acting on his behalf, corrected.*

*I do appreciate that Mr M is still showing on the accounts of Ms M's business as an employee, although he hasn't received any income for that work and is said to undertake it on a voluntary basis. I accept that anyone can work in more than one role, and that people may carry out voluntary and/or part time work, alongside their main employment. But Calpe didn't want to know from Mr M what voluntary work he did. It wanted to be told his occupation. And Mr M, on more than occasion, following the accident, told Calpe quite clearly that he was a basketball coach. And he specifically said he didn't do any part time work – suggesting he did no other work than the roles which involved basketball for the school and his limited company. It was only after Calpe highlighted the disparity between the detail that Mr M had provided and that recorded on the policy documents, that Mr M's view on, or at least his explanation about, his occupation changed. Taking everything together, I don't think I can reasonably disregard Mr M's earlier comments in favour of that later explanation. I'm satisfied that Mr M's occupation at renewal can most accurately be described as "sports coach".*

*All of which means, as I said at the start, that Calpe can reasonably avoid the policy. But it can't keep the premiums – or demand that premiums not paid against the policy are paid to it. The legislation requires a voiding insurer to return premiums where a misrepresentation was carelessly made. After all the policy is being treated as though it didn't exist – so it*

*makes sense that no money is to be paid, taken or kept in respect of that 'non-existent' policy. The only exception is if the misrepresentation was made recklessly or deliberately.*

*In that instance the legislation puts the onus on the insurer to show the act was done in that manner – that the prospective or renewing policyholder was more than careless. Calpe hasn't shown me anything like that here. My view, having seen everything and heard everything from both parties, is that an oversight and/or misunderstanding occurred at the point of renewal. I don't think, for one second, that Mr M had any intent to deceive Calpe. Nor do I think he would believe there was any need for him to do that either – because Calpe had given him cover in 2018 when his occupation was "fitness instructor". That is a very similar field of work and I don't doubt that Mr M, if he had given it any thought, would have guessed that Calpe would see "sports coach" in a similar light. Calpe doesn't (see it in a similar light), and that is its choice. But I can't see any likely reason why Mr M would have knowingly set out to deceive Calpe as to what he does for a living. From the calls I've heard I think Mr M and Ms M have tried their best to arrange their affairs and I can see that Mr M is clearly a keen young driver. But that, in this case, at renewal in 2021, a mistake was made. And, unfortunately, for Mr M, the consequences of that mistake are significant – his policy has been declared void, his claim won't be paid, he may be liable to other people affected by the accident and he will have to inform future insurers of the voidance.*

*Calpe got it wrong when it said it was retaining the premium, and I am going to make it correct that. And I will award some compensation to Mr M as well as I understand that he has received debt collocation letters regarding outstanding premiums. That can only have served to add to his anguish. So I think Calpe should pay him £300 to make up for that upset. But, in awarding that, I bear in mind that the act of voidance is the main issue here and, understandably, the main cause for upset. I accept that the stress and worry caused by that is likely immense. However, as I've found that Calpe acted fairly and reasonably in voiding the policy, I can't make it compensate Mr M for the upset that flowed naturally from that fair and reasonable act."*

Calpe replied, stating it had nothing further to add. Ms M, replying on behalf of Mr M, said (in summary):

- It was only the pandemic that stopped Mr M being paid by her business, he has always been, and still is, employed by her business.
- That work includes fitness and basketball training with teenagers.
- He'd told Calpe he was a senior support worker, and its representative selected the closest appropriate job title.
- It's difficult to accept that employment will affect motor insurance cover, and a friend has two jobs which hasn't worried her insurer.
- She hopes I can look favourably on this as Mr M is very low and finding things very difficult.

### **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 appreciate that this has been, and continues to be, a difficult time for Mr M. But the upset he is suffering can't sway my findings of what has happened, which has caused this distress and inconvenience. It is regrettable that Mr M's car is damaged and remains in the recovery yard with charges accruing. But my focus has to be on what happened – what occupation detail Calpe was passed at renewal in 2021, whether that was likely correct to the best of Mr M's knowledge and, if it wasn't what the relevant legislation allows Calpe to do.

I accept that detail was given to Calpe in May 2020 which resulted in it recording Mr M's occupation as local government/supervisor. I accept that in April 2021, he was receiving payslips from Ms M's business, which would suggest that the occupation detail of 'local government/supervisor' might well have been accurate enough at that time. But my point made provisionally, was that Mr M, in his own mind, as of May 2021, before renewal and certainly at the time of the crash, shortly thereafter, believed his occupation to be that of basketball coach. And that he did not view himself as still working for Ms M's business at all. I think Mr M's occupation had changed before the policy renewed in May 2021 and that Calpe should have been notified of that change.

I appreciate it is difficult to accept that Mr M's employment would affect Calpe's decision to offer cover. But insurance is a matter of risk. And how a policyholder, or prospective policyholder is employed, effects the 'risk' they present to an insurer. Most occupation types, for most insurers, won't cause them to decline to offer cover. But some, for some insurers will. Similarly, for the number of jobs held, although the number of jobs held by Mr M was not an issue here. Risk though is a matter for each insurer to assess and decide upon. It isn't something this service will comment on or get involved with. When a policy is voided, as long as the insurer can show it wouldn't have offered cover if the correct information had been received, it is likely this service will find the avoidance fair and reasonable. Calpe has shown here that it would not have offered Mr M cover if the correct detail had been given. The legislation allows Calpe, in that instance, to void the cover.

I know Mr M had no intent to give Calpe incorrect information. And I know my decision will cause him further upset, as he had been hoping for a positive end to this very distressing time. However, on this occasion, I think Calpe has acted fairly and reasonably in voiding Mr M's policy. Which means I can't fairly and reasonably require it to change that. But I am still of the view that Calpe acted unfairly and unreasonably regarding the premiums. My view in that respect, and what Calpe must do to put that right, has also not changed.

Overall, my provisional findings haven't changed. They, along with my additional comments here, now form the findings of this, my final decision.

### **Putting things right**

I require Calpe to return to Mr M any and all premiums paid on the policy from renewal in May 2020. To each reimbursed sum, Calpe will have to add interest\* from the date each amount was paid until settlement is made.

I also require Calpe to provide a letter to Mr M, which explains that any debt, shown against his credit record for this policy (if any is showing), is an error caused by it. Mr M can then use this letter, if he should need to, to try and amend or explain his credit history for this policy.

I further require Calpe to pay Mr M £300 compensation.

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs requires Calpe to take off tax from this interest. If asked, it must give Mr M a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint. I require Calpe Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 December 2022.

Fiona Robinson  
**Ombudsman**