

The complaint

Mr H complains that Calpe Insurance Company Limited unfairly avoided his motor insurance policy and declined his claim, after he was involved in an accident causing damage to his car and another vehicle.

Calpe is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agent. As Calpe has accepted it is accountable for the actions of the agent, in my decision, any reference to Calpe includes the actions of the agent.

What happened

In mid-2021 Mr H made a claim under his motor insurance policy with Calpe after he was involved in a car accident.

Calpe decided to avoid Mr H's policy with effect from its renewal in October 2020. It told Mr H this was due to misrepresentation of the risk. It said Mr H had failed to disclose his correct risk address upon renewal.

Mr H complained to Calpe, but it maintained its position. It said Mr H had failed to notify it of a change of address at policy renewal. It said if Mr H had provided accurate information, Calpe would have charged a different premium as different postcodes are subject to varying rating factors. It said it believed Mr H's failure to provide correct details regarding his current address when questioned, was a deliberate or reckless act, so it had avoided his policy with effect from the policy renewal and retained his premium.

Mr H asked our service to consider his complaint. Calpe didn't respond to multiple requests for information from us, so our investigator reached an outcome based on the limited information available. She didn't think Mr H had taken reasonable care not to make a misrepresentation. But she didn't agree that Mr H's misrepresentation was deliberate or reckless. She thought it should be treated as a careless misrepresentation and Calpe should proportionately reduce the amount to be paid on the claim. She also recommended that Calpe pay Mr H £150 compensation for distress and inconvenience.

Calpe didn't respond to our investigator's outcome, so Mr H's complaint was passed to me to decide.

I issued a provisional decision on 24 April 2023 where I explained why I intended to uphold Mr H's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Calpe hasn't provided any information to support its position, despite several requests from our service. It hasn't responded to my request for information after the case was passed to me for a decision and we've been unable to reach anyone by telephone. I've decided to issue a provisional decision in order to bring this matter to a conclusion. However, it is

possible that the outcome to Mr H's complaint may change from what I've set out in this provisional decision if Calpe provides further evidence for me to consider.

Based on what I've seen so far, I intend to uphold Mr H'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.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have 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.

Reasonable care

Calpe thinks Mr H failed to take reasonable care not to make a misrepresentation when he renewed his policy in October 2020. It says he didn't inform it that he had moved to an address in place A to an address in place B in September 2020.

Mr H has sent us copies of his insurance renewal documents from October 2020. The schedule, certificate and statement of insurance show Mr H's address as being in place A.

On the statement of insurance it says: "Where is the Vehicle Kept Overnight" and next to that it says "Public Highway at (post code of address at place A)".

The statement also has an "Important Notes" sections which says:

"IMPORTANT, PLEASE READ THE FOLLOWING INFORMATION Failure to disclose all material information (i.e. information likely to influence the assessment and acceptance of this risk) could invalidate the insurance. If you are in any doubt whether any information is material, it should be disclosed. Any false information you provide could invalidate your insurance..."

I'm satisfied that the question Calpe asked was clear and unambiguous. It also made Mr H aware of the importance of checking that the information he provided was correct.

Mr H says the information on his renewal documents is correct. He says he didn't move from place A. He says his wife and son moved from A to B in September because his wife was studying in B. Mr H says he came to B to spend some time with them and applied for a parking permit to be able to park near where they lived. He says he needed to change the registered address of his driving license and vehicle logbook from his address in A to the address in B to get the parking permit. However, his main residential address is and always has been in A.

In its response to Mr H's complaint Calpe referred to a statement it says Mr H gave when his claim was being investigated in August 2021:

"I reside at (address in place B) – I am currently renting this property and I have been living here for about 11 months, I own my home in (place A) but was working at (workplace in B) so rented a (B) address for 12 month."

I haven't been provided with Mr H's signed statement. However, the information next to "Main Occupation" and "Business" on the statement of insurance supports what Mr H has been quoted as saying about his workplace. So, I think Mr H is likely to have said what Calpe has quoted him as saying in August 2021.

Mr H appears to have given conflicting information in his complaint email to Calpe in October 2021. But I think what Mr H told Calpe in August 2021 is more likely to accurately reflect his circumstances when he renewed the policy in October 2020 So I think it was reasonable for Calpe to have concluded that Mr H's car was kept overnight in B, rather than A, and that he'd made a misrepresentation.

Qualifying misrepresentation

If a consumer fails to take reasonable care, the insurer has certain remedies providing the misrepresentation is, what CIDRA describes as a "qualifying" misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

Calpe says that if Mr H had shared information about his change of address at policy renewal, it would have charged an additional premium as different postcodes are subject to varying factors.

However, Calpe hasn't provided any evidence to support this (e.g. evidence of the loading from its underwriting guide or a retrospective quote). So, I'm not persuaded from what I've seen so far, that Mr H's misrepresentation was qualifying.

Based on what I've seen so far, I don't think it was fair for Calpe to have avoided Mr H's policy. It wasn't entitled to do so as it hasn't shown that Mr H's misrepresentation was qualifying.

Mr H has told us that his car was written off and he didn't receive any payment from Calpe for it. He says Calpe asked him to cover the third party claim, amounting to over £8,000. Given the above, I think it would be fair for Calpe to reinstate Mr H's policy and reconsider his claim. It should also deal with the third party's claim.

Mr H has also raised concerns about being charged higher premiums on his subsequent car insurance due to the avoidance of his Calpe policy. Calpe should remove any reference the policy having been avoided from its records and any central databases. And it should provide a letter to Mr H to confirm this has been done, which can be provided to his new insurer so they may potentially recalculate his premium based on this.

As this is a provisional decision, it's possible that Calpe may yet provide evidence to show that Mr H made a qualifying misrepresentation. Calpe hasn't said whether it thinks Mr H's misrepresentation was deliberate or reckless or explained why it thinks it was one of these, rather than careless. So, I think it's worth saying that I'd also need to be persuaded that Mr H's misrepresentation was likely to have been deliberate or reckless to conclude that Calpe acted fairly."

I set out what I intended to direct Calpe to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Calpe didn't respond to my provisional decision.

Mr H provided a letter from Calpe's agents dated September 2021 which said it had settled the third party claim for £8,269. The letter said that Mr H was liable for the full cost of settlement of the claim. Mr H said he had paid part of the cost to Calpe's agents.

Mr H didn't make any further comments in relation to my provisional decision.

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.

As neither party have provided any comments in relation to my provisional decision, I see no reason to change the conclusions I reached.

As I am directing Calpe to deal with the claim, the settlement it pays Mr H should include reimbursement for any payments Mr H paid Calpe's agents in respect of the third party claim. It should add 8% per year simple interest from the date(s) Mr H paid Calpe's agent until the date the settlement is paid.

Putting things right

Calpe should:

- Reinstatement the policy Mr H took out at renewal in October 2020.
- Deal with the claim in line with the remaining terms and conditions of the policy (including the third party claim).
- Pay 8% per year simple interest on any settlement it pays to Mr H, from the date of loss to the date the settlement is paid.
- Subject to reasonable proof, reimburse Mr H for any period he was dually insured if this applies. Pay interest on the date of payment to the date of reimbursement at a rate of 8% simple interest per year.
- Remove any references to the policy having been avoided from its records and any central databases.
- Provide a letter to Mr H confirming that the policy avoidance has been removed.

My final decision

For the reasons I've explained, I uphold Mr H's complaint and direct Calpe Insurance Company Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 June 2023.

Anne Muscroft
Ombudsman