

The complaint

Mr P complains that Calpe Insurance Company Limited avoided his car insurance policy (treated it like it never existed) and refused to pay his claim

What happened

In August 2021 Mr P took out a car insurance policy with Calpe Insurance through an online comparison website.

In March 2022 his car was hit while stationary and damaged. So Mr P made a claim to Calpe.

Calpe said he'd answered the question it asked about a previous motoring conviction in April 2018 incorrectly. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policy, decline his claim because of this and keep the premium Mr P had already paid.

Mr P brought his complaint to us and our Investigator thought it should be upheld. Although he agreed that Mr P had misrepresented the facts about his motoring conviction, he didn't agree it had been deliberate or reckless. And so in line with the law around misrepresentation, the Investigator recommended Calpe deal with Mr P's claim on a proportionate basis - in line with the percentage increase it would have charged him for cover if it had known about the motoring conviction.

The Investigator recommended Calpe do the following to put things right:

- reinstate the policy on the amended terms, deal with Mr P's claim based on those terms and in the event of a settlement being made, apply 8% simple interest from the date the policy was avoided to the date of settlement.
- remove the avoidance from any external databases and provide Mr P with a letter that explains this.
- Pay Mr P £200 compensation for the considerable distress and inconvenience Calpe caused by its decision.

Calpe didn't reply to the Investigator's view. Mr P said the compensation isn't enough to reflect the impact of Calpe's decision. He wants Calpe to refund the premium he paid for cover. Mr P explained that he'd paid over £5,000 to insure his car and had to continue to pay the monthly instalments even though his car wasn't roadworthy and required repair.

Mr P said he paid over £20,000 to have his car repaired. He said he had to work extra hours to source a deposit to pay the garage to order parts - and says he went into debt on credit cards which accrued interest to fund the remaining repairs.

Mr P says he is still paying those debts off. He says he did all he could to assist with Calpe's investigation into the claim and its decision caused him considerable stress over a period of a year.

I issued a provisional decision on 17 April 2023. I thought Calpe should pay Mr P £500

compensation to reflect the distress and inconvenience caused. As I intended to ask Calpe to deal with Mr P's claim, I explained that the premium would be correctly owed under the policy.

Calpe didn't reply to my provisional decision. Mr P asked why instead Calpe should deduct the premium difference and meet his claim in full.

I explained that under CIDRA, an insurer isn't required to do this, but should meet his claim - where the misrepresentation was careless - on a proportionate basis.

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 I haven't received any new information to change my provisional findings, my final decision is on the same lines as my provisional decision.

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.

Calpe Insurance thinks Mr P failed to take reasonable care not to make a misrepresentation when he said he didn't have any motoring convictions in the past five years when he applied for the policy. But Mr P had a motoring conviction in April 2018. He said the reason why he didn't declare it was because it had expired on his driving licence - and so he thought it didn't apply.

Calpe has provided a screenshot of the question Mr P was asked and I'm satisfied it was clear. So I think Mr P didn't take reasonable care when answering it.

In Calpe's response to Mr P's complaint, it says it wouldn't have offered Mr P a policy on the same terms if it had known about his motoring conviction from April 2018.

We asked Calpe to provide evidence of what it would have done differently. It provided an underwriting guide dated October 2021. This is after Mr P applied for the policy in August 2021 and answered the key question incorrectly about his motoring conviction. So I can't take this into account as evidence of Calpe's underwriting criteria which applied at the time.

In an email dated 19 December 2022 to this service, Calpe confirmed that its underwriters would have applied a 15% increase to the policy premium if it had known about the motoring conviction. So Calpe says it would have provided Mr P with a policy, but on different terms.

While I'm satisfied that Mr P's misrepresentation was a qualifying one, I think it was careless. I find his explanation as to why he failed to disclose the motoring conviction means he failed to take reasonable care, rather than act deliberately or recklessly.

As I'm satisfied Mr P's misrepresentation should be treated as careless, I've looked at the actions General Insurance can take in accordance with CIDRA.

CIDRA set out different remedies which an insurer can take, depending on whether the misrepresentation was careless, or deliberate or reckless.

As Calpe decided the misrepresentation was deliberate or reckless, it avoided the policy and kept the premium, even though it was able to offer a policy on different terms.

If the misrepresentation is found to be careless, an insurer can charge more to reflect the difference in premium it would have charged if it had known the correct information. Where there has been a claim, an insurer can instead pay the claim proportionately.

I think this is what Calpe should have done in this case. So I don't agree with the actions it took.

Therefore, as I'm satisfied Mr P's misrepresentation was careless rather than reckless or deliberate, I don't think Calpe Insurance acted fairly by avoiding his policy and not paying his claim. CIDRA reflects our long-established approach to misrepresentation cases. As explained above, had Calpe Insurance known about Mr P's motoring conviction, it still would have offered a policy, but on different terms.

Not meeting Mr P's claim has clearly had a significant impact on Mr P. He was left to pay for his policy and also meet the costs of the repairs to his car. I can understand this must have caused him significant distress and worry about the financial implications. Had Calpe dealt with Mr P's claim in a fair way and in line with CIDRA, these are costs Mr P wouldn't have had to cover.

From the information I have, I think Calpe should pay more than £200 compensation to reflect the impact of its decision. I think Calpe should pay Mr P £500 compensation for the distress and inconvenience and impact its decision had on Mr P, in addition to the other recommendations made by the Investigator.

As I'm requiring Calpe to meet Mr P's claim, the premium due under the policy is correctly due as it met its obligations under the policy. I don't know if Mr P paid for alternative cover elsewhere. If he did, I think Calpe should reimburse Mr P for the period he was dually insured subject to reasonable proof from Mr P

My final decision

My final decision is that I uphold this complaint. I require Calpe Insurance Company Limited to do the following:

- Reinstate Mr P's policy and meet his claim on a proportionate basis (85%) under the remaining terms and conditions of the policy.
- Subject to reasonable proof, reimburse Mr P for 85% of the costs of repairs and pay interest on the amount at a rate of 8% simple interest from the date of payment to the date of reimbursement.
- Remove any record of the avoidance from external databases.
- Subject to reasonable proof, reimburse Mr P for any period he was dually insured if this applies. Pay interest on the reimbursement from the date of payment to the date of reimbursement at a rate of 8% simple interest a year.
- Pay Mr P £500 compensation for the distress and inconvenience caused.

Calpe Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 June 2023.

Geraldine Newbold
Ombudsman