

The complaint

Mr C and Mr L complain that Calpe Insurance Company Limited unfairly avoided a motor insurance policy and declined a claim.

Mr C and Mr L have been represented by a legal representative on the complaint. But for simplicity and because Mr C was the main policyholder, I shall refer mainly to Mr C, and to anything the representative said on Mr C's behalf, to have been said by Mr C.

Calpe has also been represented by its agents. All references to Calpe include its agents.

What happened

Mr C had a motor insurance policy with Calpe, which renewed in 2021. In January 2022, his vehicle was stolen from outside his home and he made a claim with Calpe.

In March 2022, Calpe wrote to Mr C to say it was avoiding his policy due to a failure to disclose the named driver, Mr L's (ND), motoring conviction.

Mr C complained to Calpe in April 2024. He said he was not aware of the points on the ND's driving licence, until Calpe had raised this following the claim.

Calpe issued a complaint response in June 2024. It maintained its decision to decline the claim and avoid the policy due to the failure to disclose the ND's motoring convictions.

Mr C referred his complaint to the Financial Ombudsman Service. He said he wasn't aware of the points on the ND's licence.

The Investigator upheld the complaint. They said it wasn't fair for Calpe to treat the misrepresentation as reckless. And because Calpe would likely have offered a policy if the ND had been removed, they recommended it reassess the claim on that basis, with interest on any settlement paid. They also recommended Calpe pay £300 compensation.

Calpe didn't agree. It said the misrepresentation was reckless and Mr C didn't know if the answer was correct or not, and he didn't ask the ND or check their licence.

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 relevant law in this case is the Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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, reckless or careless.

The starting point is to determine if Mr C failed to take reasonable care not to make a misrepresentation. And this can occur when a policy is renewed. On each renewal with Calpe, Mr C took out a new insurance contract. And the duty for them to take reasonable care not to misrepresent applied again.

The ND was stopped by police in August 2020, for alleged offences including driving uninsured. And a court issued letter was sent to the ND in March 2021 (prior to renewal), issuing fines based on confirmation of offences relating to use of a motor vehicle without third-party insurance and failing to stop at a red light at a pelican crossing. I'm satisfied having reviewed the evidence, that this meant the ND did have motoring convictions. Calpe avoided Mr C's policy that renewed following this in 2021, so I've considered whether Mr C failed to take reasonable care not to make a misrepresentation at renewal.

I've listened to the renewal call in 2021. And I'm satisfied Mr C was asked to confirm the ND had no motoring convictions, and he confirmed the ND didn't. Mr C accepts he was aware of the ND being stopped, and the following fine. And I think a reasonable consumer in the same circumstances would've made further enquiries to ensure the answer to the question of motoring convictions was correct. It follows that in the circumstances; I don't think Mr C took reasonable care not to make a misrepresentation.

I've gone on to review the evidence Calpe provided to show what it would've done if there hadn't been a misrepresentation. And I'm satisfied, based on what I've seen, that Calpe wouldn't have insured the ND on the policy at renewal. So, I consider it reasonable to say there's been a qualifying misrepresentation under CIDRA.

The remedy available to Calpe depends on whether the qualifying misrepresentation was deliberate, reckless or careless. Calpe says it deemed the misrepresentation as reckless. And under CIDRA, a reckless qualifying misrepresentation means Calpe is entitled to avoid the policy, refuse any claims and retain the premiums. CIDRA says that it is for the insurer to show that a qualifying misrepresentation is deliberate or reckless.

Calpe says the misrepresentation was reckless, as Mr C provided an answer without knowing if the answer was correct or not, and he didn't ask the ND or check the ND's driving licence. Having reviewed the evidence, I'm not satisfied Calpe has shown the qualifying misrepresentation was reckless, in that Mr C didn't care whether the answer he gave was true or not. I say this because having reviewed Mr C's submissions, including the statements from the ND, I'm persuaded Mr C was led to believe by the ND, that the ND didn't have a motoring conviction. And this seemed to be based on a misunderstanding that a motoring conviction required the confirmation of points on the relevant driving licence. Overall, I'm persuaded Mr C had a belief in what he disclosed, and given the evidence of discussions with the ND, had at least given it some thought. And while I accept he didn't take reasonable care not to make a misrepresentation, I don't think it would be reasonable to class the misrepresentation as reckless. In the circumstances, and for the reasons outlined above, I think it's fair to treat the misrepresentation as careless.

The remedy available to Calpe under CIDRA for a qualifying careless misrepresentation is that it can avoid the policy where it wouldn't have offered cover at all. But Calpe hasn't provided any evidence to show it wouldn't have provided cover to Mr C, if the ND had been removed from cover.

The Financial Ombudsman Service's approach in situations like this is that, where a qualifying misrepresentation was deliberate or reckless, we're likely to say it's fair for the insurer to avoid the policy. But where the misrepresentation was careless, we often don't think this is fair. And I don't think it's fair in the circumstances of this complaint. Because I'm satisfied Calpe would likely have still insured Mr C (without insuring the ND), I think it should amend the policy it avoided by removing the ND from cover.

Given that the claim was following the theft of the car while it was outside Mr C's home, I think Calpe should reconsider that claim in line with the remaining terms of the policy, without avoiding or cancelling the policy for the failure to disclose the motoring convictions. In doing so, if Calpe does pay a claim, it will be entitled to pay any claim on a proportionate basis, if removing the ND from the policy would have resulted in an increased premium. But because Calpe's decision to avoid the policy would've unfairly deprived Mr C of any payment under the claim, I think it should add interest to any settlement. And I agree with the Investigator it's fair for Calpe to pay this from 22 February 2022, this being around four weeks from when Mr C's vehicle was stolen.

I also agree with the Investigator that Calpe's actions would've caused Mr C distress and inconvenience. And taking all the above into account, I agree that compensation of £300 is fair and reasonable in the circumstances. So this is what I will direct Calpe to pay.

My final decision

My final decision is that I uphold this complaint. Subject to my comments above, I require Calpe Insurance Company Limited to:

- Remove any internal or external records of it having avoided or cancelled the policy.
- Reconsider Mr C's claim in line with the remaining policy terms, without relying on the failure to disclose the motoring convictions.
- On any amount Calpe pays Mr C, following the above, it should add interest on this amount at the rate of 8% simple per year, from 22 February 2022, to the date of settlement.
- Pay Mr C £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 August 2025.

Monjur Alam
Ombudsman