

complaint

Ms S complains that Calpe Insurance Company Limited settled another driver's claim on her motor insurance policy and then cancelled her policy and asked for the rest of the premium to be paid.

background

Another driver claimed that Ms S had hit his parked and unattended car. An independent witness saw the incident and noted Ms S's car registration and CTV footage showed a similar car to Ms S's at the scene. So Calpe settled the other driver's claim. It said Ms S hadn't co-operated with the investigation so it cancelled her policy, requested payment of the full premium and said Ms S would have to pay the other driver's claim outlay.

Our adjudicator recommended that the complaint should be upheld in part. He thought Calpe had no option but to accept liability and settle the other driver's claim. But he thought Calpe had unfairly cancelled the policy. This was because he thought Ms S not sending in required documentation hadn't prejudiced Calpe. He thought it didn't take into account Ms S's personal circumstances and she did contact it before the required date to assist the investigation.

The adjudicator thought Calpe should remove records of the cancellation, waive any outstanding premiums and interest, pay the claim costs over the policy excess and pay Ms S £200 compensation for the distress caused her.

Calpe replied that it was entitled by the policy terms to cancel the policy as Ms S hadn't provided the required documentation to confirm indemnity. It thought it was reasonable to cancel the policy as Ms S may not have the correct indemnity documents and have another claim. It said it couldn't see why it should pay compensation.

my findings

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

Ms S was unhappy that Calpe accepted liability for the claim. The adjudicator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy?

Calpe is entitled under the terms and conditions of its policy with Ms S to take over, defend, or settle a claim as it sees fit. Ms S has to follow its advice in connection with the settlement of a claim, whether she agrees with the outcome or not. This is a common term in motor insurance policies and I don't find it unusual.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence before making its decision on liability.

Ms S denied all knowledge of the incident. She said she wasn't at the incident location at the time, though she lives 15 minutes away. She said the assessor had agreed there was no damage to her car. I've seen this report and it says that there was no damage on Ms S's car comparable to the areas of damage on the damaged car. But it also said that there was damage to the other car but its comparison was inconclusive.

But Calpe had to consider that an independent witness, who was prepared to attend court, saw the incident and recorded her car's number plate. The witness described the car's driver as male. There was also CCTV footage of a car of the same make, model and appearance as Ms S's at the scene. So Calpe thought it had no evidence to defend Ms S's position. And so it thought it had no option but to accept liability and deal with the other driver's claim.

I think Calpe was entitled to do this by the policy terms and conditions. I think it reasonably investigated the claim and considered the evidence available before making its decision. So I can't say it did anything wrong in this.

Calpe said Ms S hadn't complied with the policy terms by providing a completed accident report form or the required documentation to confirm indemnity. So it cancelled the policy, required payment of the full premium and held Ms S liable for the outlay to settle the other driver's claim.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably. Calpe has quoted the relevant policy term. This says that it can cancel a policy if the consumer doesn't send required document and this "significantly hinders our ability to process a claim or our ability to defend the underwriters' interests"

Calpe decided that it had no choice but to settle the other driver's claim because of the strength of the evidence. So I can't say that Ms S not providing an accident report or the required documents caused Calpe any prejudice as it had decided it must accept liability in any case.

Furthermore, Ms S had made it clear to Calpe whilst it was pursuing her for this information that her child was seriously ill in hospital. I can see that she did call Calpe and she provided what information she could about the event, i.e. that she wasn't there at the time and details of her partner. So I don't think it was fair or reasonable for Calpe to apply this policy term and cancel Ms S's policy.

Calpe later said that it cancelled the policy because it couldn't confirm indemnity without the required documents. But this wasn't the reason it provided to Ms S at the time. So I don't think it's fair for it to rely on it now.

I think that, as Calpe unfairly cancelled Ms S's policy, it should remove record of the cancellation from any databases. Ms S said she hasn't taken out cover elsewhere. So I agree with the adjudicator that Calpe should waive the outstanding premium and any charges applied for non-payment.

I think Ms S should pay her policy excess, as that's the first part of a claim to be paid. But I think Calpe shouldn't pursue her for the outlay it paid above this amount as the policy was cancelled unfairly.

From what I can see, Ms S made Calpe aware of her own health concerns only in her complaint to it. But I think Calpe should have taken into consideration what Ms S had told it about her ill child and acted accordingly. I think its actions have caused Ms S avoidable stress at a difficult time. So I agree with the adjudicator that it should pay Ms S compensation for the distress and inconvenience caused her. I think £200 is fair and reasonable as it's what I'd award in similar circumstances.

my final decision

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

1. Remove record of the cancellation from internal and external databases.
2. Waive the remaining policy premiums and any charges applied for non-payment.
3. Pay any claim costs over and above the £1,500 policy excess.
4. Pay Ms S £200 compensation for the distress and inconvenience caused her by its actions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 18 March 2019.

Phillip Berechree
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