

complaint

Mr A complains that Calpe Insurance Company Limited cancelled his motor insurance policy from the start (voided it) and charged him for another driver's costs following a collision.

background

Mr A was involved in an accident with another driver. He made a claim, but Calpe then found that he wasn't the car's owner and registered keeper. It thought this was a deliberate misrepresentation. So it voided Mr A's policy, retained his premiums and charged Mr A for its outlay for the other driver's costs.

Our adjudicator recommended that the complaint should be upheld in part. He thought Calpe's decision to void the policy was fair and reasonable as Mr A wasn't the car's registered keeper at the time of the collision. Mr A wasn't named on the V5 registration document, he couldn't produce any evidence that he'd bought the car and he hadn't updated the DVLA that he was the car's keeper. He thought Calpe could void the policy as it had been provided through incorrect information.

The adjudicator thought Calpe had fairly decided to hold Mr A liable for the collision. He thought Calpe had to deal with the other driver's claim and he saw evidence of how this was calculated. So he thought it was fair for Calpe to recover these costs from Mr A.

But the adjudicator thought Mr A's misrepresentation was careless rather than deliberate. And so he thought Calpe should refund Mr A's premiums and offset this against the charges it made for the other driver's costs.

Calpe agreed to do this. But Mr A thought Calpe's question about the car's registered keeper was unfair and he couldn't see that an incorrect answer meant it wouldn't then provide cover. He thought he'd been treated unfairly as he'd lost his car and now had a debt to pay.

my findings

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

I can understand that Mr A feels frustrated by Calpe's decision. He's been held liable for a collision when he thinks he wasn't at fault. Calpe has voided his policy because it said he provided incorrect information when he took it out. And he's lost his car and now has to repay Calpe for its outlay for the other driver's costs. I'll look at each of these points in turn.

Mr A said the accident wasn't his fault. 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 Mr A to take over, defend, or settle a claim as it sees fit. Mr A has to follow its advice in connection with the settlement of his claim, whether he 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 before making its decision.

I can see that Calpe arranged for an investigator to interview Mr A. It considered his drawings and photographs of the scene and his version of events. It couldn't obtain CCTV footage and there were no independent witnesses. Calpe considered the other driver's version of events and it compared this to the photographs and the damage caused. It concluded that the damage caused wasn't consistent with Mr A's account. So it thought a court would hold Mr A liable and it decided to settle the other driver's claim.

So I think Calpe reasonably investigated the claim and considered the evidence available. I think it reasonably decided to hold Mr A liable and to settle the other driver's claim as it's entitled to do under the policy terms and conditions. So I can't say it has acted unfairly.

Calpe said Mr A gave incorrect information about the car's owner and registered keeper when he took out the policy. Where a complaint arises from misrepresentation of information important to an insurer, we take into account the relevant legislation. We look to see that it asked a clear question when the policy was taken out. We check that the information given would affect whether a policy was offered. And we check whether the informant has acted carelessly or deliberately in making the misrepresentation.

Mr A took out his policy through an online comparison site. I've seen the question he was asked about the car's registered keeper and legal owner and I think it's clear. There's an advice box that tells the consumer to check the log book if there's any doubt. I can see that Mr A said he was the car's registered keeper and legal owner on the online application and this was also on his policy schedule.

I've seen the car's V5 registration document and Mr A wasn't the car's registered keeper when he took out the policy. Mr A said he'd bought the car from a relative but wasn't able to provide evidence to show this. He said he'd tried to update the V5 with the DVLA, but hadn't had time to finish this. There was six weeks between Mr A taking out the cover and the accident during which time he could have updated the V5. So I think Mr A was careless rather than deliberate in making this misrepresentation.

Calpe said it would only provide cover for the car's registered keeper and legal owner as this would be the person who had an insurable interest in it. It said Mr A had provided incorrect information about this. I can see that the underwriters instructed the policy to be voided due to this. And I can see that the policy's terms and conditions entitle Calpe to void the policy if incorrect information is provided.

So I think a clear question was asked, but Mr A carelessly answered it incorrectly. I think Calpe wouldn't have offered cover if the question had been answered correctly. So, under the relevant legislation, I think Calpe was then entitled to void the policy and refund the premiums, as it's now agreed to do.

Calpe had to deal with the other driver's claims for repairs, personal injuries and costs. It incurred these costs because it had a duty under the relevant legislation as it was recorded as the insurer at the time. The policy was voided, so Mr A wasn't indemnified by Calpe. So I think Calpe was entitled to recover its outlay from Mr A.

Calpe included its investigation costs in its charges against Mr A. Our approach is that we don't think it's fair for insurers to try to recover their own investigation costs from consumers when a policy has been voided. And so I asked Calpe to waive the £297 cost of this item from its charges. Calpe agreed to do this.

Mr A was also unhappy that Calpe wanted to charge him £1,000 for storage of his car. He said he couldn't pay this and so allowed Calpe to salvage his car. He thought this was unfair. But I can't see that Mr A's raised this with Calpe directly, so I can't comment on this point. Our adjudicator has already suggested that Mr A should complain to Calpe about this first and if he's unhappy with its response, he can then bring his complaint to us.

Mr A also said that premium payments were still being taken from his bank account. Calpe said that it doesn't take premiums directly from policyholders. So I think Mr A should check with his bank which business is taking the direct debits.

my final decision

My final decision is that I uphold this complaint in part. I require Calpe Insurance Company Limited to refund Mr A's policy premiums and offset this against the costs it's charging him for its outlay, less the costs of its investigations, as it's already agreed to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 March 2020.

Phillip Berechree
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