

complaint

Mr L & Miss O complained they have been treated unfairly by Calpe Insurance Company Limited (Calpe), as it wants them to pay a motor policy excess for a disputed accident claim.

References to Calpe include its agents.

background

Calpe provides motor insurance to Miss O & Mr L. Their policy features a £3,000 excess.

Miss O was contacted by Calpe in December 2017. It'd been approached by a third party insurer that says a witness saw an accident involving a car with Miss O's registration number. A man was driving it. Further, there's CCTV footage showing the accident too.

Miss O says she was away at the time of the accident and her car was with her; it isn't damaged and the accident is nothing to do with her. Regardless, Calpe asked her to complete some claim forms and it arranged to inspect her car.

In the absence of the claim forms, Calpe wrote and emailed Miss O to try and get her side of the story. But she didn't reply so it went ahead and settled the claim on the best terms it could. It asked Miss O to pay the £3,000 excess. And it cancelled Miss O's insurance when she didn't pay the amount due in the time allowed. Calpe says the policy allows it to do this.

Meanwhile, an engineer examined the car, for Calpe, in late January 2018. He found repairs consistent with the reported accident. Miss O says they relate to a much earlier accident her insurers knew about, as she declared it when the policy was proposed.

Miss O thinks it's unfair she has to pay the excess. She maintains she wasn't involved in an accident. And when she took out the policy she says she was told she'd always get the excess back. And she didn't think she'd been given enough time to reply as she was away (and didn't receive the letters or emails). She referred the complaint to this service.

Our investigator didn't uphold the complaint. He found the policy allowed Calpe to settle the claim in these circumstances. Further, it was allowed to cancel Miss O's policy.

He accepted she was involved in an earlier accident but thought Calpe's conclusion about the current claim was reasonable. He found the CCTV alone was inconclusive but in combination with the witness statement it was persuasive.

In his opinion, Calpe gave her enough time to return the forms. And it was likely she'd had access to emails even if she didn't receive the letters. He noted a broker sold the policy so that means it is responsible for the information given at the point of sale. In conclusion, he didn't think Calpe had acted unfairly as Calpe had considered the available evidence and had acted in line with the policy terms and conditions. As Miss O disagreed, she asked for an ombudsman's decision.

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 am not upholding this complaint. Let me explain why:

As noted by the investigator previously, Miss O bought the policy from an insurance broker; this means any concerns around misrepresentation need to be addressed by the broker rather than Calpe. For the purposes of my decision, I am considering how Calpe, as the insurance underwriters, dealt with this claim under the policy it provided to Miss O.

The policy schedule makes it clear there's a £3,000 all sections excess applicable to all drivers covered on Miss O's insurance; Mr L was added to it as a named driver before the date of the accident. I've summarised the significant terms and conditions from the policy below:

- The underwriters will pay all sums policyholders are legally responsible for in respect of damage to anyone else's property.
- Calpe can conduct the defence or admit negligence for any incident or claim.
- The underwriters are entitled to recover up to the excess amount from the policyholder, if they are deemed liable for it.
- It is imperative policyholders cooperate fully in settling any claim to allow every opportunity to reduce the claim's cost.
- Calpe will write to the policy holder and request repayment of any excess amount it has paid. If payment is not made within 14 days, Calpe reserves the right to immediately invoke the cancellation clause in the policy. The policy will be cancelled seven days later.

As the actual wording of the terms and conditions are clear and explicit it is reasonable for Calpe to rely upon them when dealing with this claim.

The root of this complaint lies with the accident. Calpe say Miss O is responsible as a witness took her car's number plate when they saw her car crash into a parked car. And, there is CCTV evidence that supports this. Further, the engineer's report says Miss O's car has had repairs to an area that Calpe considered was likely to have been damaged in the reported collision.

Miss O says her car wasn't involved. She was away from the area when the accident happened; her car was with her. Unfortunately, her position isn't supported by other evidence to show her car couldn't have been involved in the accident; although I note Miss O says the repairs seen by the engineer were due to a different accident some months before and she's sent an invoice (for those repairs) and some photographs to support this.

Having considered the evidence, I don't think the CCTV evidence would be sufficient on its own to say Miss O's car was involved in the collision. But in combination with an eyewitness report that linked her registration number to the accident, I think Calpe was reasonable to conclude Miss O's car was most probably involved.

I don't think there's any dispute that Miss O's car was involved in an earlier accident. But this doesn't prove it wasn't involved in the more recent collision this complaint relates to. Flowing from this is Calpe's requirement for Miss O to pay the policy excess and the cancellation of her policy, as she hadn't paid.

Once Calpe knew about the claim it contacted Miss O within a few days. When she called back, having received Calpe's email, it asked her to complete a claim form and return it. I've seen no evidence to say she did. Nor has she said she sent it back.

Over the course of the next few weeks Calpe wrote and emailed Miss O. It asked her to complete the forms and updated her about the claim. Miss O says she never received the letters because she was away from home for around a month. Similarly she wasn't checking her email account, as she wasn't at work so she had no need to. The engineer contacted Miss O by 'phone. After some failed attempts, he was able to talk to her and arranged to see the car. Around a month had lapsed between the collision and the car being seen.

On balance I think Calpe made reasonable attempts to engage with Miss O, so it could understand her side of the story. It knew from the initial phone call that she was disputing involvement in the accident but the weight of evidence it held made Calpe believe it couldn't defend the third party insurer's claim. So it settled the claim. I think it was entitled to do this under the terms and conditions of the policy and it was reasonable to do so without Miss O's input as she wasn't replying.

Having reflected on the evidence, I haven't seen anything to suggest Miss O sent Calpe a persuasive argument (about why it was wrong to settle the claim) once she was back in touch. This would mean that, even if Calpe had waited for her reply, it is more likely than not that it would still feel unable to defend the claim from the third party. So I think it was reasonable for Calpe to settle the matter quickly, to secure the best possible terms, because Miss O hasn't been disadvantaged by this.

It flows from the settlement of the claim that Calpe wants to recover the excess amount it had paid on Miss O's behalf. It wrote and asked her to pay the excess. I believe this is a reasonable thing to do in the circumstances; namely there is a valid claim from a third party insurer that I think Calpe was obliged to settle. And the policy says it's entitled to recover the excess from the policy holder, Miss O.

When the amount claimed from Miss O wasn't paid in 14 days, Calpe wrote to say it was cancelling her insurance in accordance with the terms and conditions of the policy. And seven days later it did. The consequences are described in Miss O's policy documents. Again, I think this is a reasonable thing to do in this case. Miss O hadn't complied with the policy requirement to repay the money.

So, in conclusion I'm not upholding this complaint for the reasons set out above. This means I don't require Calpe to do anything further.

my final decision

I am not upholding this complaint so I don't require Calpe Insurance Company Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss O to accept or reject my decision before 29 September 2018.

Richard Houlbrook

ombudsman