

complaint

Mr K complains Calpe Insurance Company Limited is unfairly asking him to pay the full cost of a third party claim on his motor insurance

background

In 2016 Mr K was involved in a road traffic accident when his car collided with the rear of a third party's car. When Calpe contacted Mr K, he accepted responsibility for what happened. Under the policy terms, Mr K was required to pay the first £3,000 of any claim (the excess), which he agreed to do. An engineer then came to Mr K's home to inspect the car and compiled a report. Mr K said he didn't hear anything more from Calpe after that

Mr K later found out his policy had been cancelled when he was contacted by a broker. Calpe wrote to him in 2017 asking him to pay the full cost of the third party claim (£6,648.78), which he doesn't think is fair. He wants Calpe to consider him as covered under the policy and allow him to pay the £3,000 excess only.

Calpe said it wrote to Mr K at the time of the claim and asked him to complete and return an accident report form. It also asked him to send in a copy of his driver's licence, a valid MOT, a copy of his vehicle registration certificate and a copy of a repair estimate for his own car. But Mr K didn't send the information, in spite of its requests. Calpe said it finally sent a warning letter saying it would cancel his policy in seven days if he didn't co-operate. But Mr K still didn't respond, so it went ahead with the cancellation.

Calpe said Mr K's failure to co-operate meant it was unable to confirm indemnity under the policy, and may have prevented it from mitigating its costs when settling the claim. So, it said it's entitled to recover the full costs of the claim from Mr K, rather than just the excess.

Our investigator upheld the complaint. He didn't think Mr K should have to pay more than the £3,000 excess under the terms of the policy. He also didn't think the information Mr K had failed to send Calpe had impacted or hindered its ability to settle the third party claim, given Mr K was at fault for the accident, and he said Calpe could've got the information it needed to confirm indemnity by contacting third parties, like the DVLA (Driver and Vehicle Licensing Agency). So, he thought Calpe's decision to cancel the policy was unfair.

Calpe disagreed. It said it warned Mr K he was in breach of his policy terms - and that it may cancel the policy and recover the full cost of the settlement of any claim if he failed to cooperate. And it said it would be extremely difficult to verify his licence and vehicle details without Mr K giving the relevant authorities permission to share the information. Calpe says it couldn't confirm or grant indemnity without this information.

Mr K said the engineer inspected his car, made a report and took pictures. He also told the engineer to contact him if anything more was needed. But he heard nothing further from Calpe until 2017. He questioned what more was expected from him and feels he fully cooperated. He therefore believes Calpe cancelled his cover without notice, in spite of him adhering to all the terms.

The complaint was then referred to me for a decision.

my provisional decision

I issued a provisional decision about this complaint, setting out the reasons why I intended to uphold it in part. I explained why I didn't think Mr K should have to pay Calpe more than the £3,000 excess, but that I thought the cancellation of Mr K's policy was fair overall.

Mr K agreed with my provisional findings, but Calpe didn't respond. In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I intend to uphold Mr K's complaint in part.

Was it fair for Calpe to cancel Mr K's insurance policy?

Calpe said it cancelled Mr K's cover due to his lack of co-operation when he failed to provide the information it requested to handle the third party claim. The issues I need to decide here are whether Calpe acted reasonably and in line with the terms of the policy in doing so – and whether it gave Mr K the required notice of the cancellation.

Looking at the terms of Mr K's policy, Calpe is entitled to cancel the cover at any time by giving seven days' notice if there is an exceptional or valid reason for doing so, which includes:

"Where You are required in accordance with the Terms of this Policy Booklet to co-operate with Us, or send Us information or documentation and You fail to do so in a way that significantly hinders Our ability to process a claim, or Our ability to defend The Underwriters interest"

And, under the 'Due Observance' condition of Mr K's policy, he was required to give Calpe all the information and help it needed to process a claim. I appreciate Mr K co-operated by allowing an engineer to inspect the car. But he was also obliged to give Calpe the documentation it asked for as part of its claims process.

Mr K said he was fully prepared to co-operate further with Calpe and that he didn't receive any communication about the cancellation. But Calpe provided copies of the letters it sent Mr K. The first letter was dated the same day Calpe spoke to Mr K about the accident, in May 2016. The letter is addressed correctly, to the same address as the letter Mr K successfully received in 2017. Calpe's system notes also say it posted the letter and emailed it. So, I think it's most likely Calpe sent it and that Mr K received it

In this letter, Calpe asked Mr K to provide the information within seven days, and gave the following warning: "Should we fail to hear from you within the above timeframe, we will instruct your broker to issue a 7 day cancellation notice on your policy."

When Calpe contacted to arrange the inspection of his car, its system notes say Mr K also confirmed he would send the accident report form back the next day. So I think it's likely he knew he had to at least return this form.

Calpe provided a copy of the final letter it sent Mr K in June 2016, saying he was in breach of his policy terms because he hadn't returned the requested information, and that it would cancel the policy if it didn't hear from him within a further seven days. Again, this letter was addressed correctly and, from looking at Calpe's system notes, I think it's more likely than not that Mr K received it.

A week later, Calpe's notes say it tried to contact Mr K a final time to chase the requested documentation and left a voicemail asking him to call back. But it never heard back from him, so it cancelled the policy. I accept that Calpe made this call as it says. So it looks like Mr K missed the voicemail for some reason, but that's not Calpe's fault.

Weighing everything up, I think Mr K failed to fully co-operate with Calpe during the handling of the claim, as he was obliged to do. And I'm satisfied Calpe gave him sufficient notice of the cancellation, in line with the policy terms. I appreciate Mr K was going through some difficult personal issues at the time. But he was required to return the information under the terms of his policy and Calpe was entitled to cancel it when he didn't respond. So I don't think Calpe acted incorrectly or unfairly when cancelling Mr K's policy.

Should Calpe seek to recover the full costs of the third party claim from Mr K?

In the letter Calpe sent Mr K in 2017 asking him to pay the full costs of the claim, it said it settled the claim under the Road Traffic Act due to Mr K's failure to adhere to the policy terms and conditions. Calpe later said it's entitled to recover the full costs from Mr K in these circumstances, under the following term about 'Recovery':

"If the Underwriters are required to pay a claim under the Road Traffic Law or the law of any country in which the policy operates the Underwriters reserve their right to recover from You and/or the person who incurred the liability any amount paid out which the Underwriters would not have been liable to pay had the law not existed."

Calpe says this term shows there are certain situations in which a policyholder can be liable for the full costs, rather than just the policy excess. However, in this case, Mr K's policy was cancelled - not voided (if 'voided', the policy would be cancelled from the start, as if it never existed). And a legitimate third party claim was made while the policy was still in force - before the contract was terminated. Therefore, the underlying issue I need to decide here is whether it's fair for Calpe to refuse to settle the third party claim under the contract of insurance in spite of this.

While I'm satisfied Mr K breached the policy conditions by not returning the requested information, it doesn't automatically follow that it's fair for Calpe to refuse to cover the claim under the terms of the policy.

ICOBS 8.1.2R states: "a rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is: (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach..."

Here, the breach is clearly not connected to the circumstances of the accident. And I'm not satisfied Mr K's failure to send Calpe the requested information impacted or otherwise affected its ability to fully consider and settle the third party claim. So I don't think Calpe has been unduly prejudiced by Mr K's breach of the policy conditions, or that it's suffered a loss as a result I'll explain why.

Mr K accepted he was at fault for the accident from the outset Calpe's appointed engineer also inspected the car at Mr K's home address and compiled a report, which confirmed the details of the car, that there were no modifications, the pre-accident condition and value, the mileage, a MIAFTR check, the presumed roadworthiness of the vehicle and the details of the damage. So I don't think it was fair for Calpe to say it didn't receive any co-operation from Mr K at all. And I'm not persuaded Calpe's decision to settle the claim would've been any different if Mr K had fully co-operated with them.

In fact, Calpe submitted the response to the third party claim in June 2016 before the policy was cancelled. In this response form, it said it was settling the claim as the insurer in contract and it admitted liability for the accident. And while Calpe says it was unable to confirm indemnity without Mr K's documentation, it's not provided any evidence to show why cover shouldn't be provided under the contract of insurance, which remains valid up to the point of cancellation.

Calpe said Mr K's lack of co-operation may have prevented it from mitigating the costs of the claim. But based on its response to the third party insurer and the circumstances of the claim, I'm not persuaded it did. So I don't think this justifies their trying to recover the full claim costs from Mr K either.

Overall, I'm not satisfied Mr K's breach of the policy conditions is connected to the circumstances of the claim - or that it otherwise prejudiced Calpe's ability to settle it. So I don't think it's fair for Calpe to refuse cover or treat the claim as being settled under road traffic law, instead of the insurance contract I therefore think Calpe should cover the third party claim and limit Mr K's liability to the £3,000 excess, in line with the policy terms.

Given I don't think it was fair for Calpe to ask Mr K to pay the full costs of the claim, I'm also persuaded it would've been distressing for him to receive the demand to pay over double the amount he was expecting. In recognition of this, I think Calpe should also pay Mr K £200 compensation."

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from my provisional findings.

This means I've decided to uphold Mr K's complaint in part for the same reasons I set out in my provisional decision.

my final decision

For the reasons explained above and in my provisional findings, I uphold Mr K's complaint and direct Calpe Insurance Company Limited to:

- reduce the amount Mr K owes in relation to the claim to £3,000 (the policy excess); and
- pay Mr K £200 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 December 2017.

Joanna Brown
ombudsman