

## **complaint**

Miss H is unhappy Calpe Insurance Company Limited has recorded a claim on her motor insurance policy as being her 'fault'. She's also unhappy Calpe is pursuing her for the full cost of the claim as it said she didn't cooperate with it.

## **background**

The terms and conditions of Miss H's policy says she has an excess of up to £3,000 if a claim's made against her and she's at fault for the incident.

Calpe informed Miss H that another driver had made a claim against her following a car accident in May 2016. Miss H said she hadn't been involved and was at home with her partner, a named driver on her policy.

Calpe conducted an investigation into the matter. This included an engineer inspecting Miss H's car, arranging for an investigator to interview Miss H and her partner, and obtaining information from third party sources. The engineer said Miss H's car had sustained no new damage that could be attributed to the accident. And the investigator found Miss H and her partner to be credible witnesses.

Calpe initially settled the claim and recorded it as being Miss H's fault. It based this decision on an independent witness statement which said a car matching the description of Miss H's was to blame for the accident. The other driver's insurer also said it had received confirmation of Miss H's registration from the local police who had looked at CCTV.

Miss H disagreed with this decision. Calpe asked her to provide further information in order to help it settle the complaint. Miss H didn't initially provide the information, and Calpe settled the claim as it didn't think it would be able to prove Miss H wasn't to blame. In July 2016, Calpe also cancelled Miss H's policy due to non-cooperation.

Calpe has now passed Miss H's debt to a collector who is pursuing her for approximately £17,000. This is the cost of the full settlement of the claim.

Miss H bought her complaint to us. Our investigator didn't think Calpe had done enough to show Miss H was responsible for the accident. He also didn't think it was fair for Calpe to say Miss H hadn't cooperated as she'd met with the investigator.

Our investigator said Calpe should get the CCTV or police report. He said if that showed it was likely Miss H was responsible for the accident Calpe should reduce the amount Miss H owed to £3,000. He said if Calpe didn't get this information - or if the evidence showed Miss H wasn't at fault - Calpe should waive the amount she owed and amend her credit file to show she didn't owe any money. He also thought Calpe should pay Miss H £400 to compensate for her distress and inconvenience.

Calpe has maintained that it didn't need to get the police report or CCTV footage, as it was able to defend its decision based on the information from the third party insurer and an independent witness. So, the complaint's been passed to me for a 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. Having done so, I'm going to uphold it.

I've considered the type of policy Miss H has with Calpe. It's an all sections excess policy which carries a minimum excess of £3,000 for any claim recorded against her. The policy does also allow for Calpe to take over the defence or settlement of any claim. However as it is an all sections excess policy, to me this places a requirement on Calpe to ensure it is providing a sufficient level of investigation to its customer before settling a claim. In this instance, I'm not satisfied Calpe's investigation was sufficient to allow it to record the claim against Miss H.

I say this because there's sufficient evidence from the file which demonstrates that the police report or CCTV footage would've been helpful to make a fair and reasonable decision on this claim. Miss H has maintained throughout that she was not involved in the accident. And I note that Calpe's investigator found her (and her partner) to be credible witnesses.

The subsequent inspection of Miss H's car shows that there were no recent repairs or damage consistent with the accident. Considering this evidence, I think it's reasonable to suggest Calpe should've asked for further information from the other driver's insurer, police or the CCTV footage, which would've helped defend Miss H or at least justify Calpe's decision to settle the claim.

But, Calpe hasn't done this. Our service has asked Calpe to get this information, and it has declined to do so. So, in the absence of sufficient evidence, I don't think the investigation that's been conducted so far is reasonable enough to demonstrate Miss H was involved in an accident. And as such I think the fair and reasonable outcome would be for Calpe to remove the claim from Miss H's record and waive the amount she owes. As Calpe has passed this debt on to a debt collection agency Calpe will need to settle the debt on Miss H's behalf. That will include any interest the amount has accrued since being passed on.

I note Calpe has also cancelled Miss H's policy for not co-operating. Calpe has effectively cancelled the policy from point of inception. I'm not persuaded that it is reasonable for it to do this as I think she cooperated with the investigator. Miss H now has a new policy. As I don't think Calpe should have cancelled the policy as though it never existed, I think it should record the policy as being cancelled by Miss H.

If Calpe has charged Miss H a premium it should also refund that on a pro rata basis from the date of cancellation. Due to the time Miss H has been without that money it should add interest to that amount at a rate of 8% from the date it cancelled her policy to the date it makes payment.

In addition to that, I'm not satisfied that the lack of cooperation from Miss H prejudiced Calpe's position in trying to defend or settle this claim. As I've mentioned above Calpe settled Miss H's claim on the basis of the independent witness report amongst other information. I've not seen any evidence which suggests to me that the information it has asked for from Miss H would've changed Calpe's decision on this matter. And in any event, for the reasons I've explained above, I don't think Calpe has done enough to even record a claim against her. So it follows, I'm not satisfied Calpe can seek to recover its costs from Miss H.

### **my final decision**

My final decision is that I uphold this complaint.

I require Calpe Insurance Company Limited to:

- clear off Miss H's existing debt – it can do this directly with the company who now owns the debt or it can pay Miss H the necessary amount to clear it;
- remove any record of the claim against Miss H on any internal and external database; *and*
- if it has taken Miss H's premiums then it needs to refund this on a pro-rata basis plus 8% interest from the date it took the money from Miss H until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 27 December 2017.

Tom Whittington  
**ombudsman**