

complaint

Mr D is unhappy that Calpe insurance Company Limited (“Calpe”) has voided his policy due to an alleged misrepresentation.

background

In August 2016, Mr D was involved in a car accident involving a third party. Mr D made a claim on a motor insurance policy he held with Calpe. The third party also made a claim on their insurance policy.

In September 2016, Calpe instructed a motor engineer to inspect Mr D’s vehicle and in the engineer’s initial view the car was beyond economic repair even though the pre-accident market valuation was £42,000. Mr D disagreed with the estimate, arguing it should be higher. This led to the engineer increasing the valuation to £49,000. Calpe made a settlement offer on that basis.

But, following an internal review of the file in October 2016, Calpe decided to withdraw the offer and void the policy retrospectively. It alleged that Mr D had provided misleading information at proposal in relation to the value of his vehicle which had resulted in a lower premium being applied to his policy. He forwarded a copy of the purchase receipt for the vehicle as part of the claim, which showed a purchase price of £46,000. But he’d told his broker during the *sale* of the policy that he’d paid £28,000 for the vehicle. And so Calpe decided not to entertain the claim as, in its view, there was no insurance cover in place due to the voidance.

Calpe relied on its insurance policy terms and conditions — and on the common law — which state that an insurer may immediately avoid a policy where a policyholder has misled it in order to obtain insurance on more favourable terms or to reduce the premium payable.

One of our investigators looked into this case. And she took the view that Mr D wasn’t asked clear enough questions about the value of the car at the time the policy was sold. She concluded that the policy shouldn’t be voided and that Calpe should assess the claim accordingly.

Calpe didn’t agree with this view. It maintains that Mr D deliberately provided misleading information. And so it argues that it’s entitled to void the policy.

Calpe has asked for an ombudsman to review the case. And so it has come 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.

The Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”) effectively codifies in law the equitable approach that this service has long taken to cases of non-disclosure or misrepresentation. In short, it is the consumer’s duty to take reasonable care not to make a misrepresentation when answering an insurer’s clear and specific questions about facts relevant to the proposed risk when they buy or renew an insurance policy. If the consumer *didn’t* take reasonable care and misrepresented something, and this adversely

affected the insurer's underwriting (a 'qualifying misrepresentation'), then the way the insurer can respond depends on whether the misrepresentation was careless or deliberate/reckless. If the consumer *did* take reasonable care then there's no *qualifying* misrepresentation, so the insurer can't take any action against the consumer at all.

So the starting point in this case is whether Mr D breached his duty to take reasonable care not to make a misrepresentation. The above legislation makes it clear that whether a consumer has breached that duty is to be determined in light of all the relevant circumstances. Those circumstances include how clear and specific the insurer's questions were.

In this case, I've listened to the call recording of the sale of the policy. Mr D was asked various questions about the car. Amongst these, he was asked two questions in very quick succession (effectively two questions in one):

What is the value of the vehicle? How much did you pay for the car?

Mr D hesitated and eventually answered:

Er the car I paid for, is er around £28,000

The sales representative then moved straight on to the car's specifications without any further clarifications.

Having listened to the way those questions were put, I'm not satisfied they were clear or specific enough. The value of something and its price are not necessarily one and the same thing. In this case, Mr D says he got confused and gave an answer as to how much finance had been paid towards the car. Bearing in mind the fact that the two questions were conflated and asked at speed, without any follow up or clarification, it's not difficult to see how Mr D may have ended up getting confused. I appreciate Calpe says that, in any event, the credit that went towards the car's purchase was £30,000. But I don't think Mr D's answer of "around £28,000" is a significant departure from the above figure such as to undermine his credibility on that issue.

Calpe also says that the insurance certificate and schedule sent to Mr D both cited the value of the vehicle as £28,000 and that he could've corrected the position at that stage. But the information recorded on those documents all stemmed from the original unclear questioning. And so I don't think it's fair to conclude that Mr D would've necessarily been alerted to any issue given his initial confusion during the phone-call.

And I've not seen or heard anything else from the recordings or other information to suggest that Mr D acted dishonestly such that he should automatically be regarded under CIDRA as someone who showed a lack of reasonable care in this case.

I also note from CIDRA that if an insurer was, or *ought to have been*, aware of any particular characteristics or circumstances of the actual consumer, those also need to be taken into account in deciding whether a breach occurred.

In this case, Calpe received information as to the car's registration number as well as other relevant specifications. It's highly likely that, as an established motor insurer, it would have easily been able to identify the probable value of the car from the above information using the resources and databases available to it. And so, notwithstanding the information that Mr D provided in the call about his assumed value/price, I'm satisfied that Calpe would've had constructive notice of what the car was worth by virtue of the other information that it had been given. In the circumstances, it's hard to see how its underwriting of the risk was affected by this sort of question and answer.

Taking everything into account, I'm not satisfied that Mr D was in breach of his duty to take reasonable care not to make a misrepresentation. It follows that there's no qualifying misrepresentation that entitled Calpe to void the policy as it did. I appreciate it has placed reliance on its policy terms – but those can't override the provisions of CIDRA (which in turn codify longstanding equitable principles laid down by the Association of British Insurers and this service and its predecessor scheme). For the reasons I've set out above, I don't think there's enough evidence to suggest that Mr D misled the insurer deliberately or at all.

I require Calpe to reinstate the policy and consider the claim in line with its remaining terms and conditions.

my final decision

For the reasons I've set out above, I uphold Mr D's complaint against Calpe Insurance Company Limited. My award is:

- Calpe must reinstate the policy and consider the claim in line with the rest of the policy terms and conditions; and
- If the claim is valid, it should add interest on any monies due at the simple rate of 8% a year from the date of loss to the date of payment (less any tax properly deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 June 2017.

Anthony Harrison
ombudsman