

complaint

Mr S complains about how Calpe Insurance Company Limited dealt with another driver's claim against his motor insurance policy. He also complains that it cancelled his policy.

background

In January 2017, Mr S took out a motor insurance policy. Calpe is the lead insurer in relation to that policy.

In March 2017, Mr S was involved in an accident whilst driving. I understand that Mr S was driving in the left hand lane and car one was in the right hand lane on a roundabout. Car one signalled and changed lanes, causing Mr S to take evasive action and collide with the passenger, rear side of car two, which was stationary and also to the right of Mr S's car.

The driver of car one didn't stop at the scene of the accident and car one didn't suffer any damage. Both Mr S's car and car two were damaged. The driver and passengers of car two suffered personal injury.

Mr S didn't claim against his policy for his losses. The driver and passengers of car two claimed against Mr S's policy. Calpe settled the claim on a "*without prejudice*" basis. It paid out almost £10,000.

Calpe asked Mr S to pay the excess of £3,000 due under his policy. As Mr S didn't pay the excess, Calpe cancelled his policy and passed the debt to a third party.

Mr S subsequently took out a new policy, also underwritten by Calpe. That policy was in force for around a month and was the subject of a separate complaint. Mr S says that he sold his car.

Mr S says that the accident wasn't his fault, so he shouldn't have to pay anything. He wants Calpe to remove reference the cancellation of his policy from its systems, pay him compensation for his distress and losses and waive all charges.

Our investigator initially said that Calpe hadn't treated Mr S fairly as it hadn't actively pursued a claim against the driver of car one, who may have caused the accident. She said if it had done that, it may have been able to recover some costs and Mr S may have been able to claim the excess due under his policy.

Our investigator also said that whilst Calpe is entitled to cancel Mr S's policy it wasn't fair to do so here. That was because he continued to pay his monthly premiums and it could have pursued him separately for the excess of £3,000.

The investigator said that Calpe should actively pursue a claim against car one, remove any adverse information they've reported about the cancellation of Mr S's policy, refund charges caused by cancellation and pay him compensation of £300.

Calpe didn't agree that it had treated Mr S unfairly. It said it had never successfully pursued another driver whose car wasn't directly involved in the impact. Calpe said that as Mr S's car collided with car two, it had to deal with the claim. It said that it was entitled to decide not to pursue a claim it knew would fail, as doing otherwise would increase the costs. Calpe said that there was no reasonable prospect of recovering its costs from any other party, so the excess under the policy is due.

Our investigator looked at the matter again. She remained of the view that Calpe hadn't acted fairly in that it failed to investigate car one and cancelled Mr S's policy unnecessarily. But she thought that, until the claim had been reviewed, it wasn't known whether or not Mr S owes the excess. The investigator thought that Calpe should pay Mr S compensation of £200 in relation to its delay in investigating the claim.

Calpe still disagreed with the investigator. It maintained that it had no reasonable possibility of defending the claim. Calpe said that it was open to Mr S to pursue the driver of car one, if he wished to do so. It said that it shouldn't be expected to incur unnecessary legal expenses in order to build a case that it believes to be unrealistic. Calpe said that it was right to cancel the policy, as Mr S didn't pay the excess.

As there was no agreement between the parties, the complaint was passed to me, an ombudsman, 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.

We don't decide which party is to blame for causing an accident; that is a matter for the courts. We do consider however whether an insurer, Calpe in this case, acted in line with its policy terms and whether it acted fairly and reasonably in coming to its decision on liability.

Mr S's policy terms and conditions include the following:

"The Underwriters can conduct the defence, admit negligence for any accident or claim on Your behalf. The Underwriters will also [...] settle any claim or part of the claim without reference to the Insured Person..."

So, Calpe is free to deal with the claim against Mr S's policy as it thinks fit, to include settling the third party's claim. It can decide to settle the third party's claim if it believes it would be unsuccessful in defending that claim in court or that it had no reasonable prospect of success in getting another party to take responsibility for the accident.

I've considered this matter carefully. Based on the available evidence, I don't think that Calpe acted unfairly or unreasonably in deciding to deal with the claims by the driver and passengers of car two. Mr S's car collided with car two, which was stationary. I understand Mr S doesn't dispute that. So, car two didn't do anything to cause the accident. In those particular circumstances, I agree with Calpe that the claim against Mr S by the driver and passengers of car two would have been difficult to defend. The driver and passengers of car two aren't obliged to redirect their claim to the driver of car one, especially as that car didn't collide with them.

Mr S's position is that Calpe should have pursued the driver of car one, who he says caused him to take evasive action and collide with car two. Calpe took the view that it wasn't cost effective to make further enquires and try to pursue the driver of car one. That was because, in its experience, it had never successfully pursued another driver whose car wasn't directly involved in the impact.

As I've said, I think Calpe was entitled to settle the claims of the driver and passengers of car two on a "*without prejudice*" basis. That means that it didn't accept that Mr S was at fault. But I don't think it treated Mr S fairly when it took no steps in relation to car one. I'll explain why.

Mr S gave Calpe the registration details of car one. Both Mr S and the driver of car two agreed that car one caused Mr S to take evasive action. In the circumstances, I think it would have been reasonable for Calpe to trace the driver of car one and write to her insurers. I don't think that it would have incurred significant extra costs in doing so. It could then take any necessary legal advice and decide whether it was likely to be successful in proceeding against the driver of car one. A successful claim against car one may mean that Calpe could recover its costs and Mr S may recover the excess he has to pay under his policy. To put matters right, Calpe should actively pursue a claim against car one. If Mr S isn't happy with the outcome of that, he can complain about that separately.

The excess due under Mr S's policy was £3,000. I'm satisfied that Mr S's policy schedule set out the excess. Also, his policy explained the excess in its definitions. Mr S is obliged to pay that to Calpe, even if the accident isn't his fault. Mr S's policy also provides that Calpe will cancel his policy if he owes the excess. But I don't think it acted fairly here in doing so.

Calpe hadn't carried out a reasonable investigation in that it hadn't taken any steps to trace car one. Even if Calpe had carried out a reasonable investigation, I don't think that cancelling Mr S's policy was fair. Mr S carried on paying his premium and was generally co-operative with Calpe. Cancellation of his policy has significant detrimental impact on Mr S. Calpe had other ways of recovering the excess, without cancelling Mr S's policy.

I think that Calpe should remove information about its cancellation of Mr S's policy from internal and external records and databases. It should also reverse charges made on cancellation.

Mr S has suffered distress and inconvenience as a result of Calpe not pursuing car one and later cancelling his policy. I agree with the investigator that fair compensation for that is £200.

It doesn't alter the outcome at this stage but I should say that it's not fair or appropriate for Calpe to include its investigation costs in its total claim costs. That's because its investigation costs are to be borne by Calpe, not Mr S.

my final decision

For the reasons I've set out above, my final decision is that I uphold Mr S's complaint. To put things right, I now require Calpe Insurance Company Limited to:

- Actively pursue a claim against car one.
- Remove information about the cancellation of Mr S's policy from any internal or external records or databases.
- Reverse any charges made on cancellation.
- Pay Mr S compensation of £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 April 2019.

Louise Povey
ombudsman