

## **complaint**

Mr D has complained that Calpe Insurance Company Limited unfairly cancelled his car insurance policy and looked to recover third party claim costs from him.

## **background**

Mr D bought a car insurance policy with Calpe. In March 2018 Calpe received a claim from a third party's representative (TPR). They said that on 17 March 2018 Mr D's car collided with the TP's car while being pursued by police and failed to stop at the scene.

On 23 March 2018 Calpe wrote to Mr D and asked him to provide an incident report form as well as other verification documents within seven days. It warned that if he failed to provide the documents, Calpe would instruct the broker to issue a seven day cancellation notice.

Mr D provided the verification documents in time but explained that he hadn't completed the incident report form as he said the incident didn't happen. He said he was concerned that his registration plates may have been cloned – or the incorrect registration details had been recorded by the third party.

Calpe instructed an engineer and an investigator to contact Mr D to arrange an inspection and to interview him. The engineer inspected Mr D's car on 1 May 2018 – six weeks after the incident took place. He said there were no signs of impact damage or repairs. He recommended Calpe obtain further information from the police to support the third party's account.

The investigator made three attempts to meet Mr D for an interview during April 2018. On 1 May 2018 an investigator met with Mr D. But they told Calpe Mr D only attended for half an hour and then left. They made a number of attempts to arrange to meet him again, but they said they weren't successful.

Calpe forwarded the engineer's report to the TPR to dispute liability on 11 May 2018.

However, the TPR said that as the inspection took place six weeks after the incident, it believed this gave more than enough time for Mr D to have had his car repaired. They then provided photos of a car with the same number plate, make and model as Mr D's car parked on a street near the incident location - showing heavy impact damage to the front nearside. They said these photos had been taken the day after the incident.

Calpe decided to settle the third party's claim. On 4 July 2018 it wrote to Mr D to tell him. It said the reason was because the TPR had provided photos of his car damaged at the scene of the accident. It therefore concluded that it would have no case to defend in a court of law – and said it would write to Mr D to request the excess sum of £3,000 from him upon settlement of the third party claim.

On 8 October 2018 Calpe wrote to Mr D and requested he pay the full claim costs which came to £18,534.28 within 14 days.

Mr D complained. But in November 2018 Calpe didn't uphold his complaint. It said Mr D didn't give a statement as he didn't allow enough time when he met with an investigator in April 2018. He'd agreed to meet again at a later date - but this didn't happen despite the investigator's attempts.

On 20 June 2018 Mr D sent images of a parking ticket (dated 25 April) linked to his car which was addressed to another person. On 26 June 2018 Mr D told Calpe he'd sold his car on 4 May 2018. Calpe asked Mr D to report any concerns he had that his car plates had been cloned to the police.

On 4 July 2018 Calpe said it wrote to Mr D to remind him of his excess and stated it had images of his damaged vehicle at the scene of the accident.

On 8 October Calpe settled the claim for £18,534.28 under the Road Traffic Act.

It quoted from its terms and conditions the following:

*'If we are obliged to settle any claims had it been for the provisions of the Road Traffic Acts in the United Kingdom or corresponding legislation elsewhere or by reason of our participation in the Motor Insurers Bureau arrangements we will require you or the person who made the claim repay all such monies to XS Direct'.*

Calpe said it didn't receive a police report to say that Mr D's car was cloned. And without this information or any evidence to support his version of events, Calpe settled the third party claim on a 'Without Prejudice' basis. Calpe said it acted in accordance with terms of the policy and dealt with the claim in a fair and reasonable manner. So it said Mr D correctly owed Calpe £18,534.28 as its excess request.

Mr D asked us to look at his complaint.

Our investigator thought Calpe hadn't done enough to properly investigate the claim. He could see that the engineer reported no evidence of damage or repairs to Mr D's car. He thought the photo of a car with the parking ticket penalty notice Mr D provided in June 2018 showed a different car to his. He thought this supported Mr D's view that his car plates may have been cloned.

Since the TPR had alleged there was a police chase involved, he expected Calpe to have requested a police report. And as photos had been provided allegedly showing Mr D's car near the scene, he thought it unusual that the police didn't proceed to recover the car – or at least carry out enquiries as to the identity of the car in question.

So the investigator didn't think there was sufficient evidence to show Calpe that Mr D's car was involved in the alleged incident. He didn't agree that Mr D had failed to co-operate with Calpe during its investigation. So he didn't think Calpe had fairly cancelled his policy.

The investigator recommended Calpe do the following:

- remove the claim that has been recorded against Mr D
- remove the record of cancellation if this has been recorded
- refund any cancellation charge applied and any time on risk which Mr D has lost out on due to the cancellation
- reinstate any no claims discount which Mr D held
- award £350 for the distress and inconvenience caused to Mr D.

Calpe didn't agree. It said Mr D caused delay in arranging to inspect his car. When the TPR disputed the engineer's findings in May 2018, Calpe wanted to inspect Mr D's car again to carry out a paint sample test - but by then Mr D said he'd sold his car and refused to tell it who to.

It said the photos of Mr D's car (taken the following day) show it wasn't causing an obstruction. So it's not unusual that the police didn't proceed to recover the car.

Calpe doesn't agree that the parking ticket shows a different car to Mr D's. And even if it did, this doesn't therefore mean that Mr D's car wasn't involved in the incident.

So Calpe wants an ombudsman to decide.

### **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 liability. This is the role of the courts. But we can look at whether an insurer has properly investigated a claim and reached its decision reasonably.

Calpe's policy says it has the option at their discretion to defend or represent Mr D in the event of a claim. This is a very common term which I've seen in most – if not all motor insurance policies. We don't disagree with this term in principle, provided the insurer can show it treated its customer fairly when applying it.

The third party's allegation was that Mr D's car collided with theirs while being pursued by police. I think it was reasonable for Calpe – when Mr D denied his involvement – to request further evidence from the TPR to support their claim.

On 11 May 2018 Calpe wrote to the TPR and said Mr D denied involvement. It asked the TPR to provide further evidence by way of a police report, witness statements or CCTV. It wrote:

*“If this vehicle had been chased by the Police, there would be records and charges made by the Police, I would suggest enquires made in this direction.”*

I think Mr D caused delay in arranging to be interviewed and have his car inspected. However, I don't think the delay has prejudiced the case – because the engineer reported that there was no evidence of damage or repairs. I can't criticise Mr D for deciding to sell his car after the inspection took place. He wasn't to know that Calpe would ask for a second more detailed inspection.

I don't think the photos provided by the TPR which they said were taken the following day – are enough to show causation and for Calpe to decide to settle the third party's claim. Given the circumstances of the incident as described, from my experience if a car is involved in a police pursuit – even if the police weren't involved in a collision, the police will write up a collision report. And if the TPR reported sight of Mr D's car to the police – as I would have expected – the following day when it was discovered – the police would have recovered the car, would have been able to quickly identify whether it had cloned plates, and investigate the identify of the driver and whether the car had been stolen. In any event, a report would be available to the TPR.

But I can't see that Calpe made any enquiries beyond the photos provided by the TPR. And given its own engineer's report along with Mr D's version of events, I don't think Calpe properly investigated the claim. I therefore can't conclude that its decision to settle the third party claim – based on what it had - was reached in a reasonable way.

I don't think Calpe acted reasonably in cancelling Mr D's policy. I can see that he provided the verification documents promptly to Calpe. He explained why he didn't complete the accident report form as he said he wasn't involved in the accident. When he did complete it for Calpe in May 2018, he answered 'N/A' to all of the questions about the accident.

I'm more persuaded by the delay I think Mr D caused in arranging to have his car inspected. It's possible that due to the time that passed his car was repaired. But as the engineer's report supports his account, I don't think overall that it's fair for Calpe to rely on any delay here to justify its decision to cancel Mr D's policy.

It's possible that Mr D's car was involved in the incident. That isn't for us to determine. As I said, we don't decide liability. But I think Calpe has failed to properly investigate the claim. It knew from the outset the alleged circumstances of the incident and so it was in a position to seek further evidence from the TPR in order to support their allegation – the allegation being that Mr D's car was involved in a criminal act. I don't think Calpe received sufficient evidence from the TPR to reach the decision it did reasonably.

So I agree with the investigator's recommendations to put things right and I uphold this complaint.

### **my final decision**

My final decision is that I uphold this complaint. I require Calpe Insurance Company Limited to do the following:

- remove the claim that has been recorded against Mr D
- remove the record of cancellation if this has been recorded
- refund any cancellation charge applied and any time on risk which Mr D has lost out on due to the cancellation
- reinstate any no claims discount which Mr D held
- pay Mr D £350 compensation for the distress and inconvenience caused
- provide a letter to Mr D confirming it's removed the recording of the cancellation of the policy and the claim.

Calpe Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If Calpe considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 January 2020.

Geraldine Newbold  
**ombudsman**