

The complaint

Mr S complains Calpe Insurance Company Limited (“Calpe”) unfairly avoided his motor insurance policy from inception (without a refund of premiums) and declined a claim.

Mr S is represented, but for ease of reading I will refer to their actions collectively as his. References to Calpe includes the actions of its agents.

What happened

I issued a 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.

Mr S had a motor insurance policy with Calpe. In October 2020 he was invited by an insurance broker to renew cover with Calpe for a further year. The invitation contained a statement of fact. Mr S was asked to check it was accurate and the consequences of not checking it were explained. I find the invitation was clear, fair and not misleading.

Mr S didn’t report any inaccuracies, so the policy took effect in November 2020. In October 2021 a claim was made against the policy. The crux of this complaint is that following the claim, Calpe considered Mr S had misrepresented some information and so avoided the policy from inception (without a refund of premiums) and declined the claim.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (“CIDRA”). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn’t made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Calpe has raised two main concerns: a named driver’s offences and the registered keeper of the car. I will address each in turn.

The statement of fact said a named driver (Mrs S’ wife) had two motoring offences:

- February 2016: SP30: 3 Points
- July 2017: CU80: 6 points

Calpe argue this wasn't accurate. It has said, and Mr S hadn't disputed, that his wife also had:

- October 2019: SP30: 3 points
- May 2021: SP30: 3 points
- In late 2021: TT99: a driving disqualification

The May 2021 SP30 and the TT99 were after policy inception, so I set those to one side. The October 2019 SP30 was before policy inception. By not correcting this with Calpe, Mr S provided inaccurate/incomplete information. Mr S says he didn't know about the driving offences, but he should have checked. By not doing so Mr S didn't take reasonable care.

The statement of fact said the registered owner and registered keeper of the car was Mr S. Calpe argue this wasn't accurate:

- Calpe says there have been four registered keepers: The selling dealership, Mr S, Mrs Y and Mrs K.
- Mr S says he bought the car in May 2020 and informally gifted it to his wife, Mrs S, with Mr S being responsible for insuring it, under an amicable separation agreement. He further says Mrs Y was made the registered keeper because she was well placed to look after the car and Mrs K was made the registered keeper following the accident.

The evidence for the registered owner and registered keeper of the car is incomplete and/or contradictory. I must therefore make my decision on the balance of probabilities – in other words, based on what I find more likely than not. Based on the evidence available to me, including Mr S' testimony, I find it more likely than not that:

- On 6 May 2020 Mr S bought the car and it was registered to him;
- On 29 September 2020 Mrs Y became the registered keeper; and
- On 28 October 2021 Mrs K became the registered keeper.

At policy inception, Mr S wasn't the registered keeper. By not correctly this with Calpe, Mr S provided inaccurate/incomplete information. He would have known this and so he didn't take reasonable care.

Calpe has shown had it known about Mrs S' driving offences and that Mr S wasn't the registered keeper of the car, it wouldn't have offered any cover. It follows Mr S made a qualifying misrepresentation.

Calpe says Mr S' misrepresentation was deliberate or reckless. I find this is a reasonable conclusion for it have made. I say this because he knew (or ought to have known) the statement of fact included information which was incorrect/incomplete and knew (or ought to have known) it would matter to Calpe.

It follows I find it was fair and reasonable for Calpe's to avoid Mr S' motor insurance policy from inception (without a refund of premiums) and decline the claim."

Neither party provided any further evidence or arguments in response to my provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In the absence of any further evidence or arguments, I see no compelling reason to depart from my provisional decision.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 6 March 2024.

James Langford
Ombudsman