

## **The complaint**

Mr D and Mr D complain about Aioi Nissay Dowa Insurance UK Limited's actions when their car insurance policy was cancelled.

## **What happened**

Mr D (son) had a car insurance policy underwritten by Aioi Nissay Dowa (AND). Mr D (father) was a named driver and paid the premiums from his bank account.

The policy renewed in July 2022, but Mr D and Mr D say they had obtained cover elsewhere and didn't want the policy to renew.

Mr D (named driver) called AND – after the renewal date – to explain the situation and cancel the policy. AND then called the other Mr D (policyholder) and explained they'd need to pay cancellation fees and pay for time on cover if they cancelled. Mr D (policyholder) said they'd think about it and get back to AND.

Mr D (named driver) cancelled the direct debit set up to pay the premium but neither he nor Mr D (policyholder) contacted AND again.

After trying to contact Mr D and Mr D to request payment, AND forcibly cancelled the policy, for non-payment. And they recorded the forcible cancellation on shared insurance industry databases.

AND also asked Mr D and Mr D to pay the outstanding cancellation charges and the premium for the time they were on cover up until the forced cancellation.

Mr D and Mr D objected to this and made a complaint to AND. And when AND maintained their position and said the forced cancellation would stand – as would the remaining amount owed – Mr D and Mr D brought their complaint to us.

Our investigator looked into it and thought AND were entitled to charge a cancellation fee, given that the policy had legitimately renewed. Mr D has admitted that he may have mistakenly renewed the policy through the customer portal.

He also thought they could charge for the time on cover, but only for 50% of the premium which had been due. This was because Mr D and Mr D had cover elsewhere and if any claim had been made in the relevant period (of dual cover), liability would have been split between the two insurers.

However, he thought it was unfair to record the forced cancellation on the relevant industry databases, given the confusion over the cancellation and the fact that it was clear Mr D and Mr D intended to cancel it after getting cover elsewhere.

AND didn't agree. They accepted that they should only charge 50% of the premium for the time on cover. But they thought they were right to record the forced cancellation on the shared databases.

## **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.

Mr D and Mr D accepted our investigator's view and have agreed to pay the outstanding charges he thought they should pay (amounting to £119.54). AND also agreed with the re-calculation of the outstanding charges. So, the only remaining bone of contention in this case is whether AND should record the forced cancellation on the relevant shared industry databases.

So, the question I have to consider in making this decision is whether it's fair that the record should remain on those databases. If it does, it would need to be declared to future insurers as part of the application process and it would very likely affect the potential insurer's decision whether to offer cover – and if so, on what terms.

There's no dispute here that the renewal was legitimate. Notification of renewal was sent in advance. Confirmation was sent just before the renewal date. AND were absolutely clear about what Mr D and Mr D would need to do if they didn't wish the policy to renew.

It was just more than a week after the renewal date that Mr D and Mr D made contact with AND to say they wished to cancel the policy. After the second telephone conversation that day (with Mr D, the policyholder), AND were expecting a return call to say whether Mr D and Mr D wanted to go ahead and cancel the policy. They've pointed out that once policyholders are made aware of the cancellation charges, they often reverse their decision to cancel.

Instead of contacting AND again, Mr D (named driver) cancelled the direct debit. This meant that AND couldn't take the premium payments for a policy which, as far as they were concerned, hadn't been cancelled at that point. Nor were they able to recover the remaining charges at the point of cancellation.

I have some sympathy with AND's arguments here. Mr D and Mr D might be said to have buried their head in the sand – after promising to call AND back with a decision about the cancellation. At worst, they might be accused of attempting to avoid the legitimate cancellation fees (set out clearly in the policy) and the premium for the time on cover.

However, I think the latter interpretation of events might on balance be harsh. There was clearly some confusion about the outcome of the calls.

Mr D and Mr D might reasonably say their intention to cancel had been clear – because that was the reason they called AND in the first place. And they might say that intention should have been even clearer to AND when the direct debit was cancelled.

It's also true to say that AND checked whether Mr D and Mr D had other cover and found that they did. Again, it wouldn't be stretching the point to conclude from that evidence that Mr D and Mr D wanted to cancel their policy with AND.

AND did contact Mr D and Mr D after the call – by letter and email (followed up by a text message) – to say that the policy would be forcibly cancelled unless Mr D and Mr D contacted them. Those messages also pointed out the consequences of forced cancellation.

Mr D and Mr D were clearly taking a risk in not responding to those messages. And there's a reasonable line of argument to say they got what they asked for when the policy was forcibly cancelled.

However, I do note that when Mr D (named driver) called AND to cancel the policy, they made contact with Mr D (policyholder) by phone. It wouldn't be unreasonable to suggest that before taking the final step of forced cancellation – despite having reasonable cause to believe that Mr D and Mr D wished to cancel the policy themselves – AND might have tried to call Mr D (policyholder).

I'm also aware that we've now said – and AND have agreed – that they were chasing Mr D and Mr D for a payment which was more than they should have been seeking (given the dual cover). So, Mr D and Mr D may have had good cause to refuse the payment and complain to AND – and then to us – in order to resolve the matter fairly.

In short, this is finely balanced decision. I'm assuming Mr D (policyholder) might have learned from this experience that ignoring communications from an insurer, presumably in the hope they might infer what his intentions were, is not a sensible option.

And if I thought that, on balance, I could justifiably conclude with any certainty that Mr D and Mr D were attempting to avoid proper payment for a policy they'd failed to cancel before renewal, I'd take a very different view on this case.

However, on balance, I think this state of affairs more likely arose because of the confusion about Mr D and Mr D's intentions in the calls to AND. And possibly because Mr D and Mr D objected – rightly, as it turned out – to the charges AND were seeking to impose on cancellation of the policy.

I don't think it would be fair in all those circumstances to record a forced cancellation on the relevant insurance industry databases. That would have a significant affect on Mr D's (policyholder's) ability to obtain insurance – and/or the amount it would cost him – in future. And that would be disproportionate, given that his error here was to fail to make his intention to cancel the policy absolutely clear to AND.

### **Putting things right**

For that reason, I'm going to uphold the complaint in part.

As AND have now agreed – in response to our investigator's view on the case – the outstanding amount owed for the time on cover is 50% of the amount they originally asked for, given that Mr D and Mr D were dual-insured at the relevant time.

I'm also going to require AND to remove from any shared databases any record or indication that the policy was forcibly cancelled by them.

### **My final decision**

For the reasons set out above, I'm upholding this complaint in part.

Aioi Nissay Dowa Insurance UK Limited must:

- reduce the outstanding payment they're requesting from Mr D and Mr D to reflect the fact they were insured elsewhere (and so dual-insured) for the relevant time on cover after renewal; and
- remove any record of a forced cancellation (and/or cancellation instigated by them) from any and all shared databases to which they added such a record after cancelling Mr D and Mr D's policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mr D to accept or reject my decision before 2 March 2023.

Neil Marshall  
**Ombudsman**