

The complaint

Mr D complains that Action 365 Ltd mishandled his commercial vehicle insurance policy.

What happened

The subject matter of the complaint is a van, first registered in 2011.

According to its MOT history, the van passed a test in early November 2022 with a recorded mileage of over 150,000.

Mr D acquired the van. He wanted to use it as a courier.

Mr D contacted a broker who acted as his intermediary, but who was an appointed representative of Action 365.

During a telephone call in December 2022, Mr D agreed an estimated mileage for the next year of just under 30,000.

He insured the van on a telematics policy for the year from late December 2022. The policy was in the name of Action 365 trading as Pukka Service (although an insurance company was the underwriter and Action 365 was its administrator).

The total cost was going to be about £1,500.00 plus interest. Mr D paid a deposit of about £320.00 and agreed to pay nine instalments of about £150.00.

From late December 2022, Mr D did a substantial mileage in the van.

By early July 2023, Action 365 noted that the telematics device said that since it had been installed, the van had covered about 30,000 miles. Action 365 didn't contact Mr D. It tried to amend the policy to its estimate of about 59,000 miles but that was beyond the maximum or "cap".

On 12 July 2023, the broker wrote to Mr D saying that Action 365 had given him a seven-day notice of cancellation of the policy with effect from 19 July 2023.

On about 13 July 2023, Mr D rang the broker to object to the cancellation.

Mr D reported that on 13 July 2023, someone had stolen the van. Notwithstanding the telematics device, the van wasn't recovered.

By an email to the broker dated 15 July 2023, Mr D appealed against the cancellation.

On about 24 July 2023, the broker confirmed the cancellation to Mr D.

By an email dated 26 July 2023, Mr D complained to the broker about the cancellation.

By a letter dated 3 August 2023, the broker told Mr D that he owed a balance of £404.55.

Action 365 agreed to settle the theft claim.

By a final response dated 21 August 2023, the broker turned down the complaint.

Mr D brought his complaint to us without delay. He added new points of complaint. They included complaints that:

- The telematics device hadn't prevented or recorded the theft or tracked the van after it was stolen; and
- He shouldn't have to pay the balance of £404.55.

our investigator's opinion

Our investigator recommended that the complaint should be upheld in part. She thought that Action 365 should have made clear at the point of sale the limitations of the policy. So she thought that Action 365 had acted unfairly and unreasonably. She recommended that Action 365 should pay Mr D £150.00 in distress and inconvenience.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr D and to Action 365 on 5 February 2024. I summarise my findings:

I didn't find the cancellation unfair.

Action 365 should've communicated with Mr D better and more promptly in July 2023.

Most of Mr D's distress and inconvenience was caused by the cancellation that I hadn't found unfair or by the theft.

Subject to any further information either from Mr D or from Action 365, my provisional decision was that I upheld this complaint in part. I intended to direct Action 365 to pay Mr D £150.00 for distress and inconvenience.

Action 365 accepted the provisional decision.

Mr D disagreed with the provisional decision. He says, in summary, that:

- The provisional decision is based on extracts from policy terms that he had never seen before. There is a significant discrepancy between those terms and the actual policy terms supplied to him by the broker when he took out the policy.
- If he was sent wrong, outdated or incomplete policy terms, then one could argue he was 'mis-sold' insurance.
- Action 365 failed to disclose the mileage cap. If the handler had warned him about a 'mileage cap', and possible cancellation, he absolutely would have altered his train of thought, and applied some due diligence. Depending on the amount, it would have made him think that he would have to be very mindful about his driving distance, or completely reconsider the policy.
- In January 2023, he reviewed the policy, within the cooling-off period. He contacted the broker about the insurance for 'Goods in Transit'. The broker emailed what he believed to be his full policy terms. That didn't include the extracts referenced in the

provisional decision.

- This also demonstrates his due diligence into the policy, and after reviewing the policy terms, he was fully confident he understood the mechanics surrounding 'excess mileage'.
- It was his understanding that he effectively had 'unlimited' mileage, with the only implication being cost if he exceeded the mileage.
- His policy was cancelled at 32,000 miles. An assumption was made that he would travel another 30,000 miles and this would exceed the mileage cap.
- In actual fact, a few months into his new career as a courier, he decided that he would prefer to operate as a 'courier broker', who need not do any driving. He has a website as a broker. His mileage covered since July has been less than 10,000.
- Action 365 failed to follow the policy terms in relation to excess mileage.
- He experienced a considerable amount of time wasted, stress and inconvenience.

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.

Scope of this decision

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules.

One of those rules is that, before we can investigate a complaint, the consumer must first have made that complaint to the regulated firm and waited for up to eight weeks for a final response. It follows that we can investigate a complaint that a consumer has made to the firm and which the firm has answered - or should've answered - in the final response.

Also, we operate a two-stage process under which our investigator gives an opinion, and an ombudsman gives a final decision.

In Mr D's case, there's not enough evidence that he complained to Action 365 about the performance of the telematics device during and after the theft. So the investigator didn't investigate that, and I can't deal with it in this decision. It follows that I can't direct Action 365 to refund the excess Mr D suffered on the theft claim.

Also, Mr D's complaint in late July 2023 was about the cancellation. I consider that he hasn't - yet - complained to Action 365 about the details of the calculation of the balance of £404.55, so that's outside the scope of this decision.

Cancellation

I accept Action 365's statement that it couldn't offer cover for annual mileage of about 59,000 because of a maximum mileage or cap.

From the call recording, I find that Mr D asked about mileage. I'm not satisfied that the call-handler gave Mr D enough information about what would happen if he exceeded the estimated mileage of 29,999.

There's no evidence that Mr D made a misrepresentation in December 2022. Mr D must've thought that about 30,000 miles was a reasonable estimate. So I'm not persuaded that the

policy wasn't suitable for him or that he would've bought a different policy if he had understood more fully the implications of exceeding that estimate.

I don't hold Action 365 responsible for mis-sale of the policy.

In any event, Mr D had the benefit of about seven months cover up to and including a claim for the total loss of the vehicle. So I wouldn't find it fair and reasonable to direct Action 365 to refund any of the instalments of premium he had already paid.

Unlike some cases I've seen, the policy didn't state that the estimated mileage was the maximum mileage limit or state a rate for extra mileage.

The broker's terms of business included the following:

"Once the Telematics Device is installed and activated in your vehicle, you and any named drivers on your policy can drive as you normally would. The Telematics Device sends us regular information, "Telematics Data", which allows us to understand how your vehicle is being driven, the distance it is travelling, when it is being driven and where it is parked.

We will use this information to:

1. Review the mileage on your policy and check it is an accurate reflection of the miles you are travelling. This may result in the mileage stated on your policy being adjusted, up or down, to reflect the mileage you have driven. You will be given 7 days' notice of any adjustment and will be charged an amendment charge in addition to any premium change

2. Review the location and class of use of the insured vehicle on the policy and check it is an accurate reflection of how the vehicle is being used and where the vehicle is being kept overnight. This may result in the adjustment or cancellation of the policy. You will be given 7 days' notice of any adjustment or cancellation.

Any adjustment will have an amendment charge in addition to any premium change, and any cancellation will have applicable charges..."

The policy terms contained a term that was materially the same.

So I accept Mr D's point that this term made a distinction between "adjustment" and "cancellation". It provided that mileage could be adjusted but didn't provide that mileage could result in cancellation.

The policy terms included the following:

"Notification of changes which may affect your insurance

...

Consumer Insurance (Disclosure and Representations) Act 2012 and The Insurance Act 2015

You are required by the provisions of the above Acts to take care to supply accurate and complete answers to all the questions you were asked at the time of insuring with us.

It is important that you check your records for the information you have provided and notify us immediately of any changes or inaccuracies in these details. Failure to provide accurate and complete information to the best of your knowledge may result in increased premiums, refusal of a claim or your policy being cancelled and may affect your ability to gain insurance from other insurers.

You are required to update us with any changes to the information you provided at the time you asked us to insure you. When you tell us about these changes, we may adjust the premium. If you do not tell us about these changes or inaccuracies, this

may result in refusal of a claim or your policy being cancelled and may affect your ability to gain insurance from other insurers. The changes you are required to notify us of include the following:

...

- if the insured vehicle is likely to exceed the annual mileage declared at the commencement of the policy for which you may have received a premium discount;*

...

When you inform us of a change we will tell you if this affects your policy, for example whether we are able to accept the change and if so, whether the change will result in revised terms and/or premium being applied to your policy."

That term mixes together misrepresentation and mid-term changes. Nevertheless it was headed "*Notification of changes...*". And it required Mr D to tell Action 365 if the van was likely to exceed his declared annual mileage of about 30,000. And it said that Action 365 would tell him whether it was able to accept a change. That meant that it might not accept a change.

We don't find it fair for firms to apply mid-term changes unless there is a fundamental change in the risk.

Also, the policy terms included the following:

"Section 7 – Telematics Supplementary Terms & Conditions

...

Section 7.1 – Requirement

By purchasing this policy which uses Telematics technology, you are agreeing to the following policy requirements

...

☐ *Insurance premiums may be adjusted or a policy cancelled, based on actual vehicle usage and location data"*

So that term said that the policy might be cancelled based on actual vehicle usage (which I consider would include actual mileage in excess of the estimate).

In any event, the policy also included the following term:

"Cancellation by us or your Insurance Intermediary after the "Cooling Off Period"

We or your insurance intermediary may cancel this insurance by giving you 7 days' notice in writing.... Subject to no non-recoverable claims having been made (or likely to be made), you will be charged on a daily pro rata basis for the time you have had on cover. We will only exercise this right if there is a good reason for doing so, including non-payment of premium, not providing documents we request, a risk we consider unacceptable or if we become aware that you have been driving your insured vehicle otherwise than in accordance with the policy terms and conditions. If a claim that is non-recoverable has, or is likely, to be made, there will be no refund of premium."

So that term said that Action 365 could serve a seven-day notice of cancellation for a good reason. Such reasons included a risk it considered unacceptable. I consider that a mileage beyond the maximum or cap was a fundamental change in the risk and a good reason for cancellation.

Taking into account the policy terms, I don't consider that Action 365 treated Mr D unfairly by cancelling his policy for the reason that his mileage was likely to be beyond the maximum that it would accept as a risk.

As I haven't found the cancellation unfair, I don't find it fair and reasonable to direct Action 365 to reverse the cancellation or to change the way it has recorded the cancellation on its internal records. I note that Action 365 has said that it hasn't marked the cancellation on any relevant external databases.

As I haven't found the cancellation unfair, I don't find it fair and reasonable to direct Action 365 to compensate Mr D for any of the consequences of the cancellation. That includes the consequences of not being able to get a replacement policy so as to continue work as a courier. So, whilst I don't doubt that this has affected his work, I don't find it fair and reasonable to direct Action 365 to compensate Mr D for any loss or earnings.

As I haven't found the cancellation unfair, I don't find it fair and reasonable to direct Action 365 not to pursue Mr D for any balance due following the cancellation. But, as I've said, the calculation of the balance is outside the scope of this decision.

Response to the provisional decision

Mr D has referred to Action 365 and the broker as though they were the same entity. However, they are separate entities and I'm dealing with a complaint against Action 365.

Mr D has suggested that – between them – Action 365 and the broker were responsible for mis-selling the policy to him. However, I consider that the broker acted as his intermediary in relation to the sale. I don't hold Action 365 responsible for the broker's sale of the policy.

Mr D has referred to the broker's terms of business as though they were the terms of the commercial vehicle policy. However, the broker sold him "Pukka Services Commercial Vehicle Telematics Motor Insurance".

Mr D has shown us that the broker sent him an Insurance Product Information Document ("IPID") for "Pukka Services Commercial Vehicle Telematics Motor Insurance" that said the following:

"Please note that complete pre-contractual and contractual information on the product is provided in the Statement of Fact, Important Additional Policy Information Document, Certificate of Motor Insurance, Policy Schedule and Policy Wording".

I'm satisfied that the policy wording was contained in the 44-page policy booklet entitled "Pukka Services Commercial Vehicle Telematics Motor Insurance".

Mr D says that the broker didn't send him that policy wording. However, I wouldn't hold Action 365 responsible for such an omission by the broker because it was acting as Mr D's intermediary. He could take that up with the broker.

I accept Mr D's evidence that – within the cooling-off period – he contacted the intermediary about the goods in transit cover. I haven't seen enough evidence that he was already thinking at that time about exceeding the mileage estimate. If he had been thinking about that, then I find it likely that he would've asked about the cost of excess mileage.

Mr D has said that Action 365 made an assumption in July 2023 that he was going to cover another 30,000 miles or so. I accept that. And I agree that Action 365 should've discussed mileage with him.

Mr D says that he became a courier broker and reduced his mileage. I have no reason to doubt that.

However, any discussions about continuing the policy were overtaken when Mr D reported the theft of the van.

It's not the case that the policy was so unsuitable that Mr D would never have been able to claim on it, so that it's fair to refund the premium. Rather, Mr D did make a claim on the policy and Action 365 paid it. So it wouldn't be fair to refund the premium.

Communication and distress and inconvenience

Whilst I haven't found the cancellation unfair, I consider that Action 365 should've communicated with Mr D better and more promptly in July 2023.

I've thought about the impact on Mr D of the shortcomings in Action 365's communication. I consider that this included his firm belief that better communication would've prevented the cancellation. In my view that belief was understandable but mistaken, because Action 365 wasn't willing to continue cover. And before the cancellation took effect, the theft intervened to deprive Mr D of the van.

So most of Mr D's distress and inconvenience was caused by the cancellation that I haven't found unfair or by the theft.

Putting things right

Overall, I find it fair and reasonable to direct Action 365 to pay Mr D £150.00 for distress and inconvenience caused by shortcomings in communication.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Action 365 Ltd to pay Mr D £150.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 March 2024.

Christopher Gilbert

Ombudsman