

The complaint

Mr P complains about the unfair handling of two claims he made to Aioi Nissay Dowa Insurance UK Limited (Aioi), its failure to refund his premium and its decision to cancel his motor insurance policy.

What happened

Mr P was involved in two car accidents. The first was in October 2022. The second happened in May 2023. Mr P didn't think he was at fault for either accident. He says Aioi failed to investigate properly, which is why he was held to be at fault.

Mr P says he arranged for the repairs to his car after the May 2023 accident. The garage also made modifications to his car, which he reported to Aioi. He says the business then cancelled his policy and declined to refund any of the premiums he'd paid. He says it told him also he owed the remaining premium instalments for the rest of the policy year.

In its final complaint response in August 2023 Aioi says that it had investigated the circumstances behind both accidents correctly. It referred to the section of Mr P's policy terms and conditions that say it can decide how best to settle a claim. Based on the circumstances of the accidents, and the evidence available, it thought Mr P was at fault. In the second accident there was a third driver involved, who had fled the scene. Aioi explained that as it had no way to recover its costs, this is why the claim was recorded with Mr P at fault.

Aioi says Mr P's car would be considered a total loss had he claimed for the damage following the second accident. It told him the excess would be deducted from the settlement as well as any remaining premium payments. Aioi says the modifications Mr P made to his car weren't acceptable under its underwriting criteria. This is why it cancelled the policy. It says as Mr P had made a claim his full annual premium was payable. Aioi says Mr P asked for a full refund of his policy, which it declined. It then cancelled the policy at his request.

Mr P didn't think he'd been treated fairly and referred the matter to our service. Our investigator upheld his complaint in part. He says Mr P had confirmed he's taking legal action regarding the liability decision. He says our service can't consider a complaint that at the same time legal action is being taken. This means we can't consider this part of his complaint.

Our investigator says Mr P's policy terms require that he pays his full annual premium where a claim has been made. However, he didn't think it was fair that Aioi told him it would deduct the full premium owing from any settlement relating to the second accident. He thought this had influenced Mr P's decision not to pursue a claim for the damages to his car. He says Mr P had a separate finance agreement to pay his premiums monthly. And that he should've been allowed to continue with this arrangement. He also says Mr P paid less than his policy excess for his car to be repaired. So, he thought the impact of Aioi's actions was minimal.

To put this right our investigator says Aioi should pay Mr P £100 compensation. He says the

money he owns on his finance agreement is under a separate contract to his insurance policy with Aioi. Meaning any issues he has with this should be taken up with his finance provider.

Mr P accepted this outcome. Aioi didn't. Because an agreement wasn't reached it has been passed to me to decide.

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.

Having done so I'm upholding Mr P's complaint in part. Let me explain.

As our investigator explained, we can't look at every complaint that is brought to us. The Financial Conduct Authority (FCA) sets out the dispute resolution or DISP rules that determine what we can consider. DISP rule 3.3.4 (R) says that we can't consider a complaint where the subject matter is undergoing court proceedings. Mr P confirms he is pursuing legal action. We asked what stage this was at. He hasn't responded. So, based on what we know we can't consider this aspect of his complaint.

I've thought about Aioi's comments that it would deduct Mr P's remaining premium instalments from its settlement payment relating to the second accident. However, Mr P has a separate agreement with a finance provider. The finance provider paid Aioi its full annual premium when the policy inceptioned. Mr P's agreement allowed him to pay the finance provider in monthly instalments, to include the interest and charges it applied under this contract.

Our service has a long-standing approach in these circumstances. We don't think it's fair for an insurer to demand that all remaining instalments are paid up front. It could request that the outstanding premiums are deducted from any settlement payment. But it's not fair to require this. If a customer has agreed a separate contract to allow them to pay their premium over a period of time, this should be allowed to continue. Aioi didn't allow Mr P this option.

In its response to our investigator's findings Aioi says the cost of repairs Mr P arranged was less than his policy excess. So, telling Mr P it would deduct the outstanding premiums from any settlement payment didn't impact on his decision not to make a claim.

Aioi says Mr P's car would've been a total loss had it proceeded with a claim for the damage caused in the second accident. In which case the car would need to be valued and an offer made, less the policy excess. I've not seen a valuation to understand what the settlement offer would've been. But I agree with our investigator that it wasn't fair to say the outstanding premiums would be deducted. Aioi should've told Mr P he had the option of continuing to pay his monthly premium instalments or for this amount to be deducted from any settlement he received.

I've thought about whether it was fair for Aioi to cancel Mr P's policy when he informed it of the modifications he'd made. The modifications included a non-standard air-filter, wheel arch extensions, artwork on the wing mirrors, painted wheels, a non-standard front bumper, non-standard rear badge, and wind deflectors.

His policy terms say Mr P must inform Aioi of, *"all changes you or anyone else make to your car if these mean the vehicle is different from the manufacturer's standard specification (whether the changes are mechanical or cosmetic)"*. I note that Mr P did inform Aioi of the changes.

When his policy inception Mr P was sent a document entitled, *“Important Information”*. This says:

“Cover will not be granted to any car which:

- has been altered, changed or modified in any way (including cosmetic changes) from the manufacturer’s standard specification (excluding manufacturer’s options fitted at the time of original purchase).”*

Mr P’s car was modified from the manufacturer’s standard specifications in a number of ways. The terms are clear that any modification isn’t an acceptable risk for Aioi and it will decline cover. In this case Mr P added the modifications mid-term. From what I understand none of the modifications were in place when his policy was set up. Aioi’s policy terms say cover won’t be provided where modifications are made. Our approach is that it’s reasonable for the business to cancel the policy if the mid-term change is fundamental to the risk its insuring.

In this case Mr P modified his car engine with a non-standard air filter. This is used to improve performance, which is something we consider to be a fundamental change to the risk posed. So, I don’t think it was unreasonable for Aioi to decide not to continue offering cover. However, ultimately it was Mr P who instructed the policy to be cancelled.

I note Mr P’s comments that he’d remove the modifications to allow cover to continue. However, Aioi didn’t agree to this. As this isn’t something it was obliged to agree to under its policy terms, I don’t think it acted unfairly.

Having considered all of this I don’t think Aioi treated Mr P fairly when it said it would deduct the outstanding premiums from any settlement payment. It should pay him £100 to compensate for this. Aioi should also confirm that Mr P owes the remaining premium instalments to his finance provider. He should contact it directly regarding any issues.

My final decision

My final decision is that I uphold this complaint in part. Aioi Nissay Dowa Insurance UK Limited should:

- pay Mr P £100 compensation; and
- confirm Mr P’s remaining premium payments are a matter between him and his finance provider.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 12 April 2024.

Mike Waldron
Ombudsman