

The complaint

Mr S complains about Advantage Insurance Company Limited (“AIC”) and their decision to cancel his policy after he made them aware he’d replaced the exhaust on his car.

Mr S has been represented by his father, also Mr S, during the claim and complaint process. For ease of reference, I will refer to any actions taken, or comments made, by his father as though they were made by him throughout the decision where appropriate.

What happened

The claim and complaint circumstances are well known to both parties, so I don’t intend to list them chronologically in detail. But to summarise, Mr S held a motor insurance policy, underwritten by AIC, when he contacted them to make them aware he’d replaced the exhaust on his car.

After being made aware of this, AIC proceeded to cancel Mr S’ policy, explaining the replacement exhaust would be classed as a modification and so, outside of their underwriting criteria to provide cover. The policy was cancelled at 11.59pm on the same day, with a pro-rata refund for Mr S’ remaining premiums being processed. Mr S was unhappy about this, so he raised a complaint.

Mr S didn’t think it was fair to class the replacement exhaust as a modification, as he felt it was the same as a standard exhaust bar the material it was made from. So, he didn’t think the policy was cancelled fairly. Mr S also didn’t think it was fair to cancel the policy the same day, and that if he’d been given the seven day notice he felt he was entitled to, he could’ve taken action to prevent the cancellation, or source other insurance. So, he wanted to be compensated for the above.

AIC responded to the complaint and upheld it in part. They thought their decision to cancel the policy was a fair one, in line with their policy terms and underwriting criteria. But they accepted they should’ve provided Mr S with seven days’ notice to allow him time to source alternative insurance and so, they offered to pay Mr S £50 compensation to recognise any inconvenience this caused. Mr S remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it in part. They thought AIC were fair to deem the exhaust replacement as a modification and so, they thought AIC were fair to cancel the policy, in line with their terms and underwriting criteria.

But they thought AIC had acted unfairly by not providing seven days’ notice of the cancellation. And they didn’t think the £50 compensation was enough to recognise the inconvenience Mr S would’ve been caused during this time, having to source alternative transport.

So, our investigator recommended AIC pay Mr S £100 compensation, as well as reimburse

any travel costs Mr S incurred during these seven days, upon receipt of valid invoices/receipts. But crucially, as they thought Mr S was always going to need to source alternative insurance, they didn't think AIC needed to cover any costs Mr S incurred when doing so.

AIC didn't agree, reversing their original view and stating they had no requirement to provide seven days' notice, explaining how this would've placed them in a position of risk during that time. And Mr S also disagreed, providing several comments explaining why. These included, and are not limited to, Mr S' continued belief that the exhaust shouldn't be deemed a modification. And even if it should, Mr S explained he would've taken action to prevent the cancellation if he'd been given notice, sourcing a new acceptable exhaust, or reinstalling his original one. So, Mr S felt the compensation offered to him should be significantly increased.

Our investigator considered all the opinions put forward by both parties. But their view remained unchanged. So, the complaint has been passed to me for a 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Mr S. I don't doubt Mr S replaced the exhaust on his car with the intention of ensuring it was like the original. And I appreciate he contacted AIC to make them aware of the replacement, to ensure he was acting in line with his policy terms and conditions. So, when he was made aware that the replacement exhaust would be deemed a modification and that his policy would be cancelled, I can understand the shock and inconvenience this caused. Even more so when I consider the fact the policy was cancelled the same day. Because of this, I do understand why Mr S feels unfairly treated and why he chose to raise a complaint, and this is something I've considered carefully throughout my decision.

But for me to say AIC have cancelled the policy unfairly, I need to be satisfied they acted outside of the terms and conditions when doing so. I've read through the terms and conditions of the policy Mr S held in detail. And these explain clearly that *"This policy doesn't cover any non-standard parts (modifications)."* And on the call between AIC and Mr S, where he explains he's replaced the exhaust to his car, I've heard Mr S confirm the new exhaust, while similar to the factory fitted original, was slightly different in terms of the size of its tail pipe, the material it was made from and that it wasn't a part supplied or fitted by the manufacturer of the car.

So, while I do appreciate the replacement exhaust didn't provide a performance enhancement as Mr S has argued, I don't think I can say AIC were unfair to deem this replacement to be a modification.

This is because it changed the car from having a factory fitted exhaust, supplied and fitted by the manufacturer, to having an exhaust that while similar, was not the same as the original that had been fitted by someone without an affiliation to the manufacturer altogether. And I can understand why AIC would consider this modification to present a higher risk to them as the insurer.

I want to make it clear it's not my role, or the role of our service, to stipulate what level of risk AIC should be prepared to take, as this is a commercial decision they are able to decide as a business. And while it may be that Mr S feels another insurer would've taken a different decision, this doesn't mean AIC have acted erroneously here.

But I would expect AIC to show our service how it calculated this risk by presenting the underwriting criteria they used. I have seen these criteria and I'm satisfied Mr S' situation, and the replacement exhaust, falls outside of AIC's underwriting criteria and what they would insure. So, while I appreciate Mr S is likely to disagree, I don't think AIC have made a mistake, or acted outside of the terms of the policy, when deciding to cancel the policy.

But I note in AIC's complaint response, they accepted Mr S should've been given seven days' notice of this cancellation, rather than it being cancelled the same day. AIC have since reversed their position on this, explaining why they feel a same day cancellation was appropriate.

I've thought about this, considering the individual situation Mr S found himself in alongside the policy terms and conditions and crucially, what I think is fair.

I think it's clear from the conversation between Mr S and AIC that Mr S contacted them in good faith, to ensure he was being open and honest about the condition of his car to ensure he remained within his insurance policy terms. And, that he didn't expect the replacement exhaust to cause a policy cancellation.

The policy terms and conditions explain, under AIC's rights to cancel the policy, that "*your insurer can cancel the policy at any time by sending you seven days written notice...stating why the policy has been cancelled.*" But just above this, the terms also state "*we may give you seven days' notice of cancellation*". So, this suggests written notice isn't definitely required, or provided.

I think these terms and conditions are conflicting in the information they provide. And so, while I do think it suggests AIC didn't need to provide seven days' notice of the cancellation, I don't think this means AIC acted fairly when not doing so. I think the terms suggest seven days' notice should be provided, and this is standard industry approach and what we would expect an insurer to do, unless they are placed in a significant position of risk.

In this situation, I think it's clear Mr S was acting in good faith and doing all he could to comply with the terms of the policy to keep his car in good condition. And considering Mr S made the agent of AIC aware he was at work during the cancellation call, I do think a reasonable approach would've been to provide Mr S the seven days' notice, to allow him time to source alternative insurance. So, I don't think AIC have acted fairly here, as they initially accepted themselves. Because of this, I've then turned to what I think they should do to put things right.

Putting things right

When thinking about what AIC should do to put things right, any award or direction I make is intended to place Mr S back in the position he would've been in, had AIC acted fairly in the first place.

In this situation, had AIC acted fairly, I think they would've provided Mr S with seven days' notice before processing the cancellation, to allow him to seek alternative insurance and remain mobile while do so.

And by failing to do so, I think Mr S was caused an avoidable level of distress and inconvenience over those seven days, as he was without transport unexpectedly. So, to recognise this, and the fact had Mr S been given this notice he'd have still been able to drive his car, I think AIC should reimburse Mr S any travel costs he incurred in this seven-day period, subject to the production of valid receipts/invoices.

And I also think Mr S should be compensated for the distress and inconvenience he's been caused. Our investigator recommended AIC increase this offer to £100. And I think this recommendation is a fair one, that falls in line with our services approach and what I would've directed had it not already been put forward.

I think it fairly recognises the distress and inconvenience Mr S was caused over this seven-day period, which I don't doubt would've been impactful, especially considering the premium refund AIC processed took 3-5 working days to be processed back into his account. So, he was left without insurance, or the funds to pay for an alternative policy.

But I think it also fairly reflects the fact that Mr S' policy would always have been cancelled and so, he would always have needed to source alternative insurance. I want to make it clear that once a business such as AIC has chosen to cancel a policy, we wouldn't expect this decision to be reversed. So, while I have thought about Mr S' comments about him being able to take action to prevent the cancellation within the seven days, AIC have confirmed the cancellation would always have been processed. Instead, had Mr S taken different action, a new policy may then have been discussed.

But even so, I don't think it's reasonable for Mr S to state he would've reinstated the original exhaust, considering he'd already told AIC that, in his words, the exhaust "*had rotten off*". So, I don't think it would be fair for me to say AIC should've reinstated the policy had this been the case. And while I appreciate Mr S may have been able to approach the manufacturer for a repair, I don't think it's likely this could've been done in the seven days and even if it was, as explained the policy cancellation would still have been processed.

So, I don't think AIC should be responsible for the actual costs Mr S incurred seeking alternative insurance, be that his own policy or the restructure of a family members. Because of all the above, the £100 payment is one I am now directing AIC to make to fairly resolve Mr S' complaint.

I appreciate this isn't the outcome Mr S was ultimately hoping for. And I want to reassure Mr S I've considered all the comments he's put forward when reaching my decision, even if I haven't commented on them directly. I again want to reiterate I don't doubt in any way that Mr S was acting in good faith when replacing the exhaust and making AIC aware of this. So, I really do understand his disappointment regarding the consequences that followed. But for all the reasons outlined above, I think the £100 compensatory payment fairly compensates Mr S for the failures, and impact of these failures, AIC are reasonably responsible for.

My final decision

For the reasons outlined above, I uphold Mr S' complaint about Advantage Insurance Company Limited and I direct them to take the following action:

- Pay Mr S £100 compensation; and
- Reimburse Mr S for any travel costs incurred within seven days of the cancellation,

upon receipt of valid receipts/invoices.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 August 2024.

Josh Haskey
Ombudsman