

## **The complaint**

Mr J or “X” complains that Action 365 Ltd (trading as Pukka Services) unfairly cancelled his motor insurance policy.

## **What happened**

The subject matter of the insurance and the complaint is a car, that had first been registered in 2009.

From 10 March 2022, Mr J had the car insured on a telematics policy. A broker acting as an appointed representative of Action 365 arranged the policy. Action 365 administered the policy on behalf of an insurance company.

For the year from 10 March 2023, Mr J renewed the policy. Mr J paid £777.35 including an arrangement fee of £46.00.

Much of the complaint is about acts or omissions of the appointed representative on behalf of Action 365. Insofar as I hold Action 365 responsible for them, I may refer to them as acts or omissions of Action 365.

On about 6 July 2023, Mr J had contact with Action 365 about increasing his mileage. Action 365 asked Mr J to pay an extra £103.54 including an adjustment fee of £40.00.

With effect from 20 November 2023, Action 365 cancelled the policy, describing it as a “broker-led cancellation”. It deducted some fees and refunded £51.13 to Mr J.

On about 21 November 2023, Mr J contacted Action 365.

On about 5 December 2023, Mr J complained to Action 365.

By a final response dated 11 January 2024, Action 365 turned down the complaint, save that it offered Mr J £75.00 as compensation for shortcomings in communication.

Mr J and Action 365 exchanged further emails.

Mr J has shown us that on 14 February 2024, he took out a new policy through a different provider.

On about 15 February 2024, Action 365 increased its offer of compensation to £100.00.

In April 2024, Mr J brought his complaint to us.

## *our investigator’s opinion*

Our investigator recommended that the complaint should be upheld. She didn’t think that Action 365 Ltd had acted fairly. She said that Mr J had provided receipts dated between 22

November 2024 and 10 February 2024 for pay- as- you- go bikes and bus services that amounted to about £95.00.

The investigator recommended that Action 365 should:

1. remove records of cancelling Mr J's policy from its internal and any external databases they have updated; and
2. provide Mr J a letter confirming this so he can present it to his new insurer to see if they can recalculate his premiums and see if a refund is due; and
3. reimburse Mr J for travel costs he has incurred during the period he was without his car; and
4. pay Mr J a total compensation of £250.00 for the distress and inconvenience it has caused him.
5. calculate the pro-rata premium they would have charged Mr J from the policy inception to the date the policy was cancelled, reimburse any unused premiums without including any fees.

Mr J thanked the investigator for her opinion.

Action 365 disagreed with the investigator's opinion. It asked for an ombudsman to review the complaint.

#### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr J and to Action 365 on 23 September 2024. I summarise my findings:

Notwithstanding Acton 365's failure to communicate a decision after the call in late July 2023, I was minded that the cancellation in November 2023 didn't treat Mr J unfairly.

Action 365's failure to communicate properly for three months after late July 2023 is likely to have caused Mr J some extra worry during that time, but he didn't ask Action 365 what it had decided. I was minded that Action 365's offer of £100.00 was fair and reasonable for such distress and inconvenience.

Subject to any further information either from Mr J or from Action 365, my provisional decision was to uphold this complaint in part. I intended to direct Action 365 Ltd to pay Mr J, insofar as it hasn't already paid him, £100.00 for distress and inconvenience.

Action 365 accepted the provisional decision.

Mr J responded to the provisional decision as follows:

*"Thank you for taking the time to go through my case in detail, and that the waiting for you to look at my case was less than the four months time frame that I was anticipating. Please forgive my last minute email response, however in adhering with your instructions I hope that I write this in time before the deadline for your final decision."*

*Rather than answering and contesting every single point of yours, I would like to be succinct and target the most relevant and important one, so with this on mind I apologise for my straightforwardness.*

*I am in disagree and dissatisfied with your provisional decision because:*

*Hypothetically speaking, in the event that I was receiving and reading every single email from 365 Ltd, our last reciprocal communication, was a recorded phone call that took place some time in the summer of 2023, where I explicitly asked and requested, to 'revert back my miles to their original number (5000 miles); there were no 'ifs', no 'buts' no 'maybes', it was a clear instruction to which the gentleman on the phoned listened and agreed to it; nevertheless, this was disrespected and unfollowed. And as previously mentioned in a former email to 365 Ltd, this alone is a violation of a customer right under the consumer cancellation rights in the UK.*

*And last but not least, it surprises me that fact that your predecessor colleague [investigator], in studying my case have found un utter antithesis to your decision; this to me shows a vast disarray in opinions in your department.*

*I hope this suffices and wraps up my case from my end"*

### **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 J acquired the car by early March 2020, the date of its last V5 registration document.

According to its MOT history, the car passed a test in mid-March 2020 with a recoded mileage of about 132,600.

According to its MOT history, the car passed a test in late February 2021 with a recoded mileage of about 135,700.

From its records, I accept that Mr J had told Action 365 that his preferred method of receiving communication was by email. In addition to email, Action 365 also provided an online portal containing relevant documents and communications. The statement of fact document in March 2022 included the following:

*"Total Mileage: 5000"*

According to its MOT history, the car passed a test in mid-March 2022 with a recoded mileage of about 139,000. So Mr J had done about 6,400 miles in about a year. I don't consider that his estimate of 5,000 miles for the next year was a statement of fact or incorrect.

According to its MOT history, the car passed a test in late February 2023 with a recoded mileage of about 144,500. So Mr J had done about 5,500 miles in about a year.

The March 2023 statement of fact document included the following:

*"Total Mileage: 5000"*

I don't consider that his estimate of 5,000 miles for the next year was a statement of fact or incorrect.

Action 365's terms included the following:

*"Telematics Data*

*...*

*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."*

The terms also provided that Action 365 could cancel the policy in the event of non-payment of premium.

From its records, I'm satisfied that on 6 July 2023, Mr J agreed with Action 365 to increase the mileage by 5,000 miles (that is to 10,000 miles) at a cost of £103.54 which included a £40.00 admin fee. Action 365 was unable to take the payment due to system issues. Action 365 said it would call back. it didn't, and I don't condone that.

However, I've seen a emailed letter from Action 365 to Mr J dated 6 July 2023 confirming the change and asking him to pay £103.54.

I've seen emailed letters from Action 365 to Mr J dated 11 and 21 July 2023, chasing for payment of the outstanding balance. The letter dated 21 July 2023 included the following:

*"If we do not receive payment by 28th July 2023, unfortunately we will have to cancel your policy with us."*

Mr J received those reminders. On 27 July 2023, Mr J called Action 365. He asked for either more time to pay or to go back to the original mileage of 5,000. On about 28 July 2023, Action 365 said it was looking into the issue.

However, Action 365 didn't contact Mr J for about three months.

I've seen emailed letters from Action 365 to Mr J dated 26 October, 5 November, and 13 November 2023, chasing him for the outstanding balance. The letter dated 5 November included the following:

*"If we do not receive payment by 12th November 2023, unfortunately we will have to cancel your policy with us"*

The letter dated 13 November included the following:

*"If we do not receive payment by 20th November 2023, unfortunately we will have to cancel your policy with us."*

I've also seen an emailed letter from Action 365 to Mr J dated 21 November 2023, confirming that it had cancelled his policy with effect from 20 November 2023.

From what Mr J has said and the receipts he's provided, he used rented bikes and buses and didn't insure or drive his car again until mid-February 2024.

According to its MOT history, the car passed a test in late February 2024 with a recoded mileage of about 150,000. So Mr J had done about 5,500 miles in about a year. Indeed, from what he has said, he had done about 5,500 miles in the period of about nine months between late February 2023 and 20 November 2023.

I've thought carefully about whether Action 365 treated Mr J fairly.

It's unfortunate that Action 365 couldn't take payment on 6 July 2023. And it should've called Mr J back.

However, he ought reasonably to have remembered later in July 2023 that he'd agreed to increase the mileage and to pay the extra amount. I don't consider that Action 365 had to give him more time to pay. Also, in the context of a policy under which it was monitoring his mileage, I don't consider that Action 365 had to agree to revert from 10,000 miles to 5,000 miles.

Nevertheless, Action 365 should've given Mr J a prompt and clear answer, rather than referring to management for a decision that it didn't communicate to Mr J. Instead, Action 365 allowed a delay of about three months – and then sent more payment reminders and notices of cancellation.

Nevertheless, Mr J ought reasonably to have remembered in October and November 2023 that he'd agreed to increase the mileage and to pay the extra amount. Moreover, he ought reasonably to have known that – three months before the next renewal date - he had already driven around 5,000 miles since the last renewal. Furthermore, Mr J didn't contact Action 365 in response to the emailed letters dated 26 October, 5 November, and 13 November 2023.

Mr J has said that such emails were going into his junk folder. However, email was his preferred method of communication, Action 365 used his correct email address, and he could've checked his junk folder in that period. Further, Action 365 had put the emailed letters in the portal.

So, notwithstanding Action 365's failure to communicate a decision after the call in late July 2023, I'm minded that the cancellation in November 2023 didn't treat Mr J unfairly.

For that reason, I don't find it fair and reasonable to direct Action 365 to change the way it has recorded the cancellation, or to pay compensation for alternative travel costs, or to pay compensation for the distress and inconvenience the cancellation caused Mr J.

I've thought about Action 365's calculation of its refund. I find that the calculation was as follows:

Paid by Mr J	£777.35
Arrangement fee	£ 46.00
Adjustment fee	£ 40.00
Time on cover	£565.22
Cancellation fee	£ 75.00
Subtotal	£726.22

Refund

£ 51.13

I'm satisfied that Mr J agreed to pay the arrangement fee in March 2023 and that it was non-refundable under Action 365's terms of business.

I'm satisfied that Mr J agreed to pay the adjustment fee on 6 July 2023.

The period of time on cover was about 34 weeks. The charge for time on cover was, in my view, the responsibility of the insurance company rather than Action 365.

I'm satisfied that the cancellation fee was in line with Action 365's terms of business.

So I don't consider that Action 365 treated Mr J unfairly by its calculation.

#### Mr J's response to the provisional decision

Mr J says that during a phone call some time in the summer of 2023, he instructed and Action 365 agreed a change back to the original mileage of 5,000.

However, I haven't found any such agreement on the telephone in late July 2023. And I haven't seen any evidence of a further telephone call later that summer.

Mr J says that Action 365 didn't follow that agreement, and that was a breach of his cancellation rights.

However, I haven't found evidence of any such agreement. And it would've been a variation, so Action 365 could've charged another adjustment fee. It would've been a variation rather than a cancellation, but if Mr J had cancelled, then he would've lost the insurance from the summer of 2023 rather than from 20 November 2023.

Mr J is surprised that the provisional decision was the antithesis of the investigator's opinion.

However, the Financial Ombudsman Service has to operate a two-stage process under which either the consumer or the business is entitled to challenge the investigator's opinion and to ask for an ombudsman to review the complaint. That will sometimes lead to a different outcome, as in Mr J's case.

#### **Putting things right**

I consider that Action 365's failure to communicate properly for three months after late July 2023 is likely to have caused Mr J some extra worry during that time, but he didn't ask Action 365 what it had decided.

I'm satisfied that Action 365's offer of £100.00 was fair and reasonable for such distress and inconvenience.

However, I don't think that Mr J accepted the offer or that Action 365 paid that amount. So I find it fair and reasonable to direct Action 365 to pay Mr J, insofar as it hasn't already paid him. £100.00 for distress and inconvenience.

#### **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 J, insofar as it hasn't already paid him, £100.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 5 November 2024.

Christopher Gilbert

**Ombudsman**