

The complaint

Ms D complains that Aioi Nissay Dowa Insurance UK Limited (Aioi) unfairly declined a claim he made on her motor insurance policy. She's also unhappy it cancelled her policy.

Reference to Aioi includes its agents.

What happened

Ms D held a motor insurance policy with Aioi. When she was involved in an accident she made a claim for the damage.

Aioi declined Ms D's claim. It said no cover was provided where the driver was under the influence of drink or drugs. It said Ms D had admitted to being under the influence of cannabis, so it thought it was fair to apply the term to decline her claim.

Ms D didn't think this was fair. She said she had taken cannabis at around 9.30 on the morning of the accident, but that the accident didn't take place until 4.50 that evening. She's said she wasn't feeling the effects of the drug at the time the accident took place. She also said when she was tested by the police, the level of cannabis in her system was below the legal limit. She thinks this is another reason why Aioi's decline of her claim and cancellation of her policy is unfair.

Aioi didn't change its stance. So Ms D brought her complaint to us. She's said as a result of Aioi's decline of her claim she had to take out insurance to get her car from the police impound and pay for the repairs herself. She's said since Aioi's cancellation of her policy, she's had to pay a lot more for insurance elsewhere as a result of having to declare that cancellation. She also isn't happy she's been held at fault for the accident.

Our Investigator recommended Ms D's complaint be upheld. He didn't think Aioi had done enough to show it fairly declined Ms D's claim. He thought Aioi needed to show Ms D was under the influence of cannabis to the extent that it affected her driving – and he didn't think it had done that. To put things right he recommended Aioi reimburse Ms D what she's had to pay to repair her vehicle, as well as paying for the insurance policy she had to take out to remove her car from the impound.

In addition, our Investigator didn't think it was reasonable to say Aioi couldn't cancel the policy following what it knew about Ms D and her use of cannabis. But he thought Ms D should have been given the option to cancel herself, and that had she have been, she'd have taken it. So, to put things right he recommended Aioi remove the record of cancellation and pay Ms D the difference between what she's had to pay, and what it would have charged her (without a cancellation) for the same period.

Our Investigator thought Aioi should also pay Ms D £300 compensation for the distress and inconvenience caused by what he considered, its unfair decline of her claim.

Aioi didn't accept that assessment and asked for an Ombudsman's 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 it. I'll explain why.

It's important to note here that while I've considered everything provided, in line with our role as an informal service, I'll not be commenting on each and every bit of evidence provided or argument put forward. Rather, I'll comment on what I consider to be key to the dispute.

Ms D's policy says cover won't be provided *"where the driver of [her] car has been driving ... under the influence of drugs whether prescribed or otherwise at the time of the accident."*

Here, there is no dispute around whether or not Ms D took cannabis. She's said she occasionally takes it for medicinal reasons but hasn't a prescription for it.

I can see that when asked about the circumstances of the claim Ms D said she was, *"at the time of the accident.... under the influence of recreational drugs and prescription drugs"*

If the investigation were to stop here, it'd be pretty damning on Ms D. It appears she's admitted to being under the influence of drugs, and her policy doesn't provide cover in such circumstances.

But I don't consider it fair to stop the investigation there. In context, the statement given by Ms D was after the accident. But, before that statement was given, whilst at the scene of the accident she was breathalysed and a swab for drugs was taken. Ms D was told the swab was positive for cannabis. She was cautioned by the police and taken for further tests.

In light of this, Ms D's statement that she was "under the influence" makes sense. To say anything other than that would have put her at risk of making a false statement to Aioi.

Importantly though, Ms D, in her statement says she last took cannabis at 9.30 the morning of the accident. She also goes on to say she had not felt tired and was not distracted when driving the car.

Aioi's term here is quite wide reaching. Therefore a strict application of it may not always lead to a fair and reasonable outcome. To illustrate this, someone would be technically under the influence of drugs, prescribed or otherwise, if they had a mild headache and took some paracetamol to ease that pain. Declining a claim under such circumstances clearly isn't the intention of the term.

Therefore to apply the term fairly, there has to be something to distinguish the example above, and one where Aioi would be fair to decline the claim. That distinction can't be on the grounds that the drug taken is, as in this case illegal, because the term doesn't specify this, and goes further to include prescribed drugs.

The logical and fair distinction, and in my opinion the whole intention of the term, is to distinguish where the drugs, prescribed or otherwise have affected the driver's ability to drive. In other words, that the consumption of such drugs was material to the loss, in that it had some detrimental impact on the ability of the driver.

Cannabis, clearly can have detrimental effects on someone's ability to drive. But simply because someone has admitted to taking cannabis doesn't mean they were "under the influence" of its effects at the time of an accident.

Here, this is relevant because Ms D says she last took a small amount of cannabis at 9.30 in the morning. The accident was over seven hours later. Traces of cannabis stay in someone's system even after its effects have worn off. So it's entirely plausible that Ms D could test positive for cannabis, while simultaneously not still feeling the effects of it.

That said, I acknowledge that the effects of cannabis last differing lengths depending on how much was taken, how it was taken, the metabolism and tolerance of the person taking it. So it is also possible that Ms D was still feeling the effects of it at the time of the accident. But of key importance here is that I'm not persuaded Aioi has evidenced this to be the case.

With the exception of the statement Ms D made saying she was under the influence – which as I've explained was a completely logical statement to make in light of testing positive – the other evidence points to Ms D no longer feeling the effects of the cannabis she took in the morning.

Here it is evident that Ms D took cannabis prior to the incident, but Aioi's term doesn't exclude cover where the drug is taken, it excludes cover where the person is under the influence, and I'm not persuaded Aioi shown that here.

It follows then that I think Aioi's decline of Ms D's claim is unfair, and so Aioi needs to take action to put that right. As I understand it, Ms D paid to have the car repaired. So, subject to her providing invoices of the repairs, Aioi should reimburse her what she's paid. It should also add interest to that payment which I'll set out in the direction below.

I'm not persuaded Ms D would have had to take out a separate policy to take her car from the impound had Aioi dealt with her claim. So, it should reimburse her for what she paid for that policy. Again, interest should be added to that payment.

Aioi should also deal with any third party claim as it usually would.

Like our Investigator, I'm not going to interfere with Aioi's decision to not continue covering Ms D considering what it knows now. But I agree with our Investigator, that Ms D should have been given the option to cancel her policy herself. Had she been, I'm persuaded she'd have chosen to do so. Therefore there are actions Aioi need to take to put that right too.

It should remove any record of cancellation from any external databases. It should also pay Ms D the difference between what it would have charged her for a policy with a fault claim on it and what she's been charged for having to declare a cancellation as well as a fault claim. That's because having to declare a previously cancelled policy is not only likely to increase the cost of a policy, but also limit the pool of insurers from which to choose to insure with.

I understand Ms D isn't happy with being held at fault for the incident, but I've not seen anything to suggest she was held at fault solely on the grounds that Aioi considered her to be under the influence of drugs. And considering the circumstances of the incident – that Ms D was carrying out a turn in the road manoeuvre – I think it's highly likely she'd always have been found at least partially liable for the accident. Which means she would most likely always have had a fault claim recorded on her policy.

Ms D says she's been made to feel helpless and alone by Aioi which has caused her distress. Having to pay for repairs herself would also be inconvenient. Therefore Aioi should pay her £300 compensation.

My final decision

For the reasons set out above, I uphold this complaint. To put things right Aioi Nissay Dowa

Insurance UK Limited needs to:

- Deal with any third-party claim for this incident.
- Pay Ms D what she paid to repair her car subject to her providing invoices. Interest should be added to this payment*.
- Pay Ms D what she paid for the policy to get her car from the impound subject to her providing evidence she's paid it. Interest should be added to this payment*.
- Pay Ms D the difference between what Aioi would have charged her for renewing the policy with a fault claim and what she's had to pay with her current insurer with the policy rated as having a fault claim and a previous cancellation. Interest should be added to this payment.
- Remove any record of cancellation from internal or external records.
- Pay Ms D £300 compensation for the distress and inconvenience caused by declining her claim.

*Interest should be applied at a rate of 8% per annum, unless Ms D provides evidence to show the interest she's paid is higher than this. If she can provide evidence of a higher interest rate, Aioi should pay that higher rate. Interest should be calculated from the date Ms D paid the invoice, or the higher premium, to the date Aioi pays her. HM Revenue & Customs may require Aioi to take off tax from this interest. If asked, it must give Ms D a certificate showing how much tax it's taken off.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 11 April 2025.

Joe Thornley
Ombudsman