

## **The complaint**

Mr E complains Herts Insurance Consultants Ltd trading as Sterling Insurance Services unfairly cancelled his car insurance policy after not taking payment on an agreed date.

## **What happened**

Mr E took out a car insurance policy through Sterling. In August 2023, the monthly premium wasn't received by Sterling, and so it sent out a seven-day cancellation notice. Sterling then cancelled the policy a week later.

Mr E complained to Sterling. He said it hadn't attempted to take payment in August. He said he'd contacted Sterling about it not taking payment, but he didn't receive a response, instead all he received was a cancellation notice. He said this policy had been reinstated following Sterling already having cancelled another policy in error just a month prior – due to it attempting to take payment on an unarranged date.

Mr E said when the policy had been reinstated, Sterling had done it at a discounted rate, which is why it had found a reason to cancel it again. He complained to Sterling and said he'd already had to spend around £400 on other insurance because of its unfair cancellation, so he wanted this refunded. He also wanted loss of earnings; he said being without his car meant he'd lost his job which Sterling should compensate him for.

Sterling didn't accept it had done anything wrong. It said it had tried to collect payment, but it was declined by Mr E's bank. Initially it said Mr E had an outstanding balance of around £50, but it agreed to remove this, meaning he didn't owe any payments to Sterling. Unhappy with Sterling's response, Mr E brought the complaint to the Financial Ombudsman Service.

Our Investigator didn't think Sterling had acted unfairly in cancelling the policy. She was satisfied it did request payment on the agreed date but Mr E's bank declined it. And she was satisfied Sterling had given Mr E sufficient notice of its intention to cancel the policy across multiple forms of contact including an attempted phone call. She also said she didn't think Sterling needed to provide a partial refund; she was satisfied it had charged him fairly for the time on cover and that the non-refundable commission had been sufficiently highlighted, so it was fair for Sterling to claw this back.

Mr E didn't accept the outcome of the Investigator. He raised various points in reply but ultimately said it was Sterling's fault that the insurance was cancelled, as it didn't respond to his email querying why payment hadn't been taken. He said he'd requested email contact so it wasn't appropriate for Sterling to phone him before the policy was cancelled.

He also said he'd been charged too much for the time on cover, and he hadn't received the documents our Investigator had referred to, including the terms of business which explained the commission payment. He felt Sterling's actions towards him had been malicious and that it had lied to him and this Service.

## **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.

As this is an informal service, I'm not going to respond to every point or piece of evidence Mr E and Sterling have provided. Instead, I've focused on those I consider to be key to determining the complaint. But I would like to assure them I have considered everything provided.

Turning first to the cancellation, Mr E's policy says Sterling will cancel the insurance if an instalment is missed. Having considered all of the evidence I have; I'm satisfied that the August payment was missed. Mr E has confirmed he didn't have enough money in his account to cover the payment. He said he was checking his online banking on the day the payment was due, and then he'd have transferred money in when Sterling had tried to take payment. Initially he said Sterling never attempted the payment, then he said Sterling didn't take the payment until after 12pm, knowing his bank would decline it. Mr T says its common knowledge that payments called after 12pm won't be paid by his bank.

I don't know whether that is the case with his bank or not, I haven't seen any evidence from his bank to confirm this. However, I consider the issue here is, Mr E didn't have enough money in his account to cover the insurance payment. If he thought Sterling would have to take the money before 12pm, then I think he could have reasonably transferred the funds into his account by then, if he was intending to do so. I'm not satisfied that the failure to take payment was because of an error by Sterling. Any concerns Mr E has about his bank would need to be raised with them separately. But I'm satisfied from what I've seen that Sterling did try to take a payment.

Cancelling insurance can have a big impact, given that driving without insurance is a criminal offence. So when cancelling an insurance policy, we'd expect an insurer to contact a consumer in a number of different ways, before cancelling the policy. Sterling sent a seven-day cancellation notice by email, as this was Mr E's communication preference. It also sent a text message and says a letter was also sent. It also tried to call Mr E before the policy was cancelled. So I'm satisfied it made reasonable attempts to make contact with him.

Mr E says he contacted Sterling on the day the payment was due, to query why it hadn't left the account. He said there were issues with Sterling taking payments on the wrong day previously, so he thought this might have been what happened here. He says because Sterling didn't respond to that email, it unfairly cancelled the policy. He said the phone call – five days after he sent his email – wasn't enough as he'd told Sterling he only wanted email contact. It is unfortunate Sterling didn't reply to his email. It hasn't provided a reason for that. However, I'm not satisfied that it not doing so is the reason the insurance was cancelled.

Mr E was aware payment hadn't been taken, as he'd queried it. The cancellation notice, confirming he hadn't paid, was sent by email, as was his preference. That email said payment hadn't been received and so the policy would cancel in seven days. It is ultimately Mr E's responsibility to ensure the payment is made. I can't see that Sterling not replying to his email means the cancellation is invalid as he says. Apart from his email, I can't see Mr E made any attempts to make the payment late or contact Sterling before the policy was then cancelled.

So overall, whilst I appreciate Mr E's strength of feeling, I'm satisfied Sterling was entitled to cancel the policy and gave appropriate notice to do so. So it follows that Sterling doesn't have to reimburse Mr E what he paid for insurance elsewhere following the cancellation. And it doesn't need to pay any lost earnings Mr E might have suffered because of not having car insurance.

Mr E says Sterling have charged him for four months of cover, when the policy was set up for just one month. And Mr E says Sterling has actually tried to charge him over £850, when it should have been £700. Having looked into this, I'm satisfied Mr E's payments would have amounted to the £700 as quoted by Sterling previously.

Mr E says he should be due a refund given the time on cover, as he'd paid over £200. Sterling said it paid the insurer upfront in full for the policy, and then Mr E was to pay that

back in instalments. When the policy was cancelled, the insurer – who is a separate business to the broker, Sterling – calculated the refund to Sterling on a pro-rata basis. Mr E had been on cover for 59 days when the policy cancelled, the insurer calculated the time on cover as being £152. It's important to set out I can't consider a complaint about the actions of the insurer here or the figure it quoted for time on cover.

Based on the amount charged for time on cover, Sterling said it received a refund from the insurer of around £540. But once it retained its commission, of around £126, the refund to it was around £420. However, the balance owed by Mr E was £480, meaning Mr E still owed Sterling just under £60. Whilst it did initially ask for this, it later waived any payments that were due.

This Service considers it's generally fair for brokers to claw-back commission lost if it sufficiently set out to its customers that it would charge non-refundable commission. For example by making it clear in the terms. Sterling said it did so when it issued its terms of business to Mr E. Mr E says he didn't receive it.

Having considered matters, including Mr E's strong opinions on it, I'm satisfied it's more likely than not that Sterling did provide the terms of business to Mr E. It's provided a screen shot of its system showing this was sent to Mr E when his original policy was set up in June. Sterling said this was on 14 June, however Mr E says he only received an email from them on 15 June, so it is fabricating evidence.

I think it's possible there was simply a delay between the email being sent and received. However, I don't think I need to decide whether that happened or not. Because – whilst I think they were likely sent - even if I accept Sterling didn't provide the terms of business, in the circumstances of this case, I'm still not satisfied it should return the commission payment to Mr E. I say this because it's already written off the outstanding balance, which was about half of that commission payment. And I can't see that Sterling charged any other fees, such as an arrangement fee, for setting up the policy. And we'd generally think it's fair for a broker to charge one. So overall, I'm not satisfied Mr E has lost out as a result of Sterling's actions, so it doesn't need to do anything differently.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 June 2024.

Michelle Henderson  
**Ombudsman**