

The complaint

Mr A has complained about his car insurance intermediary, RAC Financial Services Limited as it charged a cancellation fee, which he thinks is unfair.

What happened

Mr A arranged cover for his car via RAC in August 2022. Unfortunately, in March 2023 he found the car had a fault which caused it to nearly catch fire. He sold the car. He looked to change his policy to the new car but the insurer would not offer cover. The policy was cancelled and Mr A was charged a fee, which left him with an outstanding balance to pay on the policy of £97.23.

RAC arranged a new policy for Mr A's new car which was subsequently cancelled. This policy was also subject to a cancellation fee, which RAC agreed to waive. But, during a call with Mr A on 4 April 2023, it confirmed it would not waive the fee applicable to the original cover. During the call Mr A argued the contract for the car had been frustrated. RAC maintained its refusal to waive the charge. RAC confirmed this in a final response letter dated 12 May 2023. Mr A complained to the Financial Ombudsman Service.

Mr A told us that during the call on 4 April 2023, RAC's team manager had agreed to waive the fee. He said he was then shocked on 13 May 2023 to receive the final response letter confirming the fee would not be waived.

Our Investigator did not uphold the complaint. She considered the terms Mr A had agreed to and listened to the call on 4 April 2023. She felt RAC had not agreed to remove the charges which had caused the outstanding balance. She felt RAC had acted fairly and reasonably.

Mr A said there were other calls. That he'd been called again after the call our Investigator had listened to and the manager had agreed to remove the fee. Mr A said that an unforeseen event had occurred, causing the subject matter of the contract – the insured car – to no longer be in his possession. He felt this meant the insurance contract had been frustrated rather than truly cancelled, meaning he and the insurer should go their separate ways without loss to either of them.

Mr A's complaint was referred to me for an Ombudsman's decision.

I wasn't minded to uphold the complaint. But I needed to consider what Mr A had said about being told of the fee waiver in a different call to the one referenced by our Investigator. So I issued a provisional decision.

RAC said it would accept my decision. Mr A, noting the outcome had not changed, said he remained unhappy. He said he'd likely pursue his argument through the courts.

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.

I said provisionally:

"I know Mr A believes that the cancellation charge should not apply for reasons of frustration. But he entered into an insurance contract using RAC as an intermediary. So it was RAC's job to arrange and then administer the insurance contract. Part and parcel of a contract like this is the expectation that a policyholder may not want to continue with the policy for the whole year. RAC, as do most intermediaries, and indeed insurers, builds this expectation into their customer agreements.

RAC set out in the terms, which were shared with Mr A when the policy was arranged, that if the policy is cancelled a fee will be charged. RAC links the fee charged to the specific service provided in that, with it having fitted a data capture box (blackbox) to Mr A's car as part of the insurance contract, the cancellation fee will be £125.00. That's not an unreasonable sum and RAC is clear about it being charged. And it's a charge that is made in line with a reasonably foreseeable event which might happen during the life of the contract. It's common for insurers offering similar contracts to make a charge like this. I think it was fair and reasonable for RAC to charge this sum and Mr A's arguments around frustration don't give me cause to think it should fairly be waived in this instance.

Mr A also argues that he was told the fee would be waived. I'm not persuaded that is the case. Our Investigator obtained and listened to the call Mr A identified in our complaint form as being the one in which he was told the fee would be waived. I've listened to it. The manager speaking with Mr A is very clear on several occasions that the cancellation fee for this policy would not be waived. The matter is concluded with Mr A asking for the refusal to waive the fee to be put in writing and the manager agreeing to do that. This was sent on 12 May 2023. There's no reference in the call to a further telephone conversation being likely or intended, and the letter doesn't mention any further telephone conversation. I've not seen anything to make me think RAC, at any time, contacted Mr A and agreed to waive the cancellation fee.

I appreciate this will be disappointing for Mr A. I understand that the circumstances of his car having to be sold in, to him, unexpected circumstances, was upsetting and costly for him. However, I'm satisfied that Mr A entered into a clear contract with RAC which allowed it, in situations where the policy is no longer needed and has to be cancelled, to charge a fee. It was fair and reasonable, in my view, for it to charge that fee to Mr A and I'm not persuaded it's most likely it agreed to waive that. So I don't intend to uphold this complaint.

I understand that Mr A feels a court would find in his favour on a technical legal argument of frustration. I've taken his view on frustration into account in reaching my fair and reasonable findings set out above. If Mr A wants a legal test for his argument, he is free to pursue the matter against RAC through the courts."

I note Mr A's dissatisfaction with my decision, and his intention to pursue his concerns elsewhere. But he hasn't raised any further argument for me to consider. Having reviewed matters, I remain of the view stated provisionally. As such my provisional findings are now those of this, my final decision.

My final decision

I don't uphold the complaint. I don't make any award against RAC Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 16 November 2023.

Fiona Robinson
Ombudsman