

## The complaint

Mr A complains that Hastings Insurance Services Limited (trading as People's Choice) unfairly cancelled his motor insurance policy.

## What happened

The Financial Ombudsman Service deals with a consumer complaint against one regulated financial firm at a time. In our final decision we name that firm, but we don't identify any other party.

Mr A was approaching an age when some people retire. He was suffering from anxiety and depression. He wasn't able to work in paid employment.

In September 2019, Mr A took out motor insurance through Hastings.

After some telephone calls and letters, Mr A complained to Hastings that it had given him a deadline and then cancelled the policy and charged him fees.

Hastings wrote a final response letter dated 21 October 2019. It acknowledged some poor service where the customer representatives had spoken over Mr A. Hastings said it was sending Mr A a cheque for £50.00 compensation. Unhappy with that, Mr A brought his complaint to us in early December 2019.

### *our investigator's opinion*

Our investigator didn't recommend that the complaint should be upheld. She thought that Hastings was able to cancel the policy and it gave Mr A notice of this. Hastings had admitted its service could've been better and it had made a compensation payment. The investigator thought it reasonable that Hastings had refunded the remaining premium.

### *My first provisional decision*

After considering all the evidence, I issued a first provisional decision on this complaint to Mr A and to Hastings on 19 October 2020. I summarise my findings:

Having agreed that it would only cancel for one of the reasons in its list, Hastings cancelled for a reason not in its list. I was minded to find that unfair and unreasonable.

Subject to any further information from Mr A or from Hastings, my first provisional decision was that I was minded to uphold this complaint. I intended to direct Hastings Insurance Services Limited to:

1. pay Mr A – in addition to the £50.00 already paid – a further £100.00 for distress and inconvenience; and

2. write a letter to Mr A confirming that it incorrectly cancelled his policy and that it has asked the insurance company to remove any record of the cancellation from internal and external databases.

### *My second provisional decision*

After considering all the evidence, I issued a second provisional decision on this complaint to Mr A and to Hastings on 3 December 2020. I summarise my findings:

Mr A hadn't taken reasonable care to avoid making a misrepresentation about his occupation.

Under Consumer Insurance (Disclosure and Representations) Act ("CIDRA") Schedule 1 paragraph 9 sub paragraph (4)(b) – the insurer had a statutory right to terminate the contract by giving reasonable notice to the consumer.

I considered that the statutory right was separate from the contractual terms about cancellation. So I was satisfied that Hastings didn't treat Mr A unfairly by cancelling the policy.

Subject to any further information from Mr A or from Hastings, my second provisional decision was that I wasn't minded to uphold this complaint. I didn't intend to direct Hastings Insurance Services Limited to do any more in response to this complaint.

Mr A disagreed with the provisional decision. He says, in summary, that:

- In 30 years driving, he has never made any false information to get cheap insurance or had any previous issues.
- He isn't unemployed. He is disabled and a house person.
- In 2019, Hastings' online questions about occupation didn't include "*not working due to disability*". So he selected "*house husband*" as it was the closest thing he could select.
- On 6 September 2019 he phoned Hastings to go through his form so there wouldn't be any come-back. There was no discussion of paying an extra premium.
- He didn't cheat or make any misrepresentation.
- Hastings changed the occupation questions in 2020.

Hastings hasn't responded to the second provisional 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.

Mr A had a short-lived policy from about 1 September 2019. From the recording of the call on 6 September 2019, I find that Mr A said he was retired. But he later said he was on ESA (Employment and Support Allowance). Hastings said it would regard him as unemployed and that there would be additional charges of £134.24. Mr A cancelled the policy.

So Mr A knew his occupation was relevant to Hastings and that it would regard him as unemployed.

Later that evening Mr A went online and got a quote. On 21 January 2020 Hastings provided us with screenshots of the questions asked online about occupation. I haven't seen any evidence that the questions had changed since September 2019.

After clicking on "Not in paid work right now", there were options to click Househusband, Housewife, Unemployed or Other. After clicking on "Other", there were options to click on House Parent, Independent Means, Not Employed Due to Disability, Not in Employment or Voluntary Worker.

I find that - in response to a clear question about his occupation – Mr A said online that he was a house husband. In view of what had happened earlier that day, I find that Mr A hadn't taken reasonable care to avoid making a misrepresentation about his occupation.

From the recording of his call later that evening, I find that Mr A repeated that he was a house husband. I don't consider that the call-handler was in a position to question that or to confirm whether it was correct.

Mr A completed the purchase of the policy online. He paid the annual premium of about £256.00 in full rather than by instalments.

The policy terms included a schedule of fees. They included a policy arrangement fee of £20.00 and a fee for cancellation after the 14-day cooling-off period of £45.00.

CIDRA Schedule 1 provides an exhaustive list of the insurer's remedies for a misrepresentation. One of those remedies is that the insurer may "avoid" the policy, that is treat it as though it never existed.

Many motor policies provide that the insurer may cancel for any reason. And I wouldn't usually find it unfair for the insurer to treat the provision of conflicting information as good reason for cancellation.

But the Hastings policy terms restricted the reasons for cancellation as follows:

*"Our rights to cancel your Policy*

***We may give you seven days' notice of cancellation***

*We and your Insurer can cancel your Policy at any time by sending the Primary Policyholder seven days' written notice to the last postal or email address on our system, stating why the Policy has been cancelled. We can only do this for one of the following reasons:*

- We've been unable to collect a payment for your premium – see general condition 4*
- You refuse to allow us or your Insurer reasonable access to your Car/s in order to provide the services you've requested under this Policy e.g. when you make a claim*
- You don't provide reasonable co-operation to us or your Insurer in order to allow us to process your Policy, or a claim, or to defend our interests*
- Your Insurer is prevented from providing cover under this Policy by law or other reason*
- You don't send us or your Insurer information or documentation that your Insurer reasonably requires to process your Policy, or a claim, or to defend their interests*
- You don't take care of your Car/s as required by general condition 3 and in your Insurer's reasonable opinion this materially increases the risk they have insured*

- *You use threatening or abusive language or behaviour, or intimidate or bully our employees or your Insurer's staff or suppliers."*

I've underlined the phrase "*stating why the Policy has been cancelled*". I consider that Hastings undertook to explain a reason for cancellation.

I've underlined the phrase "*We can only do this for one of the following reasons:*" I consider that there was an exhaustive list of the only reasons for which Hastings or the insurance company could cancel the policy.

Immediately after the words quoted above, the policy said the following:

*"In certain circumstances we or your Insurer have the right to treat your Policy as if it never existed and without giving you notice or refunding your Premium. This will only apply if you make, or try to make, or where your Insurer reasonably suspects misrepresentation which is deliberate and/or reckless. Any claims made before or during when the Policy is treated as if it never existed, will be declined."*

I consider that this term was about the remedy of "avoiding" the policy under CIDRA. It didn't mention "cancellation" of the policy under CIDRA. And – although I've quoted two parts separately, reading them together suggests that there wouldn't be a cancellation of the policy for a reason under CIDRA.

From the recording of the call on 19 September 2019, I find that Hastings asked Mr A his current occupation and he said he wasn't working and was in receipt of ESA.

On the same day, Hastings wrote a letter saying that it would on 26 September amend Mr A's occupation, charge an amendment fee and take a further payment on his card. I find that by 19 September 2019, Mr A had provided reasonable cooperation to allow Hastings to process his policy.

From the recording of the call on 26 September 2019, I find that Mr A said he was a house person but received ESA.

On 30 September 2019, Hastings wrote a letter saying that it had amended Mr A's occupation to unemployed and would take a further payment of about £98.00 on his card. So – knowing of the conflicting information about his occupation – Hastings wasn't proposing to cancel the policy.

But it was proposing to charge an additional premium. And I'm satisfied that the increased premium is what it would've charged if Mr A had correctly described his occupation.

I don't consider that it was unfair for Hastings to charge the additional premium. But Mr A refused to pay it.

Within a couple of days, Hastings decided to cancel the policy. I can understand that Mr A felt pressurised. But I don't find that Hastings bullied him.

Hastings wrote two letters dated 2 October 2019.

One of them said the following:

*"You carried out a number of quotes using different details. Because of this, we'll cancel your cover on 9th October 2019"*

The other letter gave seven days' written notice that it would cancel the policy on 9 October 2019 for the following reason:

*"...because new information has come to light during our validation checks, and we're no longer able to cover you based on these details".*

I find that there was nothing that prevented the insurer from providing cover – albeit at an additional premium.

In its final response letter dated 21 October 2019, Hastings gave the following reason:

*"Your policy was cancelled because you confirmed that you are unemployed and you chose house person as your occupation because it was cheaper. This is known as quote manipulation..."*

Hastings also wrote a letter dated 29 October 2019. It included the following:

*"...confirm that we have cancelled your policy due to number of quotes that was carried out using different details"*

Hastings has never suggested that the policy was void from the start or that it was retaining the premium. It refunded Mr A as follows:

Premium paid	£256.66
Time on cover	£ 20.70
Arrangement fee	£ 20.00
Cancellation fee	£ 45.00
Sub-total	£ 85.70
Refunded	£170.96

It said it was charging for his time on cover (from 6 September to 9 October) at the initial yearly premium of about £256.00 without the additional amount of about £98.00. For that period of just over a month, it charged £20.70 – which I find proportionate.

The reasons given by Hastings didn't mention quote manipulation until the final response. And the reasons didn't mention legislation or CIDRA until after the first provisional decision. So I find that Hastings had failed properly to explain a reason for cancelling the policy.

However, I consider that Hastings has now shown that there was a good reason for cancelling the policy. Mr A had made a careless misrepresentation about his occupation.

So the insurer would've charged a higher premium and it could've reduced proportionately the amount to be paid on a claim. So – under CIDRA Schedule 1 paragraph 9 sub paragraph (4)(b) – the insurer had a statutory right to terminate the contract by giving reasonable notice to the consumer.

I consider that the statutory right was separate from the contractual terms about cancellation. So I'm now satisfied that Hastings didn't treat Mr A unfairly by cancelling the policy.

Although Hastings hasn't raised it, I consider that there is a further reason it could've given for cancelling the policy. That was that Mr A had refused to pay the additional premium. And – notwithstanding the reference to “*general condition 4*” (which was about paying instalments under a loan agreement) - I find that Hastings was “*unable to collect a payment for [Mr A's] premium*” – which was the first reason on the list of reasons quoted above.

In response to the first provisional decision, Mr A showed us policy documents for a year from 10 October 2019 at a total cost of about £660.00. But his complaint letter in November 2019 included the following:

*“I won't tell to my next insurer you cancelled my policy”*

I consider that Mr A remained under a duty to take reasonable care to answer all insurers' questions correctly.

There's not enough evidence for me to say that it was the Hastings cancellation (rather than other factors) that caused Mr A to pay the increased premium of about £660.00. And I'm now satisfied that Hastings didn't treat Mr A unfairly by cancelling the policy. So I don't find it fair and reasonable to direct Hastings to pay any compensation for financial loss in regard to the increased premium or the Hastings fees.

As I'm now satisfied that Hastings didn't treat Mr A unfairly by cancelling the policy, I no longer find it fair and reasonable to direct Hastings to write a letter to Mr A confirming that it incorrectly cancelled his policy and that it has asked the insurance company to remove any record of the cancellation from internal and external databases.

As I'm now satisfied that Hastings didn't treat Mr A unfairly by cancelling the policy, I no longer find it fair and reasonable to direct Hastings to pay Mr A compensation for distress and inconvenience.

### **My final decision**

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Hastings Insurance Services Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 February 2021.

Christopher Gilbert  
**Ombudsman**