

The complaint

Mr R has complained that Hastings Insurance Services Limited trading as Hastings Direct unfairly cancelled his insurance policy.

What happened

Mr R took out a car insurance policy with Hastings – a broker. The policy's annual premium was to be paid for on a monthly basis, funded by a credit agreement with Hastings.

The policy was set up and everything was running fine with the credit agreement being paid each month by direct debit. But in March 2020 Mr R switched bank accounts. Hastings received a notification from Mr R's old bank letting it know the direct debit instruction had been cancelled.

Hastings wrote to Mr R on 1 April 2020, both by letter and email to let him know the direct debit had been cancelled and that he needed to let it know his payment details. Hastings received no further response so it wrote to Mr R again, both by letter and email, letting him know he needed to update his payment details and gave instructions on how he could do this. Hastings said if it didn't receive Mr R's payment details by 17 April 2020 it would cancel his policy the following day. Hastings said it didn't receive anything further, so it cancelled Mr R's policy and wrote to him advising him of this.

Mr R wasn't happy with this and complained to Hastings. He said he didn't receive the letters as he was staying with his parents as he was shielding due to the coronavirus pandemic. He said he also replied to Hastings in an email saying he'd already set up the direct debit as the last payment was taken without issue – and this payment happened after he switched banks.

Hastings didn't change its stance. It said it did what it needed to in terms of letting Mr R know what he needed to do and the consequences of not doing so. It said the terms of the credit agreement allowed it to cancel his insurance policy if there wasn't a valid direct debit set up to fund the credit agreement. Hastings also said the email Mr R sent was sent to an unmonitored email address and has said that Mr R would have received an email letting him know his email wouldn't have been read.

Mr R remained unhappy and brought his complaint to us. He doesn't think it's fair his policy was cancelled as he'd not missed a payment, and never intended to miss one. He said the cancellation of this policy has meant he's had to buy a new policy, which was more expensive as he had to declare that he'd had a policy cancelled.

Our investigator recommended Mr R's complaint be upheld. She thought Hastings acted too hastily when cancelling Mr R's policy because at the point it cancelled, he'd not actually missed a payment. She thought Hastings should remove any record of the cancellation and provide Mr R a letter explaining the policy was cancelled in error. She said Mr R could then provide this letter to his new insurer to see if they could re-rate his policy based on the information. Our investigator thought Hastings should pay Mr R the difference between what he paid the new insurer after the policy was re-rated and what he would have had to pay Hastings had the policy not cancelled. And she thought Hastings should pay Mr R £100

compensation for the trouble and upset it caused by cancelling his policy.

Mr R agreed with our investigator. Hastings disagreed and asked for an ombudsman's decision. It says it was entitled to cancel the policy as Mr R didn't have an active direct debit set up to fund the credit agreement.

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.

Generally speaking, when a contract of insurance is taken out, the underwriter – the insurer – gets the full premium paid up front. What sometimes happens is that consumers choose to pay for the premium on a monthly basis. When this happens a separate credit agreement is set up with a finance provider. The finance provider pays the insurer the premium upfront. And the consumer pays the finance provider the agreed monthly repayments. The contract of insurance, and the credit agreement set up to fund it are two separate agreements.

There are often terms within the credit agreement which allow credit provider to be able to cancel the contract of insurance if they're not met. But importantly, the terms relating to the cancellation of the policy are contained within the terms of the insurance policy. Only an insurer can cancel an insurance policy. The insurer can delegate that authority to another party, such as a broker or credit provider. But they can only cancel the policy in line with the terms of the insurance policy itself.

In Mr R's case, Hastings act as his insurance broker, and the credit provider. Mr R's policy is underwritten by another business. Hastings sold him the policy and paid the insurer the full premium, and set up a credit agreement with Mr R to spread the cost of this over the year. I've seen the credit agreement and it says that Hastings can cancel the policy if there's no active direct debit set up to fund the credit agreement.

Mr R's policy was set up, and the credit agreement set up without issue. He set up a monthly direct debit and payments were being taken. The issue occurred here when Mr R switched banks.

When he switched banks, Hastings was made aware that the direct debit instruction was cancelled. And this isn't surprising – the account with the direct debit set up was closing. Hastings wrote to Mr R letting him know of this, and it wrote to him both in the post and by email, to the address it had on file. And this is what we'd expect it to do. I've seen those letters and emails and they clearly explain what Mr R needs to do to keep the policy running.

Hastings didn't receive a response to its first communication, so seven days later it sent Mr R a further chaser by both email and post. I've seen both these letters too, and both clearly say that if Mr R doesn't set up a new direct debit, or pay the balance in full, then Hastings will cancel his insurance policy in 10 days on 17 April 2020.

Hastings said a new direct debit wasn't set up, nor did it hear from Mr R to arrange one or settle the outstanding balance. So it cancelled Mr R's policy on 18 April and wrote to him both by post and email letting him know.

Hastings cancelled Mr R's policy based on him not complying with a term in the credit agreement. But the terms of the policy set out when the insurer (or in effect Hastings acting on behalf of the insurer) can cancel the policy. Those terms say Hastings can cancel the policy at anytime by giving seven day's written notice. But importantly, it says it can only do this for a number of reasons. Those reasons are:

- *“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.”*

General Condition 4 relates to “Non-payment of premiums” and goes on to say “If you're paying in instalments under a loan agreement, you (the Primary Policyholder) must make sure instalments are paid on time. If an instalment isn't received by the date it's due, we, on behalf of your Insurer, will give you at least seven days' notice of cancellation in writing to your last known address by first class post or email. The Policy will end after the seven days' notice runs out.”

Mr R's policy was cancelled before any payment was missed. He'd made the last payment, and the issue with the direct debit was spotted before the next payment was due to be taken. By cancelling Mr R's policy before any payment was missed, Hastings has done so outside of the terms of the policy. So it has cancelled Mr R's policy unfairly.

Hastings said it wouldn't be fair for it to wait until Mr R missed a payment before notifying him there was an issue. And I agree. I think Hastings acted fairly when letting Mr R know it had an issue with the direct debit as soon as it found out. But as explained above, I think Hastings acted unfairly when cancelling Mr R's policy when it did. This is because the terms of the insurance policy only allow it to be cancelled for a number of reasons set out within the terms. And, as Mr R hadn't missed a payment, none of those listed reasons applied.

Putting things right

As a result of this policy cancelling, Mr R had to purchase a new policy with a different business. He's said that policy was more expensive as a result of him having to declare that he'd had a policy cancelled. That's not unsurprising, so I think Hastings needs to take action to put that right for Mr R.

To do so it should:

- Remove any record of cancellation from any internal or external databases.
- Once Hastings has removed any record of the cancellation, it should write to Mr R confirming this and confirming it cancelled his policy in error. Mr R can then use this letter to show his current insurer and ask it to re-rate his policy based on him now not having had a policy cancelled.
- Hasting should then pay Mr R the pro-rata difference between that re-rated policy

and the policy he had with Hastings if the new policy is more expensive. This should be calculated from the date Mr R took out his new policy, to the date his policy with Hastings was due to end. Any refund under this point is subject to Mr R providing Hastings with evidence of the re-rated policy.

- Pay Mr R £100 for the trouble and upset caused by having his policy cancelled and having to arrange a new one sooner than expected.

My final decision

For the reasons set out above, I uphold Mr R's complaint and require Hastings Insurance Services Limited to:

- Remove any record of cancellation from any internal or external databases.
- Once Hastings has removed any record of the cancellation, it should write to Mr R confirming this and confirming it cancelled his policy in error. Mr R can then use this letter to show his current insurer and ask it to re-rate his policy based on him now not having had a policy cancelled.
- Hastings should then pay Mr R the pro rata difference between that re-rated policy and the policy he had with Hastings. This should be calculated from the date Mr R took out his new policy, to the date his policy with Hastings was due to end. Any refund under this point is subject to Mr R providing Hastings with evidence of the re-rated policy.
- Pay Mr R £100 for the trouble and upset caused by having his policy cancelled and having to arrange a new one sooner than expected.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 September 2021.

Joe Thornley
Ombudsman