

The complaint

Miss P complains about Hastings Insurance Services Limited and her belief that a Hastings employee accessed her personal information unlawfully to make personal calls to her. Miss P also doesn't feel as though Hastings took the seriousness of her concerns seriously.

What happened

Miss P held a motor insurance policy that was administered by Hastings. So, Hastings had access to several pieces of Miss P's personal information, including a valid contact number.

On 10 May 2022, Miss P says she received a call from an unknown number, but she believed this call had been made by an employee of Hastings. So, on 17 May, Miss P called Hastings to ask whether her account had been accessed internally on 10 May. Hastings confirmed Miss P's account had been accessed but wouldn't provide a reason as to why, and by who. Miss P was unhappy with Hastings failure to provide her with this explanation and so, a complaint was raised about this.

Hastings then completed an internal investigation into Miss P's concerns, to understand whether Miss P's account had been accessed unlawfully and her personal information mis-used. And having done so, Hastings didn't think they'd seen any evidence to show it had been. So, Hastings issued a final response to Miss P's complaint explaining this and their belief that they didn't need to do anything further. Miss P remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn't uphold it. They were satisfied Hastings had taken Miss P's concerns seriously and conducted a thorough investigation into these. And our investigator was satisfied that from this investigation, there wasn't evidence to show that any employee of Hastings accessed Miss P's account maliciously or that her personal information had been shared unlawfully. So, our investigator didn't think Hastings needed to do anything more. They also explained to Miss P that she may wish to contact the Information Commissioner's Office (ICO) as they regulated data protection within the UK and so, are able to consider breach of data complaints.

Miss P didn't agree. She reiterated the impact the complaint had on her health and so, her ability to obtain a new job. Miss P also wanted confirmation about whether Hastings were required to provide a legitimate reason as to why her account was accessed. And she felt if Hastings weren't, then their decision to tell her it had been accessed on 17 May was unreasonable and caused her unnecessary distress. Miss P maintained her belief that, as disciplinary action was taken, then it was clear her account had been accessed wrongfully. And she didn't think our investigator had taken into account Hastings lack of response to her correspondence, after their complaint response had been issued. As Miss P didn't agree, the complaint has been passed to me for a 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 not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Miss P. I recognise the complaint centre's around a significantly upsetting situation in Miss P's personal life. And I don't doubt Miss P's testimony that her health, both physical and mental, has been impacted by the situation.

I also recognise that it's not in dispute that Miss P's account with Hastings was accessed on the same day she received a call from an unknown number. Miss P believes this call came from a Hastings employee known to her and who was involved in the personal situation I've referred to above. Due to the timing of the call, and the access of Miss P's account, I can understand why Miss P would believe both are linked. And I can understand why Miss P would expect Hastings to confirm the reason for her account access, so she could rule out this potential link. When Hastings didn't provide this to her, I can understand why she'd be unhappy about this.

But for me to say Hastings should compensate Miss P for the upset she's been caused; I first need to be satisfied that Hastings have done something wrong. So, I'd need to see evidence that satisfies me an employee of Hastings did purposefully access her account on their internal system with the intention of accessing personal information that allowed them to call Miss P. Or, if I haven't seen evidence of this, I'd need to be satisfied that Hastings failed to take Miss P's concerns seriously and conduct a thorough investigation that would've brought this evidence to light. And in this situation, I don't think that's the case.

Before I explain why I've reached my decision, I think it would be useful for me to explain what I've been able to consider, and how. It is not our service's role to comment on, or direct a business to change, their business processes. So, I'm not able to make a determination on when an employee should, or shouldn't, access a customer's account as there are variety of commercial reasons why an employee may need to do so. And as these reasons are commercially sensitive, I'm unable to rule upon whether Hastings acted unreasonably when not disclosing the reason the account was accessed following their internal investigation. Any investigation into this would fall under the remit of the industry regulator, the Financial Conduct Authority (FCA). And it's also not our service's role to punish a business for a suspected data breach, as this would fall under the remit of the ICO.

Instead, my role is limited to considering the service Hastings provided to Miss P in their role as the administrator of her insurance policy. And in this situation specifically, considering whether they took Miss P's concerns seriously once they'd been raised. While I recognise Hastings' belief that their investigation into these concerns falls under their complaint handling process, which our service doesn't have jurisdiction to consider, I disagree. I think the investigation Hastings conducted was an investigation into the conduct of their staff. While this investigation began due to Miss P raising her concerns, I don't believe this to be part of Hastings' complaint handling process. I think Hastings complaint handling process covers the final response they issued, and their communication with Miss P after this was issued. So, I won't consider the communication Miss P and Hastings had after this response further. This includes any of Miss P's concerns about Hastings failure to respond to her after their complaint response. But I have considered the investigation Hastings conducted.

Hastings have provided our service with a detailed explanation of the investigation they conducted, including a breakdown of the steps they took to satisfy themselves Miss P's

account hadn't been accessed with malicious intent. And having considered this breakdown, I think it's reasonably clear that Hastings took Miss P's concerns seriously. The investigation process included a detailed look into the accessing of Miss P's policy, as well as interviews with the employee's involved and analysis of the employee's phones. And following this, Hastings concluded there was no evidence to show Miss P's account had been accessed with malicious intent or that her personal information had been unlawfully used.

It's not my role to complete an independent review into the investigation Hastings completed. Nor would Hastings be obliged to provide me with copies of the interviews or other information they considered, as this information is personal to their employees and they have a duty to ensure this information is protected. This includes any reasoning for potential disciplinary action which I'm aware Miss P feels was taken. So, I've relied on the explanation of the findings Hastings reached as I'm satisfied with the actions they took and the thoroughness of the investigation they conducted.

Because of this, I don't think I'm able to say there is any evidence to show Miss P's account was accessed maliciously, or that any access of her account led to the calls she received. And because of this, I don't think I can say Hastings have acted unfairly and so, I don't think Hastings need to do anything more on this occasion.

I understand this isn't the outcome Miss P was hoping for. And I appreciate Miss P is likely to maintain her belief that the contact she received originated from personal information available in Hastings internal systems. But I wasn't there at the time Miss P received the calls. Nor was I present at the time Miss P's account was accessed. So, I'm unable to say for certain what did, or didn't happen. In these situations, I must make my decision based on the evidence I have available to me, based on the balance of probabilities. And considering all of the above, I haven't seen evidence that persuades me Hastings have acted unfairly when concluding that they didn't access, or use, Miss P's information unlawfully.

Miss P is still able to raise her concerns with the ICO should she wish to do so.

My final decision

For the reasons outlined above, I don't uphold Miss P's complaint about Hastings Insurance Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 31 January 2023.

Josh Haskey
Ombudsman