

The complaint

Miss L has complained about how Hastings Insurance Services Limited (Hastings) assisted her with a claim on her motor insurance policy.

Hastings are a broker and administer policies on behalf of the insurer. So, when I refer to Hastings in this decision, it includes its actions as a broker and on behalf of the insurer.

What happened

On 31 January 2018, Mr D – a named driver on Miss L’s motor insurance policy - was involved in an accident in Miss L’s car so called Hastings to claim on the policy.

As Mr D said he wasn’t at fault for the accident, Hastings transferred him to another company (an accident management company who I’ll refer to as the AMC) to provide them with a hire car and repair the damage to Miss L’s car under a credit agreement.

The AMC reviewed the claim and said Miss L’s car was what is known as a ‘total loss’ and couldn’t be repaired. In June 2020, Miss L received a bill from the AMC saying she needed to pay £15,702.53 for the hire car. This was because Hastings had accepted liability in April 2018 and the third party paid the money for car hire to the AMC in error.

Miss L wasn’t happy with how Hastings and the AMC were assisting her with the claim and complained. She said Hastings hadn’t let Mr D know she was being referred to the AMC nor told him there was any possibility she could be liable for hire car costs. Miss L and Mr D thought the hire car was given to them under the courtesy car provision in their policy. Further, she was being pursued for hire car costs which she didn’t agree with, especially as she didn’t need the size and type of car she was given.

Hastings reviewed the complaint and didn’t uphold it. It said the agreement for the hire car was between the AMC and Miss L so didn’t think it was anything to do with them. It said if Miss L had reviewed the terms from the AMC and decided not to accept them, the claim would have been made under her motor insurance policy and she would have had a courtesy car up to the point the car was deemed a total loss.

Miss L didn’t agree with Hastings’s response to her complaint and referred it to this service. To put things right, she wants Hastings to settle the hire car charges.

Our Investigator looked into Miss L’s complaint and recommended it be upheld. After communicating with Hastings, he explained it was Hastings’ responsibility to provide consumers with enough clear information to make an informed choice about whether to claim under their own policy or go through the AMC and into a credit arrangement for a hire car and the repairs needed to their car. So, not telling Mr D that Miss L might be liable for hire charges - when that was a possibility with claiming through the AMC - prevented him from making an informed choice. He felt, if Mr D had been given this information, he wouldn’t have chosen to be referred to the AMC. To put things right, our investigator recommended Hastings cover the hire car costs with the AMC and pay £150 for the distress and inconvenience caused to Miss L by the poor referral.

Hastings didn't agree. It said the hire agreement was between the AMC and Miss L and an expectation for it to outline the contractual agreement of another company's service, the AMC, isn't legitimate business practise. It said the AMC outlined the contractual agreement prior to Miss L going ahead and so the charges incurred have nothing to do with it.

I issued a provisional decision on 14 June 2023 which said the following.

'I'm currently intending to uphold Miss L's complaint and require Hastings to put things right as set out below. I'll explain why.

The responsibilities of Hastings

Before I address the merits of this complaint, it's first important to set out the parties involved and Hastings' responsibilities, to make clear what I can look at in this decision.

Hastings are responsible for when it discussed Miss L's claim options and referred Mr D to the AMC for credit hire and repair. However, Hastings are not directly responsible for any actions or failures of the AMC. And I don't have the jurisdiction to consider the actions of the AMC in this complaint.

So, in relation to Hastings and the AMC, I'm only considering what happened during the call with Mr D when he was referred to the AMC for credit hire and repair and whether Hastings met the required standards for that referral. And - as I don't think it did - what the fair and reasonable outcome is to Miss L's complaint.

The relevant regulatory and other requirements

As the insurance broker, Hastings were obliged to give Miss L and Mr D information that was clear, fair and not misleading under Principle 7 of the FCA Handbook (PRIN 2.1R The Principles) and ICOBS 2.2.2.

In this case, it means when Mr D contacted Hastings to tell them about his claim, Hastings needed to give him clear information about his options so he could decide how best to proceed with his claim. Hastings were also required to do the following.

- Pay due regard to the interests of Miss L as their customer and treat her fairly (Principle 6 of the FCA Handbook (PRIN 2.1R)).*
- Act honestly, fairly, and professionally in accordance with the best interests of their customer (ICOBS 2.5.-1R).*
- Take reasonable care to ensure the suitability of their advice if any recommendations were made (Principle 9 of the FCA Handbook (PRIN2.1R)).*

ICOBS 2.5.3 makes it clear a firm cannot delegate its responsibilities under the regulatory system.

As Mr D made the call to Hastings on behalf of Miss L, he was acting as her representative. And I'm satisfied Hastings owed the same obligations to him on Miss L's behalf.

The referral to the AMC

I've listened to the referral call and considered whether Hastings met the relevant regulatory requirements.

The key call is the seventh section of the call recording we've been sent by Hastings. Mr D and Hastings had already been discussing the accident but, due to technical problems with Hastings, the call had cut out various times. I've extracted some of this conversation below.

At the beginning of this part of the call, the call handler at Hastings says she's going to 'instruct relevant services for you for repairs' but needs to make notes on the system. Mr D explains he's running out of battery so the call will need to be quick as he may get cut off.

Hastings: I can now instruct A who is our approved accident management company. They'll be able to discuss repairs and also, if you require one, a hire car for you. Your policy carries an excess of £395 however this would not be payable if credit repair is offered as the repair is not carried out under the terms of your policy. If they're not able to offer you the credit repair services they will discuss alternative repair options under your motor insurance policy and the excess will be payable. I'll transfer you to them at the end of the call, this will take a few minutes. If you would like to contact them in the future, their number is – do you want to note it down?

Mr D: So, you know, if it's not my fault, will I still have to pay the excess?

Hastings: As I mentioned, I am instructing the services under the, un..erm, under the, um, through AMC, accident management company - which will mean if gets accepted for credit repair and credit hire you do not need to pay your excess. If it comes to a point where they say no we're not going to accept it for credit, they'll let you know and then the repairs will be carried out under the terms of the policy then the excess will become payable. At this stage, you do not need to pay your excess but we still need to make you aware of it. [A's number offered and taken down] - that's for A, your approved repairers alright...I'll put you through to them.

Just to make you aware, there are other repair options available, would you like me to go through these with you or are you happy for me to proceed and instruct our approved repairers now.

Mr D: What's the other?

Hastings: The other option is you find your own garage, you take it to the garage that you would like to take it to, you would have to pay your excess directly to them. We don't provide you with a replacement car for the duration of repairs.

Mr D: No, that's absolutely fine, do I get a courtesy car as well?

Hastings: For the duration of repairs, for the duration of repairs.

Mr D: Yes, that's absolutely fine, brilliant.

[Discussion on address for collection of the car]

Hastings: [Discussion on legal cover and the contact details for Hastings in relation to contacting them again – phone number with the option to select for existing claims as well as the email address for sending in any pictures etc.]

If you hold on for me please, I will speak to our approved repairers, they will obviously help you with the next steps forward of, such as repairs and

obviously providing you with a replacement car once it is accepted for repairs, ok.'

Although the call handler told Mr D there were other 'repair options' available, I'm not persuaded she presented the information about the full extent of the options available – which don't just relate to repairs - and the benefits and drawbacks of them in a clear, fair and not misleading way. This is for the following reasons:

- *Mr D referred repeatedly to a courtesy car in the conversation with Hastings. Miss L says this is because he knew they had this cover under her motor insurance policy. At no point did Hastings correct him or explain the difference between having a hire car with A and the courtesy car cover Miss L had under the motor insurance policy.*
- *Hastings said if Miss L didn't use the AMC – referred to repeatedly as their 'approved repairer' – Miss L wouldn't be given a replacement car for the duration of repairs. This isn't correct – Miss L had courtesy car cover for the time the car is being repaired with a nominated repairer.*
- *The call handler said the policy excess wouldn't be due if Miss L used the AMC, but it would if the AMC didn't 'accept it for credit'. This isn't the full position as Miss L may have been able to claim her excess back from the third party's insurer as an uninsured loss, even if she claimed through her own insurance policy.*
- *The call handler didn't highlight any drawbacks to using an AMC. She should have made it clear that recovering the costs from the third-party insurer isn't guaranteed. And, if this was the position, Miss L could become liable for those credit hire costs which would likely be much higher than the policy excess.*
- *I don't think Hastings established Mr L needed to follow the credit hire and repair option or that it was suitable for them. Whilst I can accept Miss L had a need for a replacement car and credit hire was one way to get one, she had courtesy car cover with her motor insurance policy. The courtesy car is provided under the motor insurance policy and therefore not something Miss L would have been at risk of needing to pay for, if liability was disputed. There was a risk Miss L could be held liable for the hire car charges and Hastings should have let Mr D know this along with the fact Miss L was entitled to a courtesy car under her policy, so she could make an informed choice on whether to go for a hire car on credit. In fact, Mr D left the conversation with the – understandable - impression that Miss L would be using the courtesy car provided under her motor insurance policy.*
- *Hastings didn't explain a key downside to not claiming on the motor insurance policy and dealing with the AMC as a separate company meant Miss L was stepping outside of her regulated contract and dealing with an unregulated company. Practically, this means she didn't have the same routes available if things go wrong with the AMC.*
- *I can't agree Hastings made it clear to Mr D about the two options available to Miss L and what each one meant. The references to the AMC were as Hastings' 'approved repairer', the call handler confirmed there was a courtesy car if using the AMC and Hastings transferred Mr D to them. Taking this into account, and in the absence of a clear explanation about the options, I can understand why Mr D didn't realise he – on behalf of Miss L - had been referred to the AMC and Miss L had stepped outside the regulated motor insurance policy because of this. The only other option available was described as one which meant no replacement car and this didn't reflect what Mr D knew about Miss L's motor insurance policy having courtesy car cover.*

Taking everything into account, I'm not persuaded Hastings presented information about the options Miss L had in a clear, fair and not misleading way to Mr D. The call handler highlighted a couple of the main benefits of credit hire, but didn't make it clear it was a proactive choice to step outside the motor insurance policy. Given Mr D's questions, I think it was clear he and Miss L didn't realise this was a separate route to the motor insurance

policy. The call handler ought to have made it clear the two routes which were available and the differences between them as well as the key risks, to present Mr D with a balanced view of Miss L's options and allow him on her behalf, or her after discussing it with him, to make an informed choice about how to proceed. Miss L says if she'd been made aware of the risk of having to pay hire car costs, she would have gone through the motor insurance policy – which is what she thought she was doing in any event – as she had courtesy car cover with no risk of having to pay for it. And therefore, wouldn't be held liable for the hire car costs.

For the above reasons, I've provisionally decided to uphold Miss L's complaint. I don't think she would have agreed to the referral to the AMC if Mr D had been given the clear, fair and not misleading information he should have about her options by Hastings.

I've therefore looked at the impact of the poor referral on Miss L and how Hastings should put things right to get to what I consider to be the fair and reasonable outcome to Miss L's complaint. Because of Hastings referring Miss L to the AMC, she is now being chased for £15,702.53 for credit hire costs. These are costs Miss L would never have incurred, but for Hastings' poor referral. Therefore, I consider the fair and reasonable outcome is for Hastings' to pay the credit hire costs, plus any late fees and interest add to these.

Miss L has been chased for the outstanding hire car costs since 2020 and been threatened with debt collectors and further action. Miss L has also explained how this has impacted her, including her ability to sleep, as the demand of such a large debt has weighed heavily on her for such a long time. I can see from the communication with our service it's been an extremely stressful and worrying time for Miss L. As I'm persuaded, she's only become liable for the hire costs due to Hastings' failings, it's my view Hastings should pay Miss L £450 to compensate her for this unnecessary additional distress and inconvenience caused.'

Hastings responded to accept the decision. Miss L responded to explain she felt heard and relieved. She later responded to say she'd reflected on the matter and wanted the compensatory element to be reassessed to recognise the impact on their lives. Miss L explained the charges had hung over them and caused additional stress and anxiety for three years having a significant impact on her mental health and wellbeing.

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 reconsidered everything and with no new information from either party in response to my provisional findings on the merits of this complaint, I see no reason to depart from them.

Given all the factors set out in the provisional decision and above, I don't think Miss L would have agreed to the referral to the AMC if Mr D had been given the clear, fair and not misleading information he should have about Miss D's options by Hastings.

Miss L has asked me to reassess the compensatory amount considering her further comments. I can see from what has been said by her that she's found this stressful and it has impacted her wellbeing. I think that's understandable, and I want reassure Miss L that I'd taken this into account when reaching my provisional decision. I think it's important to explain it's my role to seek to distinguish between the distress and inconvenience Miss L suffered because of the car accident and its consequences (as well as any other matters going on in the same time frame), which Hastings isn't responsible for, with what Hastings did or failed to do that might've added to that distress. Having taken everything into account, I consider the award of £450 is a fair and reasonable way to recognise this impact so,

although I've considered what she's said in response to the provisional decision, I haven't decided to change the award.

Putting things right

To put things right, I require Hastings Insurance Services Limited to:

1. Pay the hire car costs plus any late fees and interest Miss L is liable for. It can pay these directly to the AMC or it can pay the amount due to Miss L, so she can pay the AMC.
2. Pay Miss L £450 for distress and inconvenience.

My final decision

For the reasons set out above, I uphold this complaint. To put things right, Hastings Insurance Services Limited needs to take the steps outlined above under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 9 August 2023.

Rebecca Ellis
Ombudsman