

The complaint

Mr S complained that inaccurate advice by Hastings Insurance Services Limited (“Hastings”) triggered the collapse of his house sale and led to financial consequences for him. Hastings were acting as broker to Mr S in the provision of his home insurance needs.

What happened

Mr S was planning to sell his UK home and move abroad with his family. He had found a prospective buyer, but the house sale was contingent on the ability of the buyer to have Mr S’ buildings insurance transferred to him. The buyer required this assurance as the property had some known issues of subsidence which were in the process of being remedied.

Mr S approached Hastings and asked if it was possible for his insurance to be transferred to his buyer. Mr S provided a letter from Hastings which confirmed it was. Following the assurance from Hastings, Mr S put down a non-refundable deposit on a property abroad. Apart from the buyer’s assurance, Mr C also needed the assurance from his broker before he entered a binding contract to buy his new house abroad, which he did based on the information received from Hastings.

Mr S said Hastings, later and after he and his buyer had put every arrangement in place, reversed its position on the transfer of insurance and went further in saying no guarantees could be provided that the new buyer could gain insurance on the property.

Mr S said this news caused his buyer to pull out of the agreed sale and caused himself considerable financial consequences. He said it had an enormous impact on the well-being of his family. Mr S said the inaccurate advice has led to him: paying costs of a bridging loan to buy his house abroad; loss by a reduced selling price due to needing to accelerate a sale; and potential future capital gains tax liability.

Hastings initially said it couldn’t find evidence that it had advised Mr S his insurance could be transferred to a new buyer. However, after intervention by our investigator, Hastings said *“we contacted the underwriter of the policy to see if the insurance could be transferred if the property were to be sold. [The insurer] informed us they would cover the risk however a new policy would need to be set up in the new buyer’s name and for [the insurer] to be contacted to override a decline for the new quotation. Unfortunately, this was taken out of context, and we sent a letter to Mr S stating the insurance could be transferred without detailing the specific instructions detailed by [the insurer]”*.

Hastings said *“it is clear we have mismanaged the guidance provided by [the insurer] and caused significant trouble and upset to Mr S. Our original response detailed we could not find any evidence of mis-information about transferring the policy, this is obviously incorrect and therefore a change in outcome is merited”*. Hastings apologised and offered £250 for the poor service provided.

Our investigator decided to uphold the complaint. He didn’t think the compensation Hastings offered reasonably covered Mr S for the distress and inconvenience he suffered, so he increased this by £350 (to £600). However, he didn’t think Hastings needed to cover Mr S’

financial losses as he didn't think the loss was solely due to Hastings' actions. Both Mr S and Hastings disagreed, so the case has been referred to an ombudsman.

My provisional decision

I made a provisional decision on this on 28 June 2023. I said:

"Mr S said the incorrect advice from Hastings led to the sequence of events, so I've reviewed what Hastings said to Mr S in a brief letter. It said *"just to confirm, we have spoken to your underwriter, and they are happy to transfer this policy over to a new customer. If you could please call us as soon as you have a buyer, and we will look to make the changes necessary"*. Hastings didn't stipulate any conditions or other factors that might stop the transfer taking place. To Mr S the impression given by Hastings was that everything was going according to plan."

The letter was signed by the Operations Director of Hastings. When Mr S received the letter I think it was reasonable for him to rely on the contents of the letter, given it had been sent by a senior authority from within Hastings. It seems the letter was a follow-up to a verbal confirmation, as the letter started *"just to confirm..."*. I think the letter is clear. It says the underwriter is happy to transfer this policy – I think it was reasonable for Mr S to think this was his policy, as his policy number is stated at the top of the letter. The letter states the policy can be transferred to a new customer. As Mr S had been in contact with Hastings about a buyer purchasing his property, I think he was reasonable to believe his policy could be transferred to the new buyer and that Mr S could go ahead with his arrangement to get into a binding contract to buy his property abroad and therefore committing him to the move.

Later, Hastings did admit to providing *"mis-information"*. This led it to offering £250 compensation, so I have considered whether I think this was a fair compensation offer in the circumstances of this complaint and put Mr S back in the position he was in pre-loss.

Hastings said Mr S' buyer contacted it. Hastings attempted to change the policy into the buyer's name. Hastings said its systems wouldn't allow it to make the change. Hastings said it advised the buyer to approach the insurer direct. However, Mr S said when the buyer approached the insurer direct he couldn't transfer the policy or take out insurance direct. Mr S approached a different insurer, and he was told it's unlikely any insurer would take on new insurance for a different customer so close to having work carried out on subsidence.

Despite Hastings being fully aware of the arrangements in place it didn't take on board dealing with the issues when its system failed. It knew that the deal to buy the house was based on the transfer arrangements it had already confirmed to Mr S would go ahead. So, even though its system wouldn't let it conclude the transaction I think it could have done more on behalf of Mr S and his new purchaser to contact the insurer and make the arrangements to transfer the cover. I don't think the new purchaser could be expected to know who to contact or what to say. But Hastings had agreed documentation, it had a record of the discussion, it had the contact details and it could easily have gathered those from the new purchaser and provided them to the insurer to follow through on its promise that the policy could be easily transferred. Under the Association of British Insurers (ABI) guidelines the current insurer would've been obliged to take responsibility for continuing cover on the property. And I have no reason to doubt it wouldn't have, had Hastings facilitated it.

Hastings now said there was no guarantee that a new owner would be quoted by the existing insurer. It further explained, these would be completely new details and the existing insurer's acceptance criteria, so even if the process was completed correctly there would be no guarantee of cover. However, I don't think the advice provided in writing by Hastings Operations Director was correct as the buyer wasn't able to transfer the insurance or

couldn't get new insurance on the property. This was contrary to what the Operations Director had advised in the letter she sent.

Mr S said when the buyer became aware he couldn't get insurance on the property, he pulled out of the sale, which led to difficult financial consequences for Mr S. Mr S thinks these difficulties were caused by the incorrect advice from the broker.

However, Hastings has said its advice wasn't the main cause of Mr S' financial difficulties. It said we have not received any evidence that the sale of his property was dependant on the transference of Mr S' home insurance. Hastings said subsidence is notorious for making things difficult (in terms of selling and covering insurance wise) and Hastings did not cause the subsidence in the property.

However, the key for me is that Mr S only put down a deposit on his new property (a requirement in that jurisdiction) after receiving confirmation from Hasting's Operations Director stating his insurance policy could be transferred directly to his buyer. Mr S has consistently said his sale to the specific buyer was dependent on this transfer.

Mr S has shared an email which was sent by the prospective buyer that shows they were hopeful the sale could be finalised that week. He has also shared an email from the buyer's agent wanting certainty over the insurance arrangements.

The letter sent by Hastings was incorrect and the prospective buyer couldn't get the insurance cover he thought he was going to get. I think it's clear this led to the buyer pulling out.

What is clear in my mind is that this sequence of events has led to Mr S being put in a difficult financial predicament. Facing the prospect of losing his significant deposit, he felt the less bad option was taking out a bridging loan. Now owning two properties, he faces potential capital gains tax when he does sell this house as it's not now his main residence. He wouldn't have faced any such potential costs if the transfer of insurance cover had continued, and the sale gone through on the property when it was his main home.

This outcome, I feel was triggered by the incorrect advice provided by Hasting's Operations Director. Therefore, I don't think Hastings offer of compensation (£250) sufficiently puts Mr S back in the position he would've been in had the error not occurred. Therefore, I intend to uphold this complaint.

Mr S has tried to mitigate his losses. He's explained how he'd accepted lower bids on his property to accelerate the process. He's been a distressed seller. However, unfortunately due to concerns over the lack of continuity of the insurer these potential later sales also fell through. Mr S explained the changing of an insurer on a house with subsidence is against market convention and was therefore a warning sign to new buyers. Mr S thinks Hastings would've been able to ensure continuity of the underwriter if it had given the matter its due attention.

Given the inability of selling his home and the bridging loan costs he was paying, Mr S said he was facing insolvency so chose to rent out his UK property. He said the income matched what he was paying on his mortgage payments, but he was out of pocket for white goods he purchased to support the rental and for general upkeep costs. I think Mr S has done as much as he could be expected to minimise the losses resulting from Hastings' error. I can also see in parallel he worked with a specialist surveyor and a specialist insurer to get specific subsidence cover that has allowed him now to re-market his property for sale. He's also incurred duplicate selling costs, having to find a buyer for the second time. I think it's reasonable that Mr S is reimbursed these costs, as it's a consequence of the first sale falling

through due to Hastings' error. I intend Hastings reimburse Mr S £1,236 for the survey costs (incl. asbestos survey) and £540 for the selling costs (on production of valid receipts).

Mr S has provided details of the costs he's incurred so I've examined these carefully to decide what I think is a fair payment from Hastings to put Mr S back in the position he was in before the mistake.

I think Mr S has put a sensible mitigation in place by renting out his property. This was the most logical action in reducing the loss. I see the expiry of this tenancy agreement is on 22 December 2023. I think this acts as a natural backstop by which to consider additional costs Mr S will incur, but I'll add two further months as contingency to allow for reasonable timing differences with the sale of the property or, to allow Mr S to decide whether to move forward with his UK property on a permanent rental basis in the medium term.

Therefore, I intend for Hastings to pay the interest costs Mr S has incurred (on production of valid receipts /evidence) for the bridging loan from inception to the date Mr S' UK property is sold (or 14 February 2024 whichever is earlier). Mr S paid in the local currency which when converting to Sterling was an annual cost of £8,764. So, I intend Hastings pays £730 for each month the loan is outstanding. As Mr S has been without this money, I intend to add 8% interest per annum (simple) from the date the bridging loan was taken out to the date Hastings reimburse Mr S. I intend for Hastings to reimburse the arrangement fee for the bridging loan - £119 (on production of a valid receipt).

Mr S has set out that he thinks he will lose money on his UK house sale as he will be a distressed seller. However, Mr S has explained that he now has subsidence cover and he's also had time to remedy any building faults with the property if he so chooses. Therefore, I don't see why Mr S wouldn't expect to receive market value for his property for the condition it's in. So, I won't be asking Hastings to cover any perceived shortfall in sales proceeds if Mr S chooses to sell his property.

It's possible under current legislation that Mr S will need to pay capital gains tax on the sale of his property now that he owns a second property. Mr S has shared the tax rules that are applicable in his circumstances. Mr S never intended to own two houses, so he wouldn't have been liable for the capital gains tax on the sale of his home had Hastings' not made the error.

To put Mr S back in the position he would've been in, I intend Hastings to indemnify Mr S for any capital gains tax liability on the sale of his UK home (on production of valid evidence a tax charge has accrued). I think this indemnity period should last until 14 April 2024 (which is based on 60 days from 14 February 2024, which is the period in which UK law stipulates that Mr S would need to fulfil any tax requirements).

Mr S has provided a full calculation of the potential capital gains tax on his property based upon his circumstances. He's assumed the house will sell for the same price the previous purchaser had bid. This seems reasonable. He's also deducted nearly £90,000 of costs that he's spent on improving the property. So, I think Mr S has tried to do a fair calculation of the future liability. So, to create certainty, I intend Hastings pay the amount Mr S has calculated (£20,716), once Mr S has provided evidence to it that he has successfully sold his house with the indemnity period (i.e., before 14 February 2024). I don't think it's fair to expect Hastings to indemnify Mr S indefinitely for any other taxes he may incur, so I wouldn't expect Hastings to cover this potential tax charge if the sale happened after 14 February 2024.

I think it's evident that Mr S has acted quickly to minimise the loss - he rented his house out at a lower price to make sure he was receiving some income to improve his financial predicament. He's said the income he received on rent was the same as he was paying on

mortgage payments. Normally, I'd expect there to be a profit from renting out a property, but I think it's reasonable one hasn't been made here. However, Mr S has incurred additional costs to get the property ready for rent. Given no profit has been made, I think it's reasonable that Hastings covers these costs. Therefore, I intend Hastings to reimburse the cost of the washing machine Mr S has purchased for the property to facilitate the rental (on production of valid receipts).

Mr S has shared other costs he has incurred in either, preparing to sell his UK property, or for moving to his new property. Apart from the costs I've already outlined, I think these costs would've either been needed to be paid anyway even without Hastings' mistake or alternatively should be seen as an investment that enhanced the sale price of his property. Therefore, I don't think it's reasonable that these costs are reimbursed.

Hastings offered Mr S £250 in compensation. I think moving house in any circumstances is an extremely stressful event. In Mr S' position, I think the circumstances were more difficult – he was moving a very young family abroad. Mr S sought support from family members to help with his financial needs due to the error Hastings made. Mr S has explained about the pressure he has felt from the difficult financial circumstances. I think the levels of stress would've been high and I don't think his broker did enough to help after making the mistake. I think this stress has been long lasting. The time Mr S has spent trying to manage this situation caused significant inconvenience. Therefore, I intend Hastings to compensate Mr S by a further £1,250 (that's £1,500 in total)".

Responses to my provisional decision

Mr S accepted my reasoning and remedies that I set out in my provisional decision. However, he felt his key point had been overlooked in the area which he feels he has suffered the greatest financial impact.

Mr S has explained that house prices have fallen since his original sale fell through because of Hasting's error. He has shared evidence to show that the potential sale price now is lower than it would've been. He explained the housing market is depressed due to *"a severe change in the economic climate, with rising interest rates and inflationary pressures"*.

Mr S said *"the compensation in the provisional decision does not compensate me for this [drop in sale price], it only compensates me for the ancillary costs related to the retained ownership of the property. Hastings' actions have forced us to sell our property in a different economic climate - this represents over 90% of the financial damages caused. By excluding this cost, I do not see how the provisional decision puts my family back in the financial position it was in before Hasting's actions, which is the stated intention"*.

Mr S has asked to be indemnified for the financial loss he expects when he sells his house (for a lower price) when compared to the price he had agreed before Hasting's error caused the sale to fall through. Mr S has said the costs involved in renting out his UK property have increased, and he'd like to be reimbursed for this expense.

Mr S also reiterated the previous points that he'd made.

Hastings didn't accept my provisional decision. It has re-highlighted the key facts supporting its opinion and provided a timeline to help explain its view. Hastings provided new evidence in the form of a recorded telephone call between itself and the prospective buyer when talking about insurance cover.

Hastings said Mr S put his deposit on the property overseas on 12 June 2022, despite not receiving an offer on the property until 21 June 2022. Hastings said, *"it's not unreasonable to*

wait until the sale of the property had been officially completed before placing a deposit elsewhere". It said this placed an unnecessary deadline on Mr S having to sell his UK property.

Hastings said *"a structural survey had not been completed until 16 November 2022. Overall, there were still final repairs and reports to be completed before sale, regardless of the offer date [by the prospective buyer] and the date Mr S placed a deposit on his property [overseas]"*.

Hastings said on a call with [the prospective buyer] on 25 October 2022 it ran a quote to provide cover but the buyer declined it. It said *"[the prospective buyer] stated she would not have placed an offer and would have pulled out of the sale at an earlier point if she'd known about the second subsidence claim. With this in mind, Mr S's assertion that the [prospective buyer] pulled out because we weren't able to offer cover isn't true. We attempted to offer cover and [the prospective buyer] declined this, so she was able to get insurance on the property. As such, there's no evidence to suggest that [she] pulled out of the sale due to the lack of available cover. [She] pulled out of the sale due to the unknown subsidence history of the property, which is evidenced in the call provided"*.

My (second) provisional decision

Based on the new evidence provided, I changed my provision decision and issued a second provisional decision on 4 August 2023. I said:

In my provisional decision, I said the key point for me in reaching my decision was the evidence pointed towards the sale of Mr S' property was dependent on the transfer of insurance from Mr S to the prospective buyer. When it was apparent the transfer of insurance wasn't possible, it seemed that was the principal cause of the sale of the UK property collapsing.

However, Hastings has provided new evidence in the form of a recorded call between itself and the prospective buyer that shows this wasn't the case. I've listened to this call carefully and I'm persuaded the prospective buyer would've pulled out of the sale even if the transfer of insurance could've been arranged.

On this call the prospective buyer explained part of the reason she was looking to move was for a *"stress free and more economical existence"*. She explained that when she had discovered two claims of subsidence had been made on Mr S' property this made her particularly unnerved as she was aware any further subsidence issues on the property could lead to it becoming uninsurable in the future or at best very expensive to insure or making it difficult for her to re-sell the property in the future.

She said if she had known about the second subsidence claim on the property before, she would've pulled out of the sale earlier. She said she was also worried about a recent subsidence claim made at a neighbouring property – she thought there was every chance due to the nature of the soil conditions in the area the level of subsidence claims generally would increase significantly in the future, making it harder to get insurance at a reasonable price. She said this maybe even be the reason Mr S had chosen to put his property on the market.

The call makes compelling listening – the prospective buyer thought that buying Mr S' home wouldn't give her the *"stress free and more economical existence"* she strived for. She said she wouldn't want to go to bed each night thinking about what could go wrong.

Having considered this new evidence, I now don't think Hastings error led to the house

falling through. From listening to the call with the prospective buyer I am convinced [her perception of] the general condition of the property and the future risk it presented was the main reason she pulled out of the purchase. Therefore, I don't think it's fair to hold Hastings accountable for any financial loss Mr S has incurred, as I don't think its error led to the sequence of events. I know this will be extremely disappointing for Mr S and will not ease his financial difficulties, but I have based my decision on the evidence that has been provided and what I think is reasonable in the circumstances.

However, I do think Hastings error has caused Mr S difficulties and unnecessary distress. I think Hastings could've dealt with Mr S' concerns earlier by sharing the call or a transcript of the call between the prospective buyer and itself. I think this would've helped manage Mr S' expectations. Therefore, I do intend to uphold this complaint in part. I intend to award Mr S a further £350 compensation for distress and inconvenience caused (in addition to the £250 already offered by Hastings).

Responses to my second provisional decision

Hastings accepted my second provisional decision, and it didn't have anything further to add.

Mr S didn't accept my second provisional decision. He said he's attached evidence that is contrary to what I set out in my decision that *"the general condition of the property and the future risk it presented was the main reason she pulled out of the purchase"*.

Mr S said his evidence demonstrates *"the following: (1) that the property was in a good condition, (2) that there was no off-market future risk that could not have been covered with standard insurance, (3) that our buyers were highly motivated and committed to the purchase of our property until Hastings' actions and (4) that Hastings was the critical, principal and only reason our prospective buyers' confidence in our property was terminally undermined"*.

Mr S continued *"I want to add that your current decision is missing a key causal link between concerns around the property and the ability to find insurance. This is very concerning to me as my complaint regards Hastings' retraction of its original assurances and the role this played in critically undermining my prospective buyers' confidence in the 'general condition of the property', and which therefore terminally impacted my ability to sell the property. For extra clarity, my complaint is not vaguely related to the provision of insurance for a house, it was that the specific assurances provided regarding the continuity of underwriter were later retracted by Hastings which led to the sale falling through. This was later compounded by a general lack of care and attention, as a satisfactory resolution could have been found"*.

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 S has provided a well written and detailed response to my second provisional decision. He has provided some new evidence which I have considered carefully.

A structural engineering survey on the property was carried out following the work was completed aimed at providing assurance to the prospective buyers. The engineer commented *"no further significant subsidence and settlement of the front part of the subject building should be expected within the foreseeable future"*. Mr S said his evidence shows his property *"is of a high standard and has never had any structural concerns – only a slight issue with vegetation"*. He's also said there is evidence that the prospective buyers were motivated and satisfied with the general condition of the property until their ability to secure

standard insurance became a great concern.

I can't overlook the recorded call I have listened to from the prospective buyer. This provides a first-hand testimony from the prospective buyers explaining why they pulled out of the purchase. I appreciate Mr S has provided evidence of the condition of the property after work was carried out. But what's most important is the perception the prospective buyers had on the property and the risk they were willing to take on future subsidence issues. On the recorded call, Hastings did at several points offer to get quotes and figures for the prospective buyer, but the buyer didn't want these. It's clear to me that it was the prospective buyer choosing not to buy once they knew the full claims history of the property, rather than Hastings not offering to provide insurance quotes.

For the reasons I set out in my second provisional decision, the prospective buyers weren't happy to take on this perceived risk and how future issues or issues with surrounding properties in the area may impact their ability to insure the property at an economical cost. The prospective buyers said if they'd had more information sooner, they would've pulled out the purchase earlier. I find the buyer's actual recorded call / testimony more persuasive as it's their view that ultimately is critical in their decision to purchase the property. Not that of the structural engineers.

I understand Mr S' point of view that Hastings' error was *"the critical, principal and only reason the prospective buyers' confidence in the property was terminally undermined"*. I was initially persuaded of this point myself when I wrote my first provisional decision. I thought it was the error by Hastings' Operations Director that was the trigger to the sequence of events that unfolded.

However, to reiterate, the recorded call of the prospective buyer is the reason I have decided not to uphold this complaint. This is extremely compelling evidence that demonstrates that it wasn't Hastings' error that led to the house falling through, but the perception the prospective buyer had on the future risk of the property. The buyer said very clearly if they'd known about the second subsidence claim and the claim by the neighbouring property they would've pulled out of the sale earlier. So, I maintain the decision I set out in my second provisional decision, I uphold this complaint in part.

My final decision

My final decision is that I uphold this complaint in part. I require Hastings Insurance Services Limited to:

- Pay Mr S £350 in compensation – for distress and inconvenience (Hastings should still pay the £250 they offered if it hasn't yet been paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 September 2023.

Pete Averill
Ombudsman