

The complaint

Mr S complains about Hastings Insurance Services Limited (“HISL”) and the service he received when he contacted them to make a claim on his van insurance policy.

Mr S has been represented by Ms B during the complaint process. For ease of reference, I will refer to any actions taken, or comments made, by either Mr S or Ms B as “Mr S” throughout the decision.

What happened

Mr S held a van insurance policy, which was purchased through HISL, who acted as the broker and policy administrator. The policy itself was underwritten by a separate insurer, who I’ll refer to as “A”.

Unfortunately, in February 2022, Mr S’ van was damaged by a third-party, through no fault of his own. So, he contacted HISL to make a claim. Due to the incident circumstances, HISL referred Mr S’ claim to an accident manage company (AMC), who I’ll refer to as “E”, to manage Mr S’ claim on a credit hire and credit repair basis, as part of a separate credit agreement.

But E took longer than Mr S expected to complete the repairs to his van. And he was unhappy that E were unable to provide him with a replacement van until 1 April, explaining he was unable to work until this replacement van was provided. So, he wanted to be compensated for the upset he’d been caused, and his loss of earnings during that period of time.

HISL responded to the complaint and upheld it. They accepted there had been delays in repairing Mr S’ van, and that E had failed to provide a suitable replacement van for an extended period of time. But HISL explained E would be contacting Mr S to address this with him directly, and they didn’t offer to do anything more. Mr S remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They explained that, as E completed the repairs and provided the hire on a separate credit agreement, our service are unable to consider their actions. So, they explained we are only able to consider HISL’s referral to E, and the information Mr S was provided at the time this decision was taken.

And having done so, our investigator thought the referral was unreasonable. And, considering Mr S’ entitlement on his own policy, they thought had HISL’s referral been clear, Mr S would’ve most likely chosen to claim on his own insurance policy provided by A. So, they thought Mr S would’ve most likely received a replacement van sooner and because of this, they recommended HISL reimburse Mr S for his loss of earning, subject to proof of these losses being provided. And they thought HISL should pay Mr S an additional £250 for the distress and inconvenience he was caused.

HISL initially accepted this recommendation, as did Mr S. But, when Mr S provided what he felt was proof of his loss of earnings, HISL didn’t agree. Our investigator thought the

information Mr S provided was reasonable proof considering the situation and so, recommended HISL pay the £5,200 he was claiming for. HISL continued to disagree and so, the complaint was passed to me for a decision.

I issued a provisional decision on 7 November 2023, where I explained my intention to uphold the complaint for the same reasons as those of our investigator but that what I intended to direct HISL to do differed. In that decision I said:

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, it's my intention to uphold the complaint for broadly the same reasons as the investigator. But the directions I think HISL should take are different. 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.

Before I explain why I intend to reach my decision, I think it is important for me to set out exactly what I've been able to consider. In this situation, HISL acted in their role as broker, and the policy administrator. It's important to understand that HISL are not the insurer of the policy Mr S held, this was in fact A. It's also important to note that E completed the repairs, and provided the hire van, under a separate credit agreement in their role as an AMC. They were not working on behalf of HISL, or A. So, I'm unable to consider E's actions, including E's own delays in providing Mr S with a suitable hire van or how long it took them to complete the repairs, as well as their communication with Mr S during this time.

What I am able to consider is the actions HISL took directly, in their role as policy administrator. And this is limited to the way they referred Mr S' claim to E, and the information they provided to Mr S when doing so. And I note HISL have already accepted their referral was unreasonable when accepting our investigator recommendation initially. So, I'm satisfied this is no longer in dispute.

But for completeness, I want to make it clear I have listened to the call between Mr S and HISL, where they referred his claim to E. And I don't think the information they provided to Mr S was clear, or that it gave him a reasonable amount of information that allowed him to make an informed decision on how he wished to proceed with this claim. So, I'm satisfied HISL acted unfairly here and because of this, I've then turned to what I think they should do to put things right.

Putting things right

When thinking about what HISL should do to put things right, any award or direction I make is intended to place Mr S back in the position he would've been in, had HISL acted fairly in the first place.

In this situation, had HISL acted fairly, I think they would've made it reasonably clear to Mr S that by allowing his claim to be referred to E, he'd be entering into a separate, unregulated agreement rather than making use of his own insurance policy with A.

So, I've then had to think about, on the balance of probabilities, what action Mr S would most likely have taken had this information been made clear. In this situation, I think Mr S assumed he was utilising his own insurance policy. And I note on this policy, he is entitled to a "group 1 van" as a replacement van while his own was being repaired, if he used A's nominated repairer. So, I can't see there was a benefit to Mr S in using E under a separate agreement, other than the fact by choosing this option he wouldn't have to pay an excess. In the call with HISL, I don't think Mr S raised an excess payment as being an issue for him.

But he did make clear he needed a replacement van. So, based on this, I think that, had HISL given Mr S a reasonable amount of information, he would've most likely chosen to claim on his own policy rather than use E.

I've then had to think about what would most likely have happened, had Mr S chosen this option. I asked HISL to confirm which repairer and hire provider A would've used, had Mr S chosen to claim through his policy directly. This is because if it was confirmed that E would still have been used to provide these services, which was a possibility, then I don't think I would be able to say that the poor referral had a significant negative impact on Mr S, and the events that followed.

But I note HISL haven't responded to provide this information. So, where information isn't provided despite our service's request, I must assume HISL didn't respond as they were unable to provide information that would support their position. So, I have assumed that, had Mr S claimed on his own policy, he would most likely not have faced the delays he did regarding the repair of his van, and the providing of a replacement van.

And I note Mr S' extensive comments explaining why the delay in being provided with a replacement van prevented him from working. I don't dispute Mr S' testimony that he required a replacement van to work effectively, as I note he is self-employed and due to the nature of his profession, required several tools to complete his work.

And from what I've seen, Mr S was without a van for 26 days, from the date of loss to the date a replacement van was eventually sourced. While the delay in sourcing a suitable van was ultimately E's responsibility under a separate agreement, had HISL acted fairly in the referral then I don't think E would've been used. So, I still think HISL are responsible for this delay as I'm not satisfied Mr S would have incurred this delay when using his van insurer.

But crucially, for our service to consider loss of earnings, we need to see evidence that satisfies us of what these earnings would've reasonably been. This is because we are an impartial and independent service, and any direction or award we make shouldn't place a complainant in a position of betterment.

In this situation, I note that in Mr S' testimony to HISL, he initially explained he'd found an alternative way to get to work and so, a replacement van wasn't immediately required. But I note Mr S has provided additional testimony explaining this since.

And I don't doubt Mr S testimony that he was unable to transport tools and so, I do think it follows that this would've made it more difficult for him to attend jobs and complete his work as required. But for me to consider his actual loss of earnings, I'd need to see evidence of jobs he was due to attend, that he was unable to because of not having a van. And what these jobs would've been worth. And Mr S has been unable to evidence this.

In absence of this information, I could consider evidence that shows what Mr S earned in the previous year of a similar time but again, Mr S hasn't provided these as he doesn't think the previous year is representative, due to the impact of COVID-19 on his business.

So, all I have is Mr S explaining what he charges as a day rate, plus overall invoices from work completed before the incident, and after receiving a replacement van. While they do show Mr S worked, and what he earned, they don't provide a breakdown to show they supported Mr S' overall daily rate he says he charges.

And even if they did, I still have no evidence to show for definite that Mr S had work lined up to ensure he worked every day he was without the van, at the day rate he says he charges or what his lost profit is. So, because of this, I don't think it would be reasonable for me to

say HISL should pay Mr S his loss of earnings, calculated at 26 days of £200 a day.

Instead, in line with our service's approach, I think HISL should pay Mr S for loss of use, as he didn't have his van or a replacement as I'd expect. And standard industry guidelines set this as £20 a day and so, this equates to a total of £520.

And on top of this, I think HISL should compensate Mr S for the significant inconvenience he's been caused by their failures and in particular, his loss of opportunity to work as he'd usually do with a suitable van.

While I have no evidence to show it for definite, I think it's reasonable for me to assume that had Mr S been contacted for a job, he wouldn't have been able to accept this during the time he was without a van. And from one invoice I have seen, it does suggest that he was only paid up until 27 February 2022, suggesting that job was cut short due to not having a replacement van available to him.

So, considering the above, I think HISL should pay Mr S an additional £500 for this inconvenience, and this loss of opportunity, taking the total payment to £1,020 overall.

I understand this is unlikely to be the outcome Mr S was hoping for. And, that it differs from what our investigator originally recommended. But I hope this decision sets out the parameters our service must work within, around our evidence-based approach."

Responses

HISL didn't respond directly to the provisional decision. But they did confirm that, had Mr S claimed through his own policy rather than through E, a different garage would've been used to complete the repairs. And this garage would've attempted to provide Mr S with a hire van directly, before outsourcing a van from the same company E ultimately used.

Mr S confirmed his understanding of the provisional decision. But he provided additional evidence he felt showed he had work lined up for the period he was without a hire van, and how this then impacted him financially. So, Mr S requested that this additional evidence be considered before my final decision is made.

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 see no reason to change my initial conclusions. I think the additional information provided by HISL confirming a different garage would've been used had Mr S claimed through his own policy, and that this garage would've attempt to supply a hire van directly, supports the conclusions I reached within my provisional decision.

And while I appreciate Mr S taking the time for provide further evidence that he feels supports his loss of earnings, I don't think this information is enough for me to know for certain exactly what Mr S' earnings would have definitely been over the time he was without a hire van.

Much of the additional evidence he supplied showcase conversations which detail the work he intended to do, but not when and crucially, how much this would earn. And although there is an email from a business that I note stated they had offered Mr S work which he'd needed to turn down, this work was for some time after the delay period I'm looking to compensate Mr S for. I recognise the email states Mr S turned down the offer of work to catch up with

jobs that were delayed by his lack of a hire van, but ultimately I think it was Mr S' own decision to turn down this offer of work in order to complete other jobs.

So, my decision remains that same that HISL should make a payment to Mr S for loss of use, and compensation for the inconvenience he was caused.

Putting things right

My decision remains unchanged that HISL should compensate Mr S for the 26 days he was without a hire van unfairly. This comprises of a loss of use payment calculated at £20 a day, in line with industry guidelines and our services approach, totalling £520 as well as an additional £500 payment to recognise the inconvenience and emotional distress Mr S had been caused. So, I am directing HISL to pay Mr S a total of £1,020.

My final decision

For the reasons outlined above, I uphold Mr S' complaint about Hastings Insurance Services Limited and I direct them to take the following action:

- Pay Mr S a total of £1,020 to recognise his loss of use of a van, and the impact and inconvenience this had on him overall.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 January 2024.

Josh Haskey
Ombudsman