

The complaint

Miss W bought a motor insurance policy through Hastings Insurance Services Limited, a broker. She and Mr G (a named driver) complained to us that Hastings had misinformed them about the extra cover they wanted to run alongside the main policy.

What happened

Mr G said that in July 2022 he and Miss W asked Hastings whether they could buy extra cover from another insurer (in addition to a motor policy bought through Hastings) to insure the car if they undertook delivery work. An advisor said they could. Miss W then bought a motor policy through Hastings in August 2022. She didn't carry out any delivery work that policy year, but she renewed the policy in August 2023.

In October 2023 Mr G called Hastings to say Miss W intended to start working as a delivery driver, with an extra policy covering the delivery work. Hastings said having a supplementary policy would invalidate the main policy, so it would have to be cancelled, with a £45 charge. Miss W decided *not* to carry out deliveries, so the main policy could continue. Mr G said she would have faced not only the £45 charge, but the loss of a year's no claims discount ('NCD') on cancellation. He also said they couldn't afford to buy another policy mid-term.

Miss W and Mr G made a formal complaint to Hastings two days later. In the complaint Mr G referred to the *Consumer Rights Act 2015* ('the Act'). He said the Act's provisions meant the assurance given to them by Hastings' advisor in July 2022 in error became a binding contractual term that the insurer had to honour, so delivery work could be undertaken. Hastings agreed it had provided the wrong advice initially and offered £30 compensation.

One of our investigators said Hastings should pay Miss W £100 in total for distress and inconvenience. He also thought she should have been given the chance to cancel the policy without charge. Mr G said the investigator hadn't taken into account the Act and the consequent breach of contract in not allowing Miss W to use extra insurance cover for delivery work. The investigator said he thought Hastings' error didn't change the contract between the insurer and Miss W – but that his role wasn't to interpret statutes.

Hastings' response to the investigator's view was to say that further compensation wasn't fair, as its error had a low impact. It said had a claim been made on the policy from August 2022 to October 2023 (when Mr G contacted it again about the extra policy) it would have been covered. Hastings said it could have cancelled the policy in October 2023, but it had accepted Mr G's assurance that neither he nor Miss W would carry out any deliveries. Both parties asked for a review of the complaint by an ombudsman, and I issued a provisional decision along the following lines:

The Act

We're an alternative dispute resolution service and we aim to resolve complaints informally. Our decisions (whilst noting the relevant law) are based on what we think is fair and reasonable in all the circumstances of each complaint.

Mr G has asked whether we think that (under the Act) the assurance from Hastings in July 2022 became part of the contract / policy – so the extra insurance could then run alongside the main policy. He has also asked whether we think Hastings' refusal to allow Miss W to use supplementary cover bought elsewhere for deliveries was a breach of contract, given the term inserted by the Act.

Although I understand why Miss W and Mr G think the Act applies to their situation, it isn't my role to determine whether it does, or whether an error by a broker is sufficient to form a new term of a contract with an insurer. Only a court can determine what happened, what the legal position is and whether there was a breach of contract. But having looked at the policy and queried some of its terms with Hastings, I don't think the application of the Act is a relevant issue here anyway

The policy / advice given

The policy says the insurer won't be responsible for any claim if the loss or damage is covered by another insurance policy. It also says loss or damage isn't covered if the car is being used for any type of delivery at the time of an incident. But it doesn't say extra insurance cover isn't permissible. When we asked Hastings recently to comment on that, it said having such extra cover was technically feasible - but that there were many problems with such an arrangement. It said they ranged from the extra cost for a consumer of having two policies to the fact that two insurers would have to co-ordinate in the event of a claim and may not agree on which of them was responsible.

Based on my understanding of Hastings' response, I don't think the initial advice given to Mr G by the advisor in July 2022 was wrong. Mr G didn't ask about dual insurance (in which two insurers cover the same risks). He asked about buying additional cover limited to delivery activities, which were excluded from cover under the main policy. As it seems the policy isn't invalidated by such extra cover, it follows that the advisor in July 2022 wasn't wrong to say it was permissible to buy and use it. So Miss W could have carried out delivery work with an add-on policy from August 2022 onwards.

If my understanding is correct, Hastings' error occurred when Mr G called again 15 months later and was told the policy would have to be cancelled if Miss W started delivery work under extra insurance cover. Mr G queried what he was told at the time, and the advisor assured him that she'd checked with a senior colleague. So, although he was taken aback by what was said, Mr G had no reason to think the advice was incorrect at the time.

Effect of Hastings' advice

Had Hastings provided different advice in October 2023, Miss W could have started the delivery work as planned. Instead, due to the threat of cancellation, she decided to postpone it rather than face the extra costs incurred in cancelling the policy and getting cover elsewhere. I don't think she should have been put in a position where she had to make that decision, when it was unnecessary. Having considered delivery work for well over a year, my understanding is that she'd decided which firm she was going to deliver for - and that firm had arranged / was about to implement the extra cover – hence Mr G's call.

Miss W and Mr G shouldn't have had to experience the confusion and significant disappointment that resulted from the advice they were given at that point. Mr G told us they aren't seeking compensation for potential lost earnings, but I think the issue should be mentioned. I think it's far more likely than not that Miss W would have carried out some delivery work in October 2023, but for Hastings' error. So in my opinion, the loss of expectation of an immediate extra income contributed to her distress and inconvenience.

I don't think Miss W lost the chance to carry out delivery work altogether, and she could have found another policy and then complained about any cancellation charge / loss of NCD, initially to Hastings - and if necessary, to us. But finding another policy and having to complain to Hastings about charges would have taken time, effort, and extra expense. It would also have caused further unnecessary stress and inconvenience to Miss W. And it seems there was no need for her to have had to make a choice between not starting delivery work and finding other cover anyway.

Compensation

Although I think it's more likely than not that Hastings' poor advice had a potential financial impact on Miss W (and Mr G) even if they had asked for compensation for that, I can't make an award for lost earnings without evidence. But based on the information available so far, and the impact I think Hastings' error had in terms of distress and inconvenience, I'm minded to think it would be fair and reasonable for it to pay Miss W £250 in total.

I asked the parties to comment on my provisional decision. Miss W and Mr G accepted it. Hastings didn't respond.

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.

As neither of the parties commented on my provisional findings, there's no need to depart from them.

My final decision

For the reasons set out above, I uphold this complaint and I require Hastings Insurance Services Limited to pay Miss W £250 compensation in total for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Miss W to accept or reject my decision before 19 July 2024.

Susan Ewins
Ombudsman