

complaint

Mr C has complained that Hastings Insurance Services Limited, a broker, didn't update his car insurance policy with his new car details and this led to a claim he made being declined by the insurer.

background

Mr C bought a car insurance policy through Hastings. In February 2019 he called to tell Hastings he'd sold his car and bought another one. He provided Hastings with details of his new car. He asked about changing the named drivers to his policy. Hastings did this – but didn't change the car details. It sent Mr C policy documents which showed the named driver change – but for the car that Mr C had sold. This meant Mr C's new car wasn't insured.

In April 2019 Mr C's car was damaged by fire. He reported the incident to Hastings. But it told him the claim wasn't covered because his car wasn't insured. Hastings said that it didn't tell Mr C it had insured the new car.

Our investigator recommended Mr C's complaint should be upheld. He thought it was reasonable for Mr C to have believed that Hastings had changed his car under his insurance policy when he called in February 2019. So he thought Hastings should deal with Mr C's claim. And if it meant Hastings needed to pay a total loss settlement, the investigator thought Hastings should deduct the difference in premium to insure the new car from the settlement sum - from February 2019 to the claim date in April 2019.

Hastings didn't agree. It said it was clear with Mr C that it hadn't changed his policy – other than to change the named driver details. When it sent updated documents to Mr C, these showed the sold car was insured. Mr C should have checked his documents. So Hastings doesn't believe it did anything wrong.

Mr C accepted the investigator's recommendations. As Hastings didn't agree, the case has been passed to me to decide.

I issued a provisional decision on 5 August 2019. I agreed with the investigator's view. But I thought Hastings should also provide redress for Mr C's loss of use of his car by paying him £400 in addition to the £150 compensation already offered. And as I thought from the evidence available that Mr C's claim would have been a total loss due to fire damage, I recommended Hastings pay a fair market value for Mr C's car. The details of my recommendations remain unchanged from my provisional decision and so they are set out below.

Mr C accepted my provisional decision. Hastings didn't agree. So the case has been passed back to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I agree with the investigator that the strongest evidence in this case is the recording of the call Mr C made to Hastings on 24 February 2019. The purpose of his call was to tell Hastings he'd sold his car and bought a new one.

An agent at Hastings took the new car details from Mr C. It appears that the error happened because Mr C was transferred between departments in order to change the named driver details – so Hastings didn't change the car registration details under his insurance policy.

Hastings has relied on the following transcript – around 13 minutes into the call - to support its view:

H (Hastings): *"So what is it you'd like to do?"*

C (Mr C) : *"Erm, just take the two named driver's off the policy and just have my name on the policy only."*

H: *"Ok, yeah, that's fine, that's done now. So everything will remain the same as before?"*

C: *"Yeah - and what would my monthly payments be?"*

H: *"So, you've not made any changes, you were trying to make the changes to the named drivers, so it's just going to stay the same as before which is £29.31."*

C: *"Right ok."*

H: *"Mhmm."*

C: *"Right that's fine."*

Hastings said that Mr C didn't open his documents which were available online – even though the onus was on him to do this. It said if he had, Mr C would have noticed that Hastings hadn't changed the car under his insurance policy – and so it wasn't insured. I agree that – had Mr C checked his documents showing the change in named driver – he would have noticed that the car hadn't changed. But bearing in mind that he had told Hastings that he changed cars and had given it his new car details I don't think it was unreasonable for him to assume that the change had gone through and that the policy documents reflected that. Also as a business, I don't think Hastings acted reasonably in failing to update the insurer about the change of car.

I think – given Mr C clearly gave Hastings his new car registration details - Mr C reasonably assumed the highlighted part of the conversation related to any other changes – and not that Hastings hadn't changed the registration details. He continued to pay a premium for the policy. So I don't think the part of the conversation Hastings highlighted is relevant.

Mr C made a further call to Hastings in March 2019 about the named driver details. Hastings couldn't find an insurance policy for Mr C with the registration details he gave. I think Hastings had a further opportunity here to check that Mr C's car was insured. But it didn't.

In response to my provisional decision, Hastings said it wants to understand what it should have said to Mr C to inform him that it hadn't changed his policy. It has commented as follows:

"The current view places no weight in us explicitly confirming no changes had occurred, which in a complaint about why a change didn't occur, is a key piece of evidence? You're assuming that the no changes statement referred to the drivers, but it referred to the whole policy. Mr C provided us with the vehicle details - but no price was discussed and no cover confirmed at any point for the vehicle during the call.

Mr C had assumed something had occurred despite being told explicitly that it hadn't - this isn't the responsibility of Hastings Direct, we did what we reasonably could to inform Mr C that no changes had occurred to his policy. The onus of responsibility is

on the policyholder to ensure that the information is correct, again, Mr C didn't check any of the information as he didn't check his policy documentation.

Again, being an evidence based service, I cannot agree that Mr C should not have checked his documents. This is a material bit of evidence versus again, Mr C's assumption."

My view remains that it wasn't reasonable for Hastings as a business to expect Mr C to know that despite calling to change his car – Hastings ended the call to confirm it wasn't changing the car details under his policy. Hastings didn't explicitly say this in any event. As I've explained, the transcript reads; *"So, you've not made any changes, you were trying to make the changes to the named drivers (my underline), so it's just going to stay the same as before"*

We look at all of the evidence and take a fair and reasonable approach. I don't consider the way Hastings handled the call was reasonable. It was made aware that Mr C had changed his car. He did the right thing. It was for Hastings to ensure the insurer was aware of that change - as clearly it shouldn't continue to insure a car that Mr C no longer had – and to put him at risk of having no insurance for his replacement car. Unfortunately this is what happened.

So I remain of the view that Hastings should put Mr C back in the position he would have been had Hastings changed his car details in February 2019. So Hastings should assess the claim as though he was insured at the time for the car in question.

We asked both parties to provide any evidence it had to determine the condition of Mr C's car – but nothing further is available. Hastings said an engineer didn't assess Mr C's car as it rejected his claim. And Mr C said the only contact he had with the salvage agent was its request for the ownership paperwork.

From the photos provided, it's clear that Mr C's car was severely damaged by fire. And Hastings initially told Mr C that it was very likely that his car would be uneconomical to repair. So I think Hastings should pay Mr C the equivalent sum of the market value for his car at the date of loss. I think this is what an insurer would have done – had Mr C's car been insured. Hastings needs to deal with the costs of the claim as though it was the insurer.

Hastings should calculate the difference Mr C would have paid to insure the replacement car from 24 February 2019 to the date of the claim – 1 April 2019. If the premium is more, Hastings can deduct the difference from any settlement it pays. If the difference is less, Hastings should pay Mr C the difference with interest at a rate of 8% simple interest a year from 24 February 2019 to the date it pays him.

Hastings should assume that Mr C still chose to change the named drivers under his insurance as he did on 24 February 2019 and 27 March 2019.

As Mr C has been without the use of a car since 1 April 2019, I think its fair for Hastings to compensate Mr C for his loss of use. Mr C didn't have insurance cover for commuting – and he doesn't have evidence of his costs – but he's explained that he and his family have had to use public transport during this time which has been more difficult and time consuming.

We generally think it's fair to apply a rate of £10 a day for loss of use. But I've taken into account the fact that Mr C didn't use his car for commuting to work. And I think an insurer needs a reasonable amount of time to investigate a claim before it settles it. So I think the fairest outcome is for Hastings to pay Mr C a global compensation sum of £400 for loss of use. This sum should be paid in addition to the £150 Hastings offered Mr C for the distress and inconvenience this has caused him. This was an offer made to Mr C for the time he spent in calls to Hastings when he reported the incident and the time it took to tell him his claim wouldn't be met.

my final decision

My final decision is that I uphold this complaint. I require Hastings Insurance Services Limited to do the following:

- Indemnify Mr C for the claim he made as though the correct car was insured under the policy he was paying for subject to the policy limit and excess.
- Pay Mr C a fair market value for his car. It can deduct any balance Mr C would have owed had Hastings correctly changed his car on 24 February 2019 to the date of the claim - 1 April 2019.
- If the change of car meant Mr C would have paid less insurance, Hastings should pay Mr C the difference he paid and add interest from 24 February 2019 to the date it pays him at a rate of 8% simple interest a year.
- Pay Mr C £150 compensation for the distress and inconvenience caused by its poor service (if it hasn't already paid him) – and a further £400 compensation for the inconvenience caused by not having use of a car.

Hastings Insurance Services Limited must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If Hastings Insurance Services Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 October 2019.

Geraldine Newbold
ombudsman