

## **complaint**

Mr S complains about how Hastings Insurance Services Limited managed his motor insurance policy. Hastings is the claims handler and administrator for Mr S' policy on behalf of the insurer.

Mr S is represented in this complaint by his mother, Mrs H.

## **background**

Mr S says a vehicle reversed into his car and although the driver admitted responsibility at the scene he later denied liability. He says there were two independent witnesses and his car was fitted with a telematics box which recorded the whole incident. Mr S made a claim on his insurance.

About two weeks later Hastings sent Mr S notice that his policy was being cancelled by his insurer. Hastings told him the cancellation was because he had a second job as a delivery driver which he hadn't told it about. Mr S disputed this, saying in February (before the accident) he phoned Hastings and told it about the job.

Hastings told Mrs H it would listen to the February call and email Mr S to confirm the policy wouldn't be cancelled until its investigation completed. As no email was received Mrs H phoned and was told the policy would be cancelled. When Mr S phoned to cancel his policy (as he says he was told he should) he said Hastings told him he'd have to pay the remaining premiums in a lump sum which hadn't been mentioned before. The notice said he had to pay the £45 cancellation fee.

Hastings told Mrs H it wouldn't seek any more payment from Mr S until the complaint was resolved. The claim would be processed as usual even though the policy had been cancelled. It agreed to send Mrs H a transcript of the call but didn't.

Later Mr S complained Hastings told him it had deleted data from the telematics box (as the policy was cancelled). Mrs H said previously it had told them several times the information would be sent to Mr S' legal representative. Also Hastings' engineer who fitted the telematics box in his car caused some slight damage to his car. He hadn't raised the issue before but now thought Hastings should pay for the repair.

Mrs H added that Hastings charged a £210 fitting fee for the telematics box which should be refunded when the policy ended. Mr S was told on cancellation of his policy that he wouldn't get the refund which he now wanted particularly as Hastings had deleted the helpful data in the box. But when Mr S called Hastings to complain about the damage it told him the data *hadn't* been erased.

Hastings responded to the complaint. It had listened to the two February phone calls. In the first call Mr S told it he would be applying for a delivery job. It told him that the policy wouldn't cover him for that use of the car and recommended he speak to the company he was delivering for about cover. It accepted it incorrectly told Mr S a delivery job wouldn't be a problem for his policy overall and he should let it know if he got the delivery job. In the second call, Mr S phoned to get a quote to include business use on his policy. It asked what the business use was needed for and Mr S said it was in connection with his main employment (not a delivery driver). It gave a quote and Mr S ended the call without buying cover for business use. When it found out Mr S was doing a delivery job the insurer said that

occupation 'was not acceptable' and the policy should be cancelled. Hastings sent Mr S a recording of the calls.

Hastings accepted it had provided some poor service and paid £25 in compensation for the estimated telephone costs incurred and waived the £45 cancellation fee. It also told Mrs H that the claim on its system had been recorded as no fault, so Mr S' full annual premium wouldn't now be due following cancellation. It calculated the premium refund as £43.79 which it credited back to Mr S.

Hastings explained why it thought there was no evidence that the damage to the car had been caused by its engineer. And it said the policy, and the information given on sale of the policy, was clear the telematics box fee of £210 was non refundable.

Mrs H complained to us on her son's behalf about various aspects of Hastings' dealing with the claim and complaint. She said they were 'forced to accept' Mr S failed to tell Hastings when he started the new job. But she felt he was misled by Hastings as it gave him a lot of incorrect information and he didn't deliberately withhold the information.

Mr S wanted:

- Reimbursement of the £210 telematics box deposit
- Not to pay the remaining premiums for the cancelled policy
- Hastings to pay for the repair to the damage to his car caused by its engineer
- Hastings to provide data to his legal representatives to finalise the claim as no fault
- Payment of his additional new premiums due to the claim being logged as a fault claim and not being finalised
- Compensation for the stress of the policy being cancelled, Hastings providing wrong information and its poor customer service.

The adjudicator thought Hastings should pay another £100 for the upset and inconvenience caused to Mr S by its poor service. But he didn't think Hastings had done anything else fundamentally wrong. Hastings agreed. Mrs H, on Mr S' behalf, didn't agree and sent in detailed comments.

Before the matter was referred to me for a decision Hastings sent a subject access request form to Mr S for the release of the telematics data. But Mrs H spoke to another department at Hastings who said that as the claim had now progressed to court proceedings the evidence needed to be sent in a technical format direct to Mr S' solicitor to ensure it was admissible in court.

Before I made my provisional decision I asked Hastings about the claim's progress. Its record showed the claim had been closed as no fault, with the insurer making no payment. That didn't match the information Mrs H gave us about the claim having progressed to court proceedings. It's possible the insurer is dealing direct with Mr S' claim and I asked him to clarify that in response to my provisional decision.

### **my provisional decision**

I made a provisional decision that Hastings should pay Mr S £300 compensation in total but no other payments.

I'd set out the background in detail as matters had moved on since the complaint had been with us. I explained that I'd read Mrs H's emails but wasn't going to respond to all the issues

she's raised. I'd make a decision on the key issues to decide a fair outcome to the complaint. I explained the remit of our service as Mrs H was disappointed we'd not done more investigation. I gave detailed findings but in summary I said:

*refund of the payment for the telematics box*

Hastings doesn't need to refund the £210 Mr S paid for the telematics box. The policy's very clear that the box installation fee is non refundable after the box is installed. There was no reason Hastings should refund.

*the remaining premiums for the cancelled policy*

The policy's clear that if Hastings cancels the policy it will refund the premiums pro rata unless Mr S has made a claim during the insured period. I hadn't seen supporting evidence that Hastings did ask for the full premium to be paid. But it was no longer asking for the remaining premiums and had refunded the 'overpaid' amount due to Mr S pro rata. It appeared to have recorded the accident as no fault on its system which was reasonable given that, according to Mrs H, the outcome of the claim hasn't yet been decided.

*damage to the car caused by Hastings*

Hastings sent Mr S' comments and photos of the minor damage to the car to its engineers. The engineer's evidence was that it 'doesn't need to take the cowling off referred to in the photos sent, to install the box. Our box is mounted and our connections are taken from the pillar on the driver's side which is not near the panelling damage in the photo'.

The engineer provided photos to show the telematics box was fitted to the door pillar which Mrs H strongly disputed. But the expert evidence is that the damage wasn't caused by Hastings fitting the box. Mrs H and Mr S could send some expert evidence to show that's not correct in response to my provisional decision.

*cancellation of the policy*

It was the insurer's decision to cancel the policy as it wouldn't provide cover at all if Mr S had a job as a delivery driver. I listened to the two February calls. Although some of the information Hastings gave Mr S was wrong it gave him the important information correctly and very clearly – he wasn't covered by the policy for a delivery driving job and he should tell it if he got the job. When Mr S phoned it shortly after he asked about business use cover saying it related to his other job. Hastings asked him if there were any other changes to the policy and he said no.

I didn't think the wrong information Hastings gave misled Mr S and he should have reasonably told it that he had a new additional delivery driving job. Had he done so the policy would have been cancelled and that's what happened when the insurer knew about the job.

*release of telematics data*

Hastings had given Mr S, Mrs H and us different information about how the data should be released. There was no evidence Hastings deliberately lied or covered up as Mrs H suggested. But I didn't think it knew what the correct procedure was and it should have known. I understood Hastings had recently arranged for the data to be sent to Mr S' legal representative in a format acceptable to the court. It should have done so much sooner.

The conflicting information Hastings gave had been stressful for Mr S. Mrs H said if Hastings had provided the data straight away the claim proceedings would have been finished by now. I didn't think that was necessarily correct. There'd been confusion about what the data will show. Mrs H's told us Hastings said to her the telematics box did capture the accident. Hastings told us that as the box records every 59 seconds the event might not have been captured.

Even if the accident was captured the data might not show whose fault the accident was. Mrs H says one of the witnesses has given a statement supporting Mr S wasn't responsible for the accident. But even with that Mrs H's told us the claim is going to court so the issues in the claim appeared to be highly disputed and not ones that could be easily settled. So I couldn't say that the claim hasn't already finished *only* because Hastings didn't release the telematics box data sooner.

#### *payment of the additional new premiums*

Mrs H says Mr S had to pay about £700 more in premiums for his new car insurance because his claim has been wrongly recorded as a fault claim. I hadn't seen any evidence from the new insurer that the potential fault claim was the *only* reason for the increase, although realistically it would have had some impact.

Hastings told us it'd recorded the claim as no-fault. But if liability is still in dispute it's likely there would be a record that it is potentially a fault claim until the outcome of the claim is known. That record didn't appear to have been made by Hastings.

There was no evidence that Hastings' delay in releasing the telematics box data is the *only* reason the case hasn't been finalised. And the evidence the data gives may not be enough to finalise who was at fault for the accident. So I didn't think Hastings should pay Mr S any additional premiums he's had to pay for the claim being recorded as a fault claim. If the outcome of the proceedings is that Mr S wasn't at fault he can tell his new insurer and they may decide to reduce the premiums.

#### *compensation*

I was sorry to read what Mrs H said about the amount of stress Mr S has been under. I wasn't asking for medical evidence about his medical conditions as even with evidence I could only award compensation for Mr S' distress and inconvenience Hastings caused by its wrongdoing. Unfortunately being involved in a disputed claim is itself stressful.

I'd set out what I thought Hastings has done wrong and about its general poor service. But even though it should have released the telematics data sooner there was no evidence that caused substantial delay to the claim proceedings. And from the evidence it wasn't involved in any ongoing claim proceedings.

Hastings' customer service has been poor in several aspects which it accepted. I didn't think its offer of £100 on top of the £70 it had in effect already paid reflected the upset and inconvenience it'd caused by its wrongdoing. It should pay £300 in total.

## **responses to my provisional findings**

Mrs H was upset I'd said in my provisional decision that Mr S had his accident while on a delivery job, which Hastings had found out about. She said this wasn't right, he'd not been on a delivery job at the time. She wanted to know where we'd got the incorrect information from. She hadn't seen Hastings' photos of the telematics box fitted to the car and said the box was still there and not fitted to the door pillar. But Mr S didn't want to pursue this issue. She said it wasn't correct that they'd received call recordings from Hastings and the accident claim was going to court. She thought she was being represented as a liar. Mrs H also questioned why I'd said I wasn't going to respond to all the issues she'd raised. She said Mr S would accept the final decision and compensation I'd suggested.

I asked Hastings to clarify some information from its letter of 14 June 2016. I'll refer to its responses in my findings. It made no comment about the £300 compensation.

## **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 uphold this complaint in part. Hastings must pay Mr S £300 compensation in total for his distress and inconvenience. I'll explain why but first I'll respond to Mrs H's recent comments.

Hastings letter of 14 June 2016 to Mr S said "On (date) a claim incident occurred. As part of the claim investigation you confirmed you were working part time delivering (specified items). Your insurer contacted us to notify us this occupation was not acceptable and that your policy would be required to be cancelled". I'd understood this meant Mr S was delivering at the time of accident. Mrs H says that's not correct and Hastings recently told me there's no reference by the insurer that Mr S was using the car for delivering at the time of the accident (which is why the insurer allowed the claim to proceed).

I'm sorry I misunderstood Hastings' comment. But importantly the fact that Mr S wasn't delivering at the time of the accident doesn't make a difference to the outcome of his complaint. Hastings has confirmed that as Mr S used the car for his delivery job he wasn't able to have the policy, albeit that the delivery company was giving some insurance to Mr S while he delivered. For the reasons I've given above I think Mr S should have reasonably told Hastings he had a delivery driving job and Hastings didn't do anything wrong in that respect.

I'd asked Mr S to clarify whether court proceedings were still ongoing, and the insurer dealing direct, because Hastings' record said the claim had been closed as no fault with the insurer making no payment. I wasn't suggesting that Mrs H, or Mr S, were lying. Mrs H has confirmed the court case is ongoing but didn't say who Mr S was dealing with on the matter. Hastings has now told me that an accident management company and solicitors have been instructed. For the reasons given in my provisional findings the information doesn't change the outcome of the complaint.

On the call recording, Hastings' letter of 14 June 2016 said it enclosed the recording. As Mrs H now says the recording wasn't received Hastings will resend it to Mr S. For the avoidance of doubt it should send the recording of both February 2016 calls.

Mrs H queries why I said I wasn't going to respond to all the issues she'd raised. As I said, I've made a decision on the key issues to decide a fair outcome to the complaint. Mrs H hasn't highlighted any outstanding issues that I need to decide.

On the main issues, I note what Mrs H says about the telematics box but that Mr S doesn't want to pursue the matter. She and Hastings haven't made any objections to the other provisional findings I made. So for the reasons given in my provisional and these findings Hastings doesn't need to:

- Refund the £210 telematics box deposit
- Pay for the repair to the damage to Mr S' car caused by its engineer
- Pay Mr S' additional new premiums due to the claim being logged as a fault claim and not being finalised.

Hastings had already agreed not to ask Mr S to pay the remaining premiums for the cancelled policy. In my provisional decision I said I understood Hastings had recently arranged for the telematics data to be sent to Mr S' legal representative in a format acceptable to the court. Mrs H hasn't told me otherwise in her response.

Hastings made no comment on my intention to award £300 compensation in total for Mr S' distress and inconvenience it caused. Mrs H agreed on Mr S' behalf. So for the reasons given in my provisional findings I award Mr S £300 compensation in total. Hastings had already agreed to pay £100 compensation on top of the £70 it has in effect already paid (£25 plus waiving the £45 cancellation fee).

### **my final decision**

I uphold this complaint in part.

I require Hastings Insurance Services Limited to pay Mr S compensation of £300 in total for his distress and inconvenience.

Hastings Insurance Services Limited has agreed to resend to Mr S the recording of the February 2016 calls between it and Mr S.

Hastings Insurance Services Limited must pay the compensation within 28 days of us telling it Mr S accepts my final decision. If it pays later than this it must also pay interest\* on any outstanding amount from the date of my final decision until the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 March 2017.

Nicola Sisk  
**ombudsman**

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