

## The complaint

On behalf of H, a limited company, Mrs L complains that Be Wiser Insurance Services Limited didn't advise that contents cover for H's vans was needed when arranging a commercial fleet insurance policy for H.

## What happened

When one of H's vans was stolen in July 2019, the insurer didn't pay for the loss of its contents, as the fleet policy didn't cover them. Mrs L said when she bought H's policy through Be Wiser in 2017, she was asked many questions about its business. But Be Wiser didn't mention contents cover then, or at the policy's two renewals. Mrs L said Be Wiser should have realised H needed extra cover for the vans' valuable contents.

Be Wiser said Mrs L would have been asked in 2017 what she required for H's cover and there was nothing to suggest she'd mentioned contents insurance. It said she could already have bought extra cover for H through another broker. And it said Mrs L had been told to read the fleet policy document carefully, to ensure the cover met H's needs.

One of our investigators reviewed H's complaint. She said Be Wiser had offered the fleet policy for H on an advised basis, so it should have thought about how H operated, in order to decide whether that policy was suitable. She thought Be Wiser should have noted that there was a gap in the cover it was offering. She noted that Mrs L had produced invoices and receipts that she said showed goods worth over £12,000 were lost when the van was stolen. The investigator said Be Wiser should pay for the van's contents in line with the goods in transit contents policy it had sold Mrs L for H after the theft.

Be Wiser said although the initial sales call couldn't be located, its advisor had queried the liquids carried in the vans and how they were used. It said its advisors usually also asked whether goods in transit cover was needed. Be Wiser said Mrs L didn't query the policy exclusion for business-related contents, despite having much commercial experience.

Be Wiser also said business items were normally insured as part of a *commercial combined policy* – which in H's case was arranged through another broker. It said the fleet policy was suitable for the cover Mrs L had asked for, as the insurer had covered the cost of the stolen van. The investigator said that as soon as Mrs L became aware that contents cover was needed for H, she arranged it. So she thought Mrs L would have done that from the start had she been aware of H's need for it from the start.

Be Wiser then said that goods in transit policies weren't designed to cover *retained* business items, due to their exclusions, which would mean a maximum of 80% of H's claim may be paid. And it said as H didn't have goods in transit cover in place previously, Mrs L wouldn't have bought it for H in 2017 anyway. Subsequently, Be Wiser said a broker offering commercial combined insurance would have been able to advise on cover for the business's goods and assets away from its premises, as in this case. It said Be Wiser didn't sell complex property and liability cover. Be Wiser thought we wanted to challenge reasonable market practice by (in its view) switching a class of insurance from one competence set to another.

As there was no agreement, the complaint was passed to me for review. I issued a provisional decision, upholding the complaint, but on a slightly different basis to the investigator and with different remedies. I made the following provisional findings:

- As the sale of the fleet policy was an advised sale, it was for Be Wiser to ensure it was a reasonable fit for H. I thought the fleet policy was suitable to cover the vans, but that H needed extra cover for the items carried and retained in them. I said I thought a broker should be aware of any significant gaps in the policy it was selling and should check whether a customer had other necessary cover in place.
- I noted that Be Wiser said its advisors normally ask if goods in transit cover is needed, but Mrs L said it wasn't mentioned during the sales call in 2017 or later. As Be Wiser didn't have the call recording, I didn't think it could show that the issue was raised. I also noted that Be Wiser had said since then that goods in transit cover wouldn't have been right for H.
- Be Wiser sold Mrs L goods in transit insurance for H in July 2019 (when she asked it for extra cover after the insurer had declined to pay for the van's contents). I noted that its website showed Be Wiser can also arrange cover for the carriage of a business's own goods. But it seemed Be Wiser's advisors didn't consider contents cover at all in 2017 or later. I said I thought advising her that H needed further cover (through Be Wiser *or elsewhere*) would have discharged its duty to H.
- As Mrs L arranged extra cover for H as soon as she realised H needed it, I said I thought it likely that she'd have bought any contents cover suggested to her by Be Wiser in 2017 or later. Mrs H had said she didn't know about the need for the cover until after the van was stolen in 2019, and I thought that was probably the case.
- I said as Mrs L went to Be Wiser for professional advice in 2017 and relied on that advice, it was at fault if its advisor didn't raise the issue of contents cover. I didn't think Be Wiser would have needed to act outside its competence set in order to do that (as Be Wiser had suggested) or to advise Mrs L to look elsewhere.
- I thought it would be fair for Be Wiser to cover the loss of the items in H's stolen van, but I thought its concerns about discrepancies in the documents already produced were reasonable. That included a claim for several 25-litre drums of oil (when the van was only supposed to carry one) plus a 150-litre oil drum. I also didn't think it was clear what standard items carried in the van had been used on the day of the theft, and hadn't yet been replaced, and so couldn't be claimed for.
- I said it was for Mrs L to show what H's losses were. I thought she should review all the items she'd listed on invoices and the receipts provided, using H's records - including the stolen van's schedule for the day, to confirm the items that were in it after that day's work. I thought she should then agree with Be Wiser a sum for the loss of contents, based on a detailed account of the items she believed were stolen.
- I didn't think Be Wiser should pay the claim in line with the goods in transit policy, as it had said it wasn't suitable and the most that would be payable would be 80% of the claim. I thought Be Wiser should have advised Mrs L from 2017 onwards about how best to ensure that the *full* contents of the vans were covered - through a policy covering the property owned by H and carried / retained in the vans. Alternatively, as it could also have referred her elsewhere to get full cover, that's what it should pay.

I asked the parties to comment on my provisional findings. Mrs L accepted them on behalf of H. Be Wiser also accepted them, although it made several comments.

Be Wiser said there was no obligation on it to provide advice outside its terms of business. It said it provided the policy Mrs L requested for H. It didn't think it should have to advise on vehicle contents, as it said that would require extra product knowledge and expertise to be in place. But Be Wiser accepted that its customers should be reminded of the need to cover property in their vehicles - whether it could advise further on that or not. It said it believed it had done so here, but as the call wasn't available, it accepted it couldn't show that was the case. Be Wiser also said it accepted the need for a fleet broker to make it clear to a client that no advice would be given beyond the instructions given by the client. It said if it was at fault, that was because it couldn't show it had put its customer in an informed position.

### **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.

In my provisional decision, I said I didn't think Be Wiser would have needed to act outside its competence set in order to offer extra cover to H *or* to advise Mrs L to look elsewhere for it. I still think that's true. But I wasn't suggesting at all that it should have to advise on other classes of insurance in every case - *or* try to cover all the insurance needs of a client.

I think in many cases where fleet insurance is sold, that's all a customer will need, as cover for the fleet's vans themselves is all that's required. But in this case, *Be Wiser established when discussing fleet cover with Mrs L that H's vans carried and retained products for business use*. So it was aware that extra cover of some sort was needed. And Be Wiser sold at least one product that seemed to be suitable for insuring H's vans' contents. In those circumstances, I think it's fair to say that it should at least have mentioned the option of considering that cover for H to Mrs L. Alternatively, Be Wiser could simply have advised her to seek advice on contents cover for H elsewhere.

I think Mrs L would have accepted any advice Be Wiser gave her. It makes no sense that if contents cover had been mentioned, she'd have disregarded it - especially given the value of the vans' contents. I agree that if Be Wiser could show that it had put her in an informed position, it would have discharged its duty to H, but it has accepted that it can't do that. In these circumstances, as H faced a financial loss following the theft, I remain of the view that it would be fair and reasonable for Be Wiser to put that right – on the basis that it's for Mrs L to demonstrate H's actual loss, so a suitable sum can be agreed with Be Wiser.

### **My final decision**

My final decision is that I uphold this complaint. I require Be Wiser to do the following:

- Agree a settlement sum for H to cover the full loss of contents of the stolen van (based on the cover that should have been in place from 2017 onwards) subject to Mrs L and Be Wiser reviewing the relevant documents, as outlined above
- Deduct the premium that's likely to have been payable for the relevant policy, plus the policy's standard excess from the settlement sum
- Add interest to the settlement sum, at the simple yearly rate of 8%, from the date of loss to the date of settlement

If Be Wiser thinks it's required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mrs L how much it's taken off. It should also provide a tax deduction certificate if required, so H can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L on behalf of H to accept or reject my decision before 22 February 2021.

Susan Ewins  
**Ombudsman**