

## **The complaint**

A company that I'll refer to as S has complained that Wilson Insurance Services Limited (WISL) made an error when renewing its commercial insurance policy which meant it wasn't covered for losses caused by Covid-19.

Mrs W, a director of S, has complained on S's behalf through a representative. For ease of reading, I'll refer to S throughout.

## **What happened**

S held a commercial insurance policy through WISL. At the renewal in 2019, S told WISL that it had found a more competitive quote but gave WISL the opportunity to match it. WISL forwarded the quote to a sub-broker who I'll refer to as M. M said S currently held a pre-school policy and the alternative quote S had provided was for a nursery policy. M said they could source a nursery policy for S instead.

In order for cover to commence under a nursery policy, M said S needed to complete a proposal form. The proposal forms were sent to S.

WISL said they told M to 'hold cover' on the policy as S was returning the proposal form by post. WISL said they had no response from M, so chased M a few days later asking for a response. M sent WISL an email containing a link to the policy which WISL forwarded on to S. WISL received the completed proposal form from S on the same day and forwarded it to M.

S claimed on its policy after its business was impacted by Covid-19 and the Government's response to the pandemic. The insurer said that the policy in place was the pre-school policy and declined S's claim because the pre-school policy didn't cover what had happened.

S complained to WISL as it thought the error had led to its claim being declined. WISL said that while they had forwarded the email on to S, M is responsible for the errors which led to S's losses. WISL said they told M to hold cover, yet it issued cover under the incorrect pre-school policy, despite being asked to provide a nursery policy.

Unhappy with WISL's response, S brought its complaint to our service. Our investigator looked into S's complaint and recommended it be upheld. She thought that WISL had made an error and that had caused S a loss. She recommended WISL compensate S to the value of what it would have received in payment for the claim, which it thought was £25,429.95. She also recommended that WISL add interest to that amount due to the time S had been without the money.

WISL disagreed. They remained of the view that the loss was caused by M and queried what M had done with the proposal forms that they had forwarded. WISL asked for an ombudsman to reach a final decision.

I issued a provisional decision on this complaint on 28 November 2022. In that I said:

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

*I recognise that there were two firms involved in placing S's policy with the insurer, WISL and M. However, as this complaint is against WISL I can only comment on what WISL, and not M, might or might not have done wrong. Having reviewed all of the information, I intend to uphold this complaint. I'll explain why below.*

*When selling S's policy, WISL had a duty to provide information that was clear, fair and not misleading.*

*I can see that M emailed WISL with the proposal form which was "needed to get a quotation". WISL responded by asking for a response to its email asking M to hold cover. M responded by providing a copy of the pre-school policy documents.*

*I've reviewed the email that M sent to WISL which was then forwarded to S. The email says, "Thank you for your instructions to proceed with your client's Pre-school policy". I've considered WISL's point that M is the one that made the error, but whether or not M made errors, I think WISL made errors.*

*The email from M, which WISL forwarded to S, didn't answer WISL's question and I think WISL should have noticed that the content of the email didn't correspond with what had been asked. I also think WISL should have been aware that, as the proposal form was needed to obtain a quotation, it's unlikely M would have been able to put the nursery cover in place without the proposal form. I think WISL should have noticed that the email from M wasn't the cover that had been requested. And if they had noticed the error S would have asked WISL to ensure that the nursery policy was put in place instead.*

*Where I believe there has been an error, I look at how to put the policyholder back in the position they would have been in if the error hadn't occurred. So, I've considered the cover that S would have had if the nursery policy had been put in place.*

*The nursery policy provides cover where access to the premises is hindered or prevented due to an emergency which is likely to endanger life or property. There is an exclusion for notifiable human infectious or contagious diseases, but notifiable human infectious or contagious diseases is defined as a specific list of diseases which doesn't include Covid-19. I think this clause would have provided cover for S's claim and WISL doesn't seem to dispute this. As this policy wasn't in place, I think that WISL's error caused S a loss it wouldn't have had without the error – i.e. it didn't have the correct policy.*

*As I think WISL caused S a loss, I think the fair and reasonable outcome is for it to put S back in the position it would have been in without the error. To do that I think WISL should compensate S to the value of what it would have received for its claim if the nursery policy was in place. I've gone on to consider those losses below.*

*The part of the policy which looks to provide cover has a three month indemnity limit. S said it was impacted from 21 March 2020. S hasn't indicated that there is any further period of loss. so I think losses would be payable between 21 March 2020 and 20 June 2020. The terms and conditions of the policy say that the insurer will pay for the loss of gross revenue or increased cost of working. S has indicated that its claim is for loss of gross revenue.*

*Under 'Basis of Claims Settlement Clauses' the policy says:*

*"loss of gross revenue being the amount by which the gross revenue during the*

*indemnity period falls short of the standard gross revenue in consequence of the damage less any sum saved during the indemnity period in respect of such of the charges and expenses of the childcare business payable out of gross revenue as may cease or be reduced in consequence of the damage”*

*I've thought about how S's claim would be settled in line with this by an insurer and calculated this using information S has provided from its accountant.*

<i>Expected turnover</i>	<i>35,574.55</i>
<i>Less actual turnover</i>	<i>9,398.98</i>
<i>Shortfall in turnover</i>	<i>26,1175.66</i>
<i>Less savings</i>	
<i>Staff savings compared to 2019</i>	<i>3,156.17</i>
<i>Furlough</i>	<i>10,795.15</i>
<i>Loss</i>	<i>12,224.34</i>

*The information was updated from a previous letter from the accountant due to the accountant mistakenly not including PAYE and pension contributions in the calculation.*

*I believe that an insurer would have deducted any saving S made in staffing costs as well what S received in furlough for this period. I think an insurer would have been entitled to deduct furlough from the claim settlement as the policy is to cover S's losses and furlough is a saving S made against its losses.*

*I haven't taken any other operating costs into account as S said it didn't make any other savings as its premises remained open during the period of loss. However, if WISL or S considers that any other costs should be taken into account they should let me know before 12 December 2022.*

*I haven't seen anything from WISL to persuade me that the amounts above are unreasonable so in the absence of anything to the contrary I think it would be fair and reasonable for WISL to compensate for its financial loss by paying £12,224.34.*

*If WISL are aware of any additional amount that the insurer would have deducted such as an excess then they should let me know by 12 December 2022. If there's an excess I think it's fair and reasonable for this to be deducted from the £12,224.34 as S would have needed to have paid this when making a claim. I also think it's fair and reasonable for WISL to deduct any additional amount that S would have paid for the correct policy. Or, if the policy was more expensive, it should reimburse this additional amount.*

*As S has been without money it should have had I think it's fair and reasonable for WISL to include interest on the settlement amount. As I'm awarding a total amount rather than the monthly payments an insurer would have made I think it's fair and reasonable to award interest from 20 June 2020 as S would have incurred its losses by that point.*

*S said it took out a Bounce Back Loan (BBL) in July 2020 for £50,000 and said it wouldn't have taken such an amount if its claim had been paid. So I think it's fair to take this into consideration when deciding at what rate interest should be paid.*

*I think it would be fair and reasonable for WISL to add interest to the compensation amount at our normal rate of 8% simple per annum from 20 June 2020 until the date S took out the BBL. S should let me know what date it took the BBL by 12 December 2022. As a BBL is 0%*

*interest for 12 months, I don't think WISL need to pay interest between the date S took out the BBL and when interest becomes payable on it. After 12 months interest is payable on a BBL at 2.5%. Therefore, WISL should add interest at 2.5% simple per annum from the anniversary of S taking the BBL to the date they make payment.*

In summary, I said that WISL should:

- Pay S £12,224.34 to compensate for its financial loss.
- Add interest at that amount at our normal rate of 8% simple per annum from 20 June 2020 until the date S took out the BBL.
- Add interest to the settlement amount at 2.5% simple per annum from the 12 month anniversary of S taking the BBL to the date WISL make payment.
- If the policy S should have had was more expensive, WISL can deduct this from the settlement. If it was cheaper, WISL should reimburse the additional amount.

WISL agreed to the outcome of my provisional decision in an effort to resolve the complaint and confirmed that there was no excess on this section of the policy and no further deductions were necessary from the settlement. However, S provided further comments. In summary, it said:

- It is unfair to deduct the wage salary from 2019 because the difference in staffing cost between the years isn't as a result of the insured event, it is as a result of the difference in staffing numbers required due to the number of children on roll. Due to the requirement for minimum staffing levels the wage bill can change substantially while only marginally impacting the turnover.
- The amount of loss is higher than I have set out and a fair amount would be £35,574.55. During the first lockdown S was required to provide care to key worker children and it was from these placements that the amount of £9,398.89 was received. Due to the rules around furlough, S wasn't able to claim furlough for these members of staff and due to the small number of children attending paid £17,176.16 in excess wages. S believes that it should be possible to claim for this under increased cost of working.
- BBLs were designed to help businesses recover from the effects of the pandemic. If S's claim had been paid by the insurer or WISL it would have impacted its decision to take out a BBL but these should be kept separate and therefore interest should be paid at our normal rate of 8%. S doesn't believe that WISL should benefit from the BBL.
- S would also like to claim £3,405 for its accountant's costs as the policy says these are recoverable.

I asked for WISL's comments on this. WISL responded to say that M had some responsibility for what happened but what happened was a genuine error. WISL said it had always acted in good faith. WISL said that the accountant's fees seemed high given the size of S. WISL made an offer to settle S's complaint in line with how I'd recommended in my provisional decision. S said it would prefer me to reach a decision on what I consider to be the fair and reasonable outcome.

I sent an email with my further findings to both parties via our investigator on 25 January 2023. This said:

#### *Difference in wage costs*

*I note S's point on this but I remain of the view that, in the absence of evidence to show what the staffing figures would have been for the claim period if the insured event had not*

*happened then, that this remains the most appropriate method of calculating S's loss. I say that because I have also used the turnover figures for the same period in 2019 so I believe this produces a fair and reasonable estimate of S's losses.*

#### *Value of claim*

*I recognise that S's staffing is dependent on the number of children on roll and the ages of those children. And that having a small number of key worker children might mean that S was required to have the same amount of staff working as it would ordinarily have for a higher number of children. However, I haven't seen anything to suggest that S had to take on any additional staff and they would always have had to pay the staff that they were contracted to pay. I understand that S couldn't furlough as many staff as it needed them to work but I don't think that needing the contracted staff to work was an extra cost and therefore I don't believe this is an amount that S should be compensated for.*

*As I am not an insurer it is difficult for me to put an exact figure on the amount that S would have been paid by the insurer if it had bought the policy it should have bought. I have therefore reached a decision based on what I consider to be fair and reasonable in all of the circumstances based on the evidence that has been presented to me... [I later sent both parties a correction to this sentence which should read as follows] Having done so, I remain of the view that S's losses are as set out in my provisional decision:*

#### *Interest*

*When I award interest it is to compensate a policyholder for being without money that it should have had. In S's case it explained that it took a BBL to cover the amount that it should have been paid under its claim. Therefore, its loss is what it is required to pay as interest on that loan rather than our usual rate of 8%. Interest is not awarded to punish a business and while WISL will need to pay less than they would have done in interest if S hadn't taken out a BBL, that doesn't impact on my decision of how much to award for the reasons I've explained.*

#### *Accountant's fees*

*The nursery policy says:*

*"We will pay under this Section reasonable charges payable by you to professional accountants for producing any particulars or details or any other proofs, information or evidence as may be required by us and reporting that such particulars or details are in accordance with your books of account or other business books or documents provided that the sum of the amount payable under this clause and the amount otherwise payable under the Section will in no case exceed the Maximum Amount Payable"*

*I think the fees would be payable under the policy. WISL have queried the number of hours and the hourly rate. While the hourly rate does seem high, if S has paid this amount or is required to pay this amount then I think it would be fair and reasonable for WISL to compensate it for this. The fees are from a qualified accountant and I have been provided with some detail to explain the breakdown of the work involved. I recognise that an insurer might have limited the hourly rate, but S didn't have the opportunity to discuss this with the insurer while a claim was ongoing. I also recognise that S might have needed its accountant to provide more or less information than they would have done to an insurer. But S presented information from its accountant that it believed was relevant in order to demonstrate its claim and its complaint.*

*I therefore ask that S provide invoices and bank statements to show that these fees have been paid. If S shows this amount has been paid then I think WISL should reimburse these fees as well as the fees which remain outstanding. If S is VAT registered, WISL does not need to pay the VAT element of the fees.*

WISL said they accepted the outcome in order to resolve S's complaint, although they asked me to clarify whether the payment of the accountant's fees was in addition to the recommendation in my provisional decision. I confirmed that it was. WISL did not provide any further comments by the required date.

S provided invoices as well as copies of its bank statements showing payments to its accountant. S confirmed that its accountant is not VAT registered so it did not pay any VAT.

### **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 I have not received any further comments to persuade me to depart from the outcome set out in my provisional decision and email of 25 January 2023, I remain of the view that it's fair and reasonable for WISL to compensate S for the financial loss caused by their error. I have set out this loss in the section below. As WISL have confirmed there is no excess and no further deductions I have not made any further deductions to the settlement amount.

S has provided copies of its bank statements showing that it makes monthly payments towards its accountant fees. I have also been provided with invoices for these fees and am persuaded that S is required to pay them. S has also confirmed that it had not paid VAT on the accountant's costs. Therefore, I have included the reimbursement of the accountant's fees in the section below as part of S's financial loss. I have not awarded interest on the accountant's fees as I think the reimbursement of them is sufficient compensation.

### **Putting things right**

To put things right WISL should pay S the following as compensation for its financial loss:

- £12,224.34 to compensate for what it would have received in settlement of its claim.
- Interest on £12,224.34 at our normal rate of 8% simple per annum from 20 June 2020 until the date S took out the BBL.
- Interest on £12,224.34 at 2.5% simple per annum from the 12 month anniversary of S taking the BBL to the date WISL make payment.
- £3,405 to reimburse the accountant fees.

### **My final decision**

My final decision is that I uphold this complaint and require Wilson Insurance Services Limited to pay S the following as compensation for its financial loss:

- £12,224.34 to compensate for what it would have received in settlement of its claim.
- Interest on £12,224.34 at our normal rate of 8% simple per annum from 20 June 2020 until the date S took out the BBL.
- Interest on £12,224.34 at 2.5% simple per annum from the 12 month anniversary of S taking the BBL to the date WISL make payment.
- £3,405 to reimburse the accountant fees.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 10 March 2023.

Sarann Taylor  
**Ombudsman**