

The complaint

A company that I'll refer to as S has complained that Wilson Insurance Services Limited (WISL) made an error when renewing their commercial insurance policy which meant they weren'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 will 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 it 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 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 a completed proposal form for S's other company on the same day and forwarded it to M. The completed proposal form for S was received by WISL a few weeks later.

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 was responsible for any errors which caused 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 £6,336.06. 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. 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, while I do think WISL made an error I don't intend to require WISL to pay S any compensation. 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. So I've thought about what the insurer would likely have paid out under this clause.

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 along with information S has provided from its accountant.

<i>Expected turnover</i>	<i>7,906.19</i>
<i>Less actual turnover</i>	<i>1,520.48</i>
<i>Shortfall in turnover</i>	<i>6,385.71</i>
<i>Less savings</i>	
<i>Staff saving compared to 2019</i>	<i>1,405.1</i>
<i>Furlough</i>	<i>5,403.88</i>
<i>Loss</i>	<i>-423.27</i>

The information above 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.

The figures provided by S's account indicate that S didn't make a loss when compared with the same period the previous year. As S didn't make a loss, I don't think it would have received any money from the insurer for its claim. Therefore, while I do think WISL made an error I'm not persuaded that S experienced a financial loss which it would be fair and reasonable for WISL to compensate it for. It follows that I don't intend to require WISL to pay S any compensation in relation to its claim.

I recognise this isn't the outcome S hoped for given that it believed it had experienced a loss of revenue. However, having considered things very carefully, I don't intend to uphold this complaint.

WISL agreed with the outcome of my provisional decision in order to resolve the complaint. They also let us know that there was no excess payable on the nursery policy. S didn't agree and provided further comments. Some comments relate to a separate complaint so I have only included the ones relevant to this complaint. 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 £9,028.13. During the first lockdown S was required to provide care to key worker children and it was from these placements that the amount of £1,520.48 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 £8,046.30 in excess wages. S believes that it should be possible to claim for this under increased cost of working.
- 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.

On 25 January 2023 I sent an email to both parties with my further intended findings. I 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, that this remains the most appropriate method of calculating S's loss when comparing the turnover to the same period during the previous year.

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 they 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 it would always have had to pay the staff that it was 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. Having done so, I remain of the view that S has not evidenced a loss of revenue when compared to what it would have been without the restrictions as a result of the restrictions on its business.

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"

The policy doesn't specify that there ultimately needs to be a loss in order for the accountant's costs to be paid so I think they 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 it 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 so I think it would be fair and reasonable for WISL to pay them. I therefore ask that S to 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 still thought the accountant's fees were high but accepted the outcome in order to resolve S's complaint.

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 its error.

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 I am persuaded that S is required to pay them. S has confirmed that there is not a VAT element to the fees. Therefore, I think it is fair and reasonable for WISL to reimburse S's accountant fees as I believe this is its financial loss due to WISL's error. I have not awarded interest on the accountant fees as I think the reimbursement of them is sufficient compensation. I have also not made any further deductions as WISL confirmed that there is no excess payable within the business interruption section of the policy.

Putting things right

To put things right WISL should pay S £3,405 to compensate it for its financial loss.

My final decision

My final decision is that I uphold this complaint and require Wilson Insurance Services Limited to pay S £3,405 to compensate it for its financial loss.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 2 March 2023.

Sarann Taylor
Ombudsman