

complaint

Ms T complains that she was prevented from cancelling her car insurance by the prohibitive cost of doing so, quoted to her by Be Wiser Insurance Services Ltd (the broker). She says she was within the cooling-off period and wanted to cancel because the policy didn't meet her needs in terms of the mileage it allowed.

Ms T reached her allowed mileage early in the policy term and was faced with an expensive charge for increasing her allowance. So she cancelled the policy early and was led to complain because of the level of the refund she received.

background

Ms T took out a car insurance policy to start on 1 November 2016. The sale was made on the telephone, following Ms T's enquiries on cost comparison websites.

Ms T says she hadn't received the policy documents by 10 November, so telephoned Be Wiser to request them. Be Wiser says that it had sent policy documents via post on 1 November, but sent duplicates to Ms T by email at her request.

Be Wiser received a call from Ms T's mother, asking about cancellation and the cost of additional mileage on 17 November. And on 23 November she called to proceed with the cancellation of the policy. But she was dissuaded from doing so when Be Wiser told her she would receive a refund of £584.79 from a total payment of £1,788.

On 29 March 2017, Be Wiser contacted Ms T to tell her she'd used 91% of her mileage allowance. Ms T's mother called Be Wiser the next day to say Ms T wanted the policy to be cancelled. Be Wiser said the refund payable would be £323. There were discussions about the cost of additional miles and Be Wiser was prepared to offer a discount, but Ms T complained on 3 April and on 6 April confirmed that the policy should be cancelled.

On 10 April, Be Wiser responded to Ms T's complaint and increased the refund to £686.51 as a gesture of goodwill. But it said it sent its terms of business to her on 1 November 2016. It confirmed to Ms T that the policy was cancelled. The refund was received by her on 15 May.

Ms T was unsatisfied with Be Wiser's response and asked us to consider the complaint.

Be Wiser provided the following breakdown of charges. This compares what it would've charged, had Ms T cancelled within the cooling off period, with what it did charge in March 2017:

	Nov-16	Mar-17
Net Insurers charge for time on cover (Includes Non-refundable Black Box charge)	408.2	666.49
Administrative charge for the arrangement of Instalments	30	0
Non-refundable placement charges as per our terms of business	630	300
Non Refundable additional extra	60	60

Cancellation Administrative charge	75	75
Total	1203.2	1101.49
Paid	1788	
Refund	584.8	686.51

Our investigator upheld the complaint, saying she wasn't satisfied that Ms T was made aware of the non-refundable charges during the sales call. And she wasn't able to make an informed choice about whether to take up the policy. When she received the policy documents, she wanted to cancel, so it's likely that if she had the full facts beforehand, she wouldn't have taken-up the policy.

Our investigator said Be Wiser should refund its charges for the placement of the policy and the charge labelled "additional extra charge." In addition Be Wiser, should pay her £100 because she was made to continue with a policy she didn't want.

Ms T accepted our investigator's opinion.

Be Wiser didn't accept our investigator's opinion. It says it sent its terms of business on 1 November and they say its placement charge is non-refundable. And Ms T called to cancel longer than 14 days after this, so was outside the cooling-off period. It also says the additional extra charge is for an optional product providing excess protection.

Be Wiser also pointed to the sales script which says that, if cancelling after cooling-off, customers could be charged the equivalent of two to three months extra premiums. And the script tells the agent to offer to read the terms of business to customers during the sales call.

As Be Wiser didn't agree with our investigator, Ms T's complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with our investigator that Ms T's complaint should be upheld. I'll explain why.

To reach my decision, I've considered whether:

- Ms T asked to cancel within the cooling-off period;
- it's likely that she knew Be Wiser would not refund certain charges on cancellation;
- this knowledge would've influenced her decision making.

Be Wiser acted as a broker of the policy, so a third party is the insurance provider ("the underwriter"). In its statement of fact, the underwriter confirms:

"You have a statutory right to cancel your policy within 14 days from the day of purchase or renewal of the contract or the day on which you receive your policy or renewal documentation, whichever is the later."

In relation to the cooling-off period, Be Wiser's own "key facts" document says:

“Should you cancel cover within fourteen days from receiving your policy documentation. The premium payable by you will be calculated by the number of days on cover with an insurer minimum premium of £25.00 plus IPT [insurance premium tax]. In addition we will charge an administration charge of £45 our charge will be applicable even if the policy has not yet incepted.”

I think it's clear from both parties' documentation that the cooling-off period is intended to start from the date the policy documents are received by the customer. And this is generally in line with the relevant guidance (ICOBS 7). Ms T says she didn't receive her documents until they were emailed to her on 10 November.

I understand Be Wiser's argument that it hadn't caused a delay and that this is evidenced by its records of sending the policy documents. But, I don't think Ms T would've asked for them on 10 November if she'd already received them. As the documentation from both the underwriter and Be Wiser says the cooling-off period starts when the policy documents are received, I think the date should be 10 November in this case. So, she asked Be Wiser about cancellation within the cooling-off period.

In its response to our investigator's opinion, Be Wiser pointed to its terms of business which say £630 is a *“non-refundable charge for placing the policy.”* And it said its telephone script leads its agents to tell customers they could be charged the equivalent of two to three months premium in the event of cancellation. I've looked at both documents to see if it's clear that the warnings relate to cancelling in the cooling-off period. Having done so, I don't think it's reasonable to argue that they do.

I think, if Be Wiser intended its placement charge to be non-refundable on cancellation within the cooling-off period, it would or should have included it in the passage I've quoted above. It didn't and nor does it relate this charge to cancelling within the cooling-off period in any of the other evidence I've seen. I've listened to a recently submitted recording of the sales call and read the accompanying script. It says:

“Due to cost we incur processing the insurance, if you cancel within the 14 day cooling off period there is a £75 cancellation fee and this is on top of the charge for time cover has been afforded.”

I don't think Ms T was told Be Wiser's charges were non-refundable on cancellation within the cancellation period and its own documentation doesn't say they were. So I don't think she thought they were non-refundable either. I think the fact that she paid a single premium, rather than a monthly one, supports this theory. So I've considered what she'd have done had she known.

When Ms T felt she wasn't getting a good deal from Be Wiser in March, she shopped around and found a better one. I think she would have done the same at the beginning if she thought she wasn't getting a good deal then. It's clear that she did try to cancel, and this was because she thought the policy didn't suit her needs. I accept that the reason she didn't cancel then was that she was told by Be Wiser that a substantial proportion of what she'd paid wouldn't be refunded. For the reasons outlined above, I think it told her this unfairly.

putting things right

The relevant guidance (ICOB5 7) explains what's reasonable for a business to charge in the event of cancellation. It says:

1. *When a consumer exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the firm in accordance with the contract.*
2. *The amount payable must not:*
 - a) *exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and*
 - b) *in any case be such that it could be construed as a penalty.*
3. *A firm must not require a consumer to pay any amount:*
 - a) *unless it can prove that the consumer was duly informed about the amount payable; or*
 - b) *if it commenced the performance of the contract before the expiry of the cancellation period without the consumer's prior request.*

While I think Ms T would've cancelled if the refund amount had been quoted to her correctly, I can see that she has been insured and it is reasonable that the insurer charges for this. She also received the black box (telematics device) and this was fitted to her car. It was explained in the sales call that the cost for this would not be refunded after it was fitted. So I don't think she should get the cost of this back.

As Ms T felt the policy was not suitable for her needs and would have cancelled it had she been advised correctly by Be Wiser, I don't think it's reasonable that it retains any of its placement charge. So this should be refunded to Ms T.

I think the cancellation charge would have been payable had she been given the correct information at the time she wanted to cancel, so it's reasonable that Be Wiser retains this.

Be Wiser has said that the "Non-refundable additional charge" was for an option providing excess protection. But it wasn't confirmed in the copy of the illustration it recently sent me or the sales call recording. And, had Ms T cancelled the policy when she originally wanted to, she wouldn't have paid this. So I think Be Wiser should refund it.

I also think Ms T has suffered significant inconvenience, having to negotiate with Be Wiser and having to find another policy halfway through the intended term, as well the delay in receiving her refund. None of this would have happened had Be Wiser allowed her to cancel when she wanted to. I also think feeling compelled to proceed with a policy she didn't think would meet her needs must have been unsettling and frustrating for Ms T. Her representative has told us that she's been very upset by what's happened. So to compensate her for this, I think Be Wiser should pay her an additional £200.

my final decision

My final decision is that I uphold Ms T's complaint about Be Wiser Insurance Services Limited and it should:

- Refund its placement charge of £300.
- Refund the £60 fee it says was for excess protection.
- It must pay interest on the above at the rate of 8% simple per year. The interest should be calculated from the date the costs were incurred until the date of settlement.
- If it considers it is legally required to deduct income tax from the interest, I mention above, it must send a tax deduction certificate with the payment so that Ms T can reclaim the tax if she's able to.
- Pay her £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 5 March 2018.

Gavin Cook
ombudsman