

## **complaint**

Mr Y complains that his excess protection policy was mis-sold to him by Be Wiser Insurance Services Ltd.

## **background**

Mr Y took out an excess protection policy through Be Wiser Insurance Services Ltd in August 2011 at the same time as setting up a motor insurance policy. Mr Y says he did not want the policy at first because the £350 excess was too high. He says that the sales advisor then told him that for an additional £35 premium his excess would be covered for any claims in the policy year so he accepted the policy.

Be Wiser has denied this saying that its sales staff would have informed Mr Y that the excess protection would only cover one claim in any single policy year. It has also said that immediately after the sale, Mr Y was sent his policy documentation which set this information out again and gave him a 14 day cooling off period.

Our adjudicator recommended that the complaint should be upheld because Be Wiser has been unable to locate the sales call to support its stance that the excess protection policy had not been mis-sold. He recommended that Be Wiser should refund the disputed £350 excess fee and add interest at 8% simple a year.

Be Wiser disagreed with this and said that it is unreasonable to expect the sales call to still be available as it was from 2011. It says its sales agent would have used a call script which would have covered how the excess protection works and that the notes it made at the time should be enough to show what was discussed. It also says Mr Y would have been sent the policy's documents setting out this protection immediately following the call. He would then have had a 14 day cooling off period to cancel the policy. In this wording it states:

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr Y says the policy was mis-sold to him. Be Wiser is unable to provide a recording of the sales call but has said that its staff would have used a generic sales script covering how the excess protection works. However, the existence of a script does not prove exactly what was said to Mr Y at the time of sale. I am satisfied that, on balance, Mr Y's recollection of the sales call is at least as valid as Be Wiser's. Be Wiser's argument that it sent out accurate policy documents after the sale does not mean that the sale itself was correct.

Further to this, I have looked at the Certificate of Insurance provided to Mr Y and it does not include an Annual Aggregate Limit for Mr Y's excess protection policy as Be Wiser's policy says. The first time documentation tells Mr Y what the excess protection covers is in two letters from 19 August 2011 and 2 September 2011. These state "With reference to the above policy, we can confirm that £350 excess protection is included within your policy." As Mr Y's excess was £350, I do not consider these letters were clear enough to make Mr Y aware that he would only be able to make one claim as the limit of payment on the policy was £350. So even after the policy was sold, I believe that the documents issued following the sale would not have informed him of the excess protection annual limit either.

Looking at whether Mr Y would have been able to get other insurance to cover him for more than one claim, he has provided evidence of alternative excess protection insurance which he could have taken out had he known he would only be covered for one claim. The company began trading in 2007 so would have provided its services in 2007. It offers three levels of cover: £500, £750 and £1,000, the costs of which are similar to the charge made by Be Wiser. Mr Y has said that he would have opted for the middle level of cover as it was important to him to be covered in the event of several claims during the policy year. I am therefore satisfied that Mr Y could have purchased his excess protection from a different provider to cover more than one claim.

**my final decision**

My final decision is that I uphold this complaint and I order Be Wiser Insurance Services Ltd to reimburse Mr Y's £350 excess (assuming the claim would have qualified in the absence of the 'one claim' restriction) adding interest at our normal rate of 8% simple from when Mr Y paid the excess to date of payment.

Christopher Tilson  
**ombudsman**