

## **complaint**

Mr F complains about the way in which Be Wiser Insurance Services Ltd dealt with his claim, following a car accident that wasn't his fault.

## **Background**

Mr F had only just renewed his insurance in October 2015 when he was involved in an accident. His car was a total loss. Be Wiser put Mr F in touch with a service company, C, which he agreed would handle his claim, including a claim for personal injury. Under the terms of the agreement, Mr F had to pay an 'after the event' (ATE) insurance premium and 25% of the damages he got for his personal injury. This came to £578.

Mr F had a number of other complaints about Be Wiser, such as its failure to refund his premium and reinstate his no claims discount. As far as I can see these have been resolved, in the sense that the adjudicator has explained that what happened is normal practice within the insurance industry.

The adjudicator did think Be Wiser had acted unfairly because it had told Mr F that free legal services were included in his car insurance policy, but in fact he had to pay C the £578. So the adjudicator asked Be Wiser to refund the £578 along with interest and pay Mr F £150 for the poor level of service he'd received. The adjudicator said Mr F had been very confused about the role of C and C's solicitors.

## **my provisional decision**

I issued a provisional decision in which I said that I didn't think Mr F was entitled to a refund of £578, although I did think Be Wiser should increase its payment for trouble and upset to £350. Neither Mr F nor Be Wiser have come back to me, so I now intend to issue a final decision, confirming my findings.

## **my findings**

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

Be Wiser says its promise of free legal assistance in the schedule, refers to the fact that Mr F was entitled to free legal assistance under the terms of his policy to defend a claim, where there was a better than 50% chance of success. As he used C's services and signed an agreement that set out the requirement to pay the ATE premium and 25% of damages for personal injury, it argues that he knew what he was signing up to.

But I think Be Wiser should have made clear that the 'free legal assistance' was limited to defending a claim, in the same way the schedule makes it clear that the breakdown cover included in the policy is limited to roadside assistance. So I'm not surprised that Mr F feels Be Wiser gave him misleading information, leading him to believe he would have full legal expenses cover under the terms of the policy if he needed it.

The difficulty is that cover of the sort Mr F thought he was getting would not have been available to him as an inclusive feature of the policy. He would always have had to decide whether to make use of the limited cover available under his policy and find his own solicitor to deal with the personal injury claim, or whether to go with C.

C's terms and conditions did make it clear that the assistance it would give Mr F wasn't free in the sense that he would have to pay a percentage of his damages and the ATE premium. Given this contradicted the information in the schedule, I would have expected Mr F to query this with Be Wiser before agreeing to C's terms. Be Wiser would then have explained to him the actual limit on the 'free' legal assistance, giving Mr F the opportunity to decide what he wanted to do.

Given that the one thing Mr F couldn't have had was free legal assistance for his personal injury claim, I don't think Be Wiser can reasonably be expected to reimburse him for those expenses. Although the 25% of his damages is a contingency fee which does go towards the cost of the legal services provided, the ATE insurance premium is the cover which nearly all personal injury claimants have to take out so that, if their claim doesn't succeed, they have cover for the winning party's legal costs.

Taking all this into account, I have concluded that, while Mr F is not entitled to be reimbursed for the £578, the fact that he was given misleading information about the scope of his legal expenses cover has caused him considerable trouble and upset. So I think that, in addition to the £150 for the poor service Be Wiser provided to Mr F, it should pay him a further £200 for the upset caused by giving him the impression that he could access free legal services for any matter related to his car insurance.

### **my final decision**

I uphold the complaint. I direct Be Wiser Insurance Services Ltd to pay Mr F £350 for trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 July 2017.

Melanie McDonald  
**ombudsman**