

## **The complaint**

Mrs A, as director of a company I will refer to as D, complains about the decision of Liberty Mutual Insurance Europe SE to decline D's business interruption insurance claim made as a result of the COVID-19 pandemic.

Mrs A is also unhappy with the impact on D of the time taken to deal with this claim.

## **What happened**

The following is intended merely as a brief summary of the events. Additionally, whilst other parties have been involved, for the sake of simplicity, I have just referred to Mrs A, D and Liberty Mutual.

D operates as a licensed restaurant offering takeaway services. It held a retail insurance policy underwritten by Liberty Mutual. The policy provided cover for a number of areas of risk, including for business interruption.

In March 2020, D was forced to close as a result of the COVID-19 pandemic. Mrs A contacted Liberty Mutual to claim for D's lost income. Liberty Mutual declined the claim and Mrs A ultimately brought a complaint about this to our Service.

Our Investigator recommended that the complaint be upheld. She thought Mrs A had demonstrated that D had a valid claim and that Liberty Mutual had incorrectly declined it. She recommended that Liberty Mutual meet D's claim, subject to the remaining terms of the policy, and that interest be added to any settlement due at a rate of 8% simple per annum, from the date the claim ought reasonably to have been settled to the date of eventual settlement.

Liberty Mutual did not initially agree with this recommendation. And it was not until January 2022 that it did agree. However, Mrs A then said that the proposed redress did not take into account the consequential losses suffered by D as a result of the delay in Liberty Mutual agreeing to meet the claim. She provided evidence attempting to show that D had incurred difficulties and financial losses as a result of this delay.

At this point, Liberty Mutual assessed the losses covered by the policy and offered D a settlement of just over £4,600. Mrs A was not satisfied this figure accurately reflected the losses sustained by D that were covered by the policy. However, as set out below, this issue is not something I will directly be considering as part of this decision.

Our Investigator did consider Mrs A's arguments about the consequential loss she said was caused to D as a result of the delay in Liberty Mutual agreeing to meet the claim. However, the Investigator was not satisfied that the issues raised by Mrs A were caused by this delay rather than the other circumstances D found itself in at the time.

Mrs A remained unsatisfied and D's complaint has been passed to me for a decision.

## **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.

I am sorry to hear about the considerable financial impact COVID-19 restrictions have had on D, as well as Mrs A. I have considered all of the evidence provided, but I do not consider it is necessary for me to detail all of this nor outline every aspect of this complaint within this decision.

Initially, the issue brought to our Service was whether Liberty Mutual had acted appropriately by declining D's claim. Our Investigator recommended the claim should be met, subject to the remaining terms of the policy, and this was ultimately accepted by Liberty Mutual. So, I do not consider it is necessary for me to expand on the reasons behind this.

Additionally, the actual size of the settlement provided by the policy is not something that forms the subject matter of this complaint. Our remit in terms of the claim has only been to determine whether Liberty Mutual had acted fairly in not initially meeting it. At the time of bringing the complaint to us, Liberty Mutual had not had a full opportunity to assess the losses covered by the policy. So, a complaint about this aspect does not form part of the issue referred to our Service. If Mrs A, on behalf of D, remains unsatisfied with this aspect, she will need to follow the normal complaints process.

The remaining issues focus on the level of consequential losses caused by Liberty Mutual not agreeing to meet the claim when it was made. It should be noted that such losses are not directly covered by the policy. The policy is limited to covering, in relation to this claim, loss of Gross Profit for a period three months – up to a financial limit. The consequential losses Mrs A has referred to are those caused by, essentially, Liberty Mutual incorrectly declining the claim rather than being something that falls within the claim itself.

The Investigator's recommendation included an award of interest. It isn't clear whether the £4,600 offer made by Liberty Mutual in respect of the claim includes this award of interest. But an interest award such as this is, effectively, made to compensate the complainant for the fact they have been without a settlement that they ought reasonably to have had. As such, it is an attempt to address any consequences of not having received an earlier settlement.

Mrs A has, essentially, said that this interest award does not fully address the consequences of D not receiving its settlement earlier.

I consider that it would have been reasonable, had Liberty Mutual initially concluded that D's claim should be met, for settlement to have been made about two months after the claim was submitted. But the settlement would be made in three monthly instalments to cover to the losses D had sustained over the period of cover provided by the relevant clause in the policy. This would allow for D's losses for each month to crystallise, and then for the claim to be assessed, before payment was made. Mrs A submitted D's claim in late March 2020, so the first monthly payment – of the first months' worth of losses – should've been made in late May 2020. With two more payments being made in late June and July 2020.

Whilst the size of claim settlement is not subject to this complaint, I do feel it is necessary to briefly address this without coming to any direct findings. The relevant policy term provides for loss of Gross Profit and an explanation of this is provided. Liberty Mutual has offered just over £4,600. Mrs A apparently disputes that this is correct. I note that she has previously told us D's annual turnover was under £200,000. I have not assessed how much of this would be Gross Profit, but I consider an estimate of 50% to be adequate for the purposes of this decision. This would mean under £25,000 of lost Gross Profit over a three-month period.

It should be noted that this is an extremely rough estimate and I am not making a finding that this is what the size of settlement of the claim should be. This is merely an indication of what might be the maximum possible claim amount and is only intended to allow me to gauge the potential impact of not having this money.

But, based on this, Liberty Mutual effectively should have paid D between £4,600 and £25,000 across three instalments from May to July 2020. So, I need to consider what the implications were on D from not having these funds made available to it.

It is clear that D has suffered considerably from events over the past few years. Not only was it forced to close as a result of the COVID-19 pandemic, it then suffered a flood. The business has suffered significant financial and related consequences. However, it is also clear that the general situations that existed would have led to the majority of these.

For example, it is not Liberty Mutual's fault that the COVID-19 pandemic occurred. Regardless of Liberty Mutual's response to the claim, D would still have been closed for many months and would have incurred the fixed business costs that it did.

D had limited available funds, as well as a number of loans and debts that it was apparently trying to refinance with a loan of £153,000. The cost of servicing the existing debt would have been incurred regardless of Liberty Mutual's response to the claim. Ultimately, D was not provided with the £153,000 loan as it was not operating at the time. But this lack of operation was not as a result of any of Liberty Mutual's actions. The industry D operated in was still subject to national restrictions at that time and so D was not allowed to open. And I have seen no evidence that persuades me that the decision of this third party lender, nor the decision of any other lender D was communicating with, was made as a result of the fact D's claim was not met in 2020.

Upon reopening, D would then have had to meet the cost of buying new stock and introducing changes to its premises and working practices to take into account the relevant rules introduced to control the spread of COVID-19. Mrs A has estimated the cost of reopening at almost £30,000. These costs would have to have been met regardless of Liberty Mutual's response to the claim. And this does not seem to include the ongoing cost of servicing D's debts.

D's policy only provides cover for the loss of profit, not for the fixed business costs or these costs of reopening. Given I have estimated that the maximum possible claim amount D would be entitled to would be around £25,000, this would not have covered these costs of reopening. If the correct claim settlement amount is ultimately closer to the sum Liberty Mutual has offered, this is even more the case.

It should also be noted that I consider, as set out above, that only two monthly payments ought reasonably to have been made by the time D would have been allowed to reopen in early July 2020. At this point, I estimate D ought to have received between £3,000 and £16,700, which would not have been enough to allow D to cover the cost of reopening. And this is assuming that D would have used all of the funds received for this purpose – rather than the servicing of the debts that it was being chased for.

Subsequent to this, D suffered an escape of water. So, its ability to reopen would have been prevented by this for some time. Its costs and debts would have continued to accumulate and it would have found it ever more difficult to reopen. I am unable to say that Liberty Mutual is responsible for this.

Ultimately, I do not consider that had the payments of the claim settlement been made when they ought reasonably to have been, this would have led Mrs A, nor the third parties she was communicating with, to have taken significantly different action. So, it follows that I do not consider the consequential losses Mrs A has referred to, to be the result of Liberty Mutual's handling of the claim.

And I am satisfied that the addition of 8% simple interest per annum to the claim settlement amount is appropriate compensation for the delay in this claim being met.

I note Mrs A has referred to the impact on her individually. I do empathise with her – it is clear that she has been significantly impacted by the events of the past few years. However, my role is to assess the impact on D. D is a legal entity in its own right and is the policyholder. Mrs A is not Liberty Mutual's customer directly. So, I am unable to comment on any impact to Mrs A herself.

### **Putting things right**

Liberty Mutual did not initially meet D's claim and it should do so, if it has not already done so. If it has not already done so, Liberty Mutual should assess D's claim based on the circumstances of the claim being covered by the Compulsory Closure extension to the Business Interruption section of D's policy.

If, following this assessment, any settlement is due to D, Liberty Mutual should pay this and add interest at a rate of 8% simple per annum from the date the settlement ought to have been made to the date it is made.

Any settlement due ought reasonably to have been made in three monthly instalments, starting two months after the claim was submitted. I understand these payment dates would have been late May, June and July 2020.

### **My final decision**

My final decision is that I partly uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 21 October 2022.

Sam Thomas  
**Ombudsman**