

The complaint

A company I will refer to as C complains about Liberty Seguros Compania de Seguros Y Reaseguros, S.A's (Liberty) handling of its claim following the total loss of several vehicles due to a fire, under its commercial motor insurance policy.

What happened

C says that as a result of an arson attack five of its commercial vehicles were destroyed. It says this included specialist 'cherry picker' class vehicles. Because of this C arranged for an independent assessor to inspect the damaged vehicles and provide a valuation. The valuation came to a total of £43,500. C says Liberty carried out a desktop valuation of its vehicles. But this only came to £24,750. It says its assessor performed a more thorough inspection and Liberty should pay the higher value.

After the arson attack C says it arranged for the vehicles to be recovered to a place where they could be stored and inspected. It says there was diesel leaking from the vehicles causing an environmental hazard. The cost of recovery and clean up came to £22,500. C says Liberty offered £5,000. It said this was in line with general market pricing. C doesn't agree and thinks Liberty should pay what it cost to have this work done.

C also complains that Liberty settled a claim from September 2021 involving one of its vehicles. It says a court date had been agreed to defend C's position. But Liberty cancelled this to settle the claim against its wishes.

The final complaint point C raised is that Liberty cancelled its insurance policy, which means it now pays more for its cover. It says the reason it gave for the cancellation is that its vehicles didn't have MOT test certificates. But C says test dates aren't readily available in its part of the country. It says it has however, provided proof that all its vehicles were fully maintained. C says the cancellation has meant its premiums increasing from £3,000 to around £10,000 per year. In addition, its lost contracts because it couldn't afford the necessary insurance.

In its complaint response Liberty says it appointed an experienced engineer to value each of C's vehicles. It acknowledges its valuations differ from C's and says its engineer reviewed the valuations in light of C's dispute. But it didn't find reason to make a change. Liberty says it asked C for purchase receipts or other evidence to demonstrate the cost of its vehicles. But C hasn't provided this information. It says without this it can't consider the matter further.

Liberty says the cost of recovery of C's vehicles has been "*grossly inflated*". It says its offer is based on market pricing and is reasonable.

In its complaint response Liberty says it tries to settle all accident claims fairly with consideration of the costs. It says the settlement of the claim highlighted by C was reached reasonably based on the advice of its solicitors. Liberty says C agreed to this settlement.

C didn't think Liberty had treated it fairly and referred the matter to our service. Our investigator upheld the complaint in part. She explained our service doesn't provide

valuations for vehicles, but we will look to see that an insurer has acted fairly when establishing a market value. Our investigator was only able to obtain a valuation for one of the vehicles using the industry trade guides. This was less than Liberty had offered for this vehicle. Based on this she thought the settlement offer for this vehicle appeared reasonable.

For the remaining vehicles our investigator thought the valuation report C provided was more persuasive than that provided by Liberty's engineer. She says the business should base its settlement on this valuation and pay 8% interest on the difference between this and the amount it originally paid.

The arson attack occurred on 9 July 2022. C contacted Liberty on 11 July 2022, and a claim was registered two days later. It says this was due to a public holiday. Contact was made with C via Liberty's recovery agent five days after this. Our investigator says it's reasonable to expect C to agree costs with Liberty before appointing its own recovery agents. Because it hadn't, she thought Liberty's offer was reasonable. But she says if its recovery agent would've charged more than this it should pay the higher amount, plus 8% interest on the difference.

Liberty was provided with CCTV footage of the accident C had disputed responsibility for. It received this prior to the arranged court date. This showed both drivers involved would likely be considered at fault for the accident. Based on this our investigator didn't think Liberty had treated C unfairly when making the decision to settle out of court.

Finally, our investigator didn't think Liberty acted unfairly when cancelling the policy. She says Liberty's argument that C hadn't provided adequate proof that its vehicles were roadworthy, was reasonable. She says this is a requirement of C's policy terms and it hadn't provided evidence to show all its vehicles complied with these requirements.

Liberty accepted our investigator's findings. C didn't and asked for an ombudsman to consider the matter.

It has been passed to me to decide.

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.

Having done so I've decided to uphold this complaint in part. Let me explain.

I've set my decision out under the relevant headings.

1. Valuation

I've read C's policy terms to understand what is expected when an insured vehicle is considered a total loss. There is no dispute that all the vehicles were completely destroyed. The terms say:

"If the Insured Vehicle is lost or damaged, the Insurers will indemnify the Policyholder by at their own option, repairing or replacing the Insured Vehicle or paying the amount of the loss or damage.

The Insurers liability in respect of the Insured Vehicle shall not exceed the market value immediately prior to such loss or damage or the Policyholder's estimate of value notified to the Insurers, whichever is the lesser."

Our investigator has explained our service's approach to vehicle valuations. We don't provide valuations for vehicles but rather we look to see whether the insurer's offer is reasonable. In assessing whether a reasonable offer has been made, we obtain valuations from the motor trade guides.

These guides are used for valuing second-hand vehicles. We find these guides to be persuasive because their valuations are based on nationwide research and likely sales figures. The guides also consider regional variations. We also take all other available evidence into account, for example, engineer's reports.

Our investigator thought Liberty's settlement offer, for the vehicle she'd managed to get a valuation for, was fair and reasonable. I've checked to see that the correct make and model of vehicle was used in the valuation, which they were. As Liberty offered more than the trade guide valuation we obtained, I don't think its offer for this vehicle was unreasonable.

However, our investigator could only obtain one valuation from the trade guides. I also tried to obtain valuations from the four guides we generally use. But no further valuations were available.

I've looked at the engineer reports provided by both C and Liberty. I agree with our investigator that the valuation report C provided is more detailed following an in-person inspection by the engineer. It contains descriptions of the additional features not mentioned by Liberty's engineer, which includes details of the specialist equipment attached to or included within C's vehicles. It also provides commentary on the availability of these vehicles in the current second-hand market, advising several of the vehicles are scarce.

Liberty's engineer performed a desktop valuation only. He used the correct make and models of the loss vehicles. But there is otherwise limited information to support the value placed on C's vehicles.

Based on this evidence I'm more persuaded that C's valuations give a fairer reflection of the market value of the vehicles at the time of the loss. My intention is that Liberty should pay the valuations, set out in C's report, in settlement of the claim. Where a range has been given, Liberty should pay the average value.

2. Recovery costs

C says it arranged for a contractor to remove the burnt-out vehicles to a safe storage facility and to clean up leaked diesel from the surrounding area. I've seen the invoices provided for these services. The invoices describe the machinery and operators required to remove the vehicles. It says a JCB bucket and brush handler were needed to carry out the following work:

"clean contaminated, debris from arson fire incident scene + recy low loader".

And:

"oil granules detergent agent used plus manpower to clean area of burnt vehicle".

I can see that C has claimed for the full cost of these services which amounted to over £20,000.

Liberty's view is that these charges are excessive for the work that was done. It offered £5,000, which it says is what its contractor would've charged for this job. I asked Liberty to

provide evidence of the charges its contractor confirmed for the work. It's supplied the estimate it received from its contractor in support of this point. This supports what it said about the expected cost.

Based on this information Liberty's contractor could've completed the recovery and clean up works for far less than the contractor C employed.

The sequence of events based on Liberty's records and C's testimony, shows the recovery contractor carried out its work on 10 July 2022. This was prior to Liberty being made aware of the claim.

I understand from subsequent correspondence that the vehicles were in a shared car park and that the police advised C to arrange removal of the vehicles. In its submissions to our service Liberty says it doesn't dispute the appointment of a recovery agent in these circumstances. But it says the charges are excessive and C hasn't been willing to negotiate a reasonable costing.

I understand the reasons C gave for appointing the recovery agent when it did. But prior to C appointing a contractor it's reasonable to expect this to have been brought to Liberty's attention. C didn't give Liberty the opportunity to appoint its own recovery agent or consider the costs C had agreed with its contractor. Because of this I don't think it behaved unreasonably by offering what its contractor would charge for the work. Based on the estimate from liberty's contractor - the work specified mirrors the work C's contractor completed.

I acknowledge it took around five days after the claim was registered for Liberty to contact the recovery agent. C says this was too long to wait given the impact of the leaking diesel and the impact on the environment. But the fact is C instructed its recovery agent prior making any contact with Liberty. In these circumstances I agree with our investigator that its fair that Liberty pays what its contractor would charge for the work as it has already agreed.

3. Accident claim outcome

I've read C's account of the collision its vehicle was involved in during September 2021. Both parties argued the other was at fault. There's no dispute that court proceedings were initially arranged by Liberty to defend its and C's position. However, Liberty explains a week prior to the court date it was provided with CCTV footage of the collision. It says this shows neither driver was at fault. It says C was not held liable for the incident and it was settled on a "*Without prejudice No Liability Basis*".

C's policy terms state the following, under the heading, "*General conditions – D, Rights of the Insurers*":

"The Insurers are entitled to take over sole control and conduct of any claim at their discretion."

This means it's for Liberty to decide how to deal with a claim. This doesn't mean it can act anyway it wants to, we still expect an insurer to treat its policyholder fairly. But in these circumstances, considering the policy terms and evidence provided, I can't see that it was unreasonable for Liberty to settle the claim as it did.

As the claim was settled on a 'without prejudice' basis C could decide to pursue the matter itself through the courts. If it's proven that the third party was at fault, I'd expect Liberty to amend how the claim outcome was recorded. But as it stands, I don't think it behaved unfairly in settling the claim as it did.

4. Cancellation

This issue wasn't raised at the time of C's initial complaint and wasn't included in Liberty's response. The business has since provided its rationale for its decision to cancel the policy and confirmed our service is able to include this issue within our consideration of C's complaint.

In its submissions to our service Liberty says C told it the company had changed its name. It amended the policy details, as requested, based on this information. It says it subsequently found out that the original company and the new company were incorporated at the same time. This means the companies were separate legal entities. Liberty says it asked C if there were any other changes but was told there weren't.

Liberty says this means the original policy should've cancelled. It would then have considered new terms to provide cover for the new company.

Our investigator didn't think it was fair that Liberty recorded the policy as 'cancelled by the insurer'. She says it should be recorded as 'cancelled by the consumer'. This is what should've happened when the name change was first highlighted.

In response Liberty says the policy would still have been cancelled in August 2022 as C could not supply sufficient evidence to confirm its vehicles were roadworthy.

Our investigator issued a second view. She said the evidence hadn't shown C's vehicles were kept in a roadworthy condition. She referred to the following policy terms in support of Liberty's decision to cancel the policy:

"The Policyholder shall take and cause to be taken all reasonable steps to prevent injury, loss or damage and shall maintain the Insured Vehicle or any Trailer in an efficient and roadworthy condition. The Insurers shall have free access to examine the Insured Vehicle at all reasonable times."

I've read the information Liberty says it received from C in support of its vehicles being kept in a roadworthy condition. I can see that Liberty also refers to a lack of MOTs and tax on a number of C's vehicles involved in the claim.

I've considered C's testimony that it's been difficult to arrange an MOT in its part of the country. It says this is the result of backlogs dating back to the coronavirus pandemic when extensions were granted to the usual MOT requirements and timeframes. It has since supplied our service with a volume of receipts showing maintenance and servicing work carried out on its vehicles.

It wasn't clear that Liberty had seen all the receipts C included in its submissions to our service. We provided this information for it to consider and asked that it provide its comments. It responded to say it had seen the receipts previously, which it reviewed as part of the claim. Liberty says:

"Although the receipts do show maintenance to various vehicles, some of the receipts aren't specific to any vehicles and highlight minor repairs and maintenance, they do not give an overall picture or description of any of the vehicles' physical health or if any further repairs are required or if any further issues exist."

The main/only way to show the vehicles' health are through testing which is why the MOT annual checks are in place. The fact that 4 out of the 5 vehicles had no MOT or proof of MOT tests dates arranged does not enable us to have confidence that the vehicles should

be driven on the roads and minor repairs may not be satisfactory to ensure the roadworthiness of the vehicles.

At the time these vehicles were being driven on the roads it was and remains a legal obligation to have the vehicles MOT'd and Taxed. Again, 4 out of the 5 vehicles could not be shown to have one or the other and should not have been driven on the roads without these certificates in place.

... without the MOT's, Tax or dates for MOT tests booked in, it was our opinion that the receipts supplied could not prove that the vehicles were roadworthy as they weren't specific enough and they do not indicate the full physical health of any individual vehicle."

I've looked at the receipts in detail. Although it does show that maintenance work was carried out. I agree with Liberty that its not always clear what work was carried out on which vehicle. And this doesn't provide a clear understanding of whether the vehicles were considered roadworthy. The established way of determining if this is the case is for the vehicles to pass an MOT.

I acknowledge what C has said about difficulties arranging an MOT. But according to the government website the requirement for an MOT hasn't been removed. All vehicles are still required to have a current MOT in order to be legally used on public roads. The information provided is that drivers won't be penalised where an MOT has expired if it can be shown that an appointment has been booked for that vehicle.

Liberty says C hasn't shown that MOT appointments had been booked for its vehicles. C hasn't provided evidence of MOT appointment dates to our service either.

Based on this evidence I don't think Liberty treated C unfairly when cancelling the policy for the reasons it gave. C hasn't shown that its vehicles were in a roadworthy condition as required by its policy terms. So, I don't think it's unreasonable for the policy to show as cancelled by the insurer.

Having considered all of this, I don't think Liberty paid C a fair settlement payment for its vehicles. It should now base this payment on C's engineer's valuations and pay interest on the difference. But I think Liberty acted reasonably in relation to the recovery costs, cancellation of the policy, and with respect to the accident claim outcome.

My final decision

My final decision is that I uphold this complaint in part. Liberty Seguros Compania de Seguros Y Reaseguros, S.A should:

- pay C a settlement amount for its vehicle claims based on C's valuation. Where a range of values is provided, the average figure should be used. It should also pay 8% simple interest on the difference in settlement figures.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 20 August 2023.

Mike Waldron
Ombudsman