

The complaint

Mr A complains that Liberty Mutual Insurance Europe SE (“Liberty”) has unfairly settled a claim under a landlord policy using an average clause.

Any reference to Mr A or Liberty includes any representatives or respective agents.

What happened

The background to this complaint is well known between parties so I’ll summarise events.

- Mr A owns five properties, all insured under one Liberty policy.
- Mr A made a claim to Liberty for malicious damage and an escape of water at one of his properties. Another complaint concerning a secondary claim to a related property falls under another reference considered separately by this Service.
- Liberty considered the claim and accepted it. But it said Mr A had failed to make a fair presentation of risk when taking out the policy by stating the property’s rebuild value as £50,000. Liberty said the actual rebuild value was around £115,000.
- Liberty said it would settle the claim on the basis of its average clause within its policy. This reduced the claim in question from £5,682 to £2,150 (after excess) – 43.5% of the claim.
- Mr A complained saying its position was unfair. Liberty issued its final response in March 2022 and stood by its position.
- The complaint came to this Service and one of our Investigators looked at what happened. He said Mr A had not made a fair presentation of risk when taking out the policy. But the Investigator said Liberty had failed to demonstrate or provide any evidence to support that it would’ve done anything differently.
- So, the Investigator said Liberty should cover the claim without reduction – neither applying its average clause or a proportionate settlement in line with the Insurance Act – taking into account the remaining terms and conditions. And he said it should pay Mr A £400 for trouble and upset caused.
- Liberty disagreed and estimated it would’ve charged £474.65 (plus IPT) for a rebuild cost of £115,000. And given Mr A had paid £206.37 (plus IPT) he had only paid 43.5% of the correct premium. It also said it had calculated this on the basis that the estimate for the rebuild cost of the risk property was £115,000 which it had applied to all five of Mr A’s properties as they were similar.
- Our Investigator considered this and wasn’t persuaded Liberty had demonstrated what it needed to in regard to premiums and assessment of rebuild value of the five properties.
- Liberty provided evidence from its broker which it said highlighted the premium calculation was based on the sums insured and not underwriting loading. This didn’t change the Investigator’s mind, so the complaint was passed to me for an Ombudsman’s decision.

On 16 October 2023, I issued a provisional decision outlining why I didn't intend to uphold the complaint. I've included an extract of this below.

"In this case, the claim has hinged on Mr A's property in question being insured for an inaccurate sum. Mr A hasn't disputed that the figure given of £50,000 was too low in hindsight and a figure of £115,000 put forward by Liberty is reasonable.

So, when accepting the claim, Liberty sought to rely on an underinsurance term within its policy wording. This states:

"Underinsurance

If at the time of damage the total of the sums insured on buildings specified in the policy schedule is less than 85 % of the reinstatement cost of the buildings covered by this section we shall bear only that proportion of the damage which the total of the sums insured on buildings bear to the total reinstatement cost."

On its face, it's evident that the sums insured on the buildings was less than 85% of the reinstatement cost. So, it appears Liberty's underinsurance clause would apply to this scenario. However, I have to consider whether its application of this term is fair in the circumstances.

To decide this, I've thought about the fact this is insurance taken to cover a commercial property. And the problem has arisen due to the information Mr A gave when taking out the policy. This means the appropriate rules I have to consider is the Insurance Act 2015.

Under this Act, I need to first consider if Mr A has made a fair presentation of risk to Liberty. In doing so I have to take into account if every material representation as to a matter of fact is substantially correct and every material representation as to expectation or belief is made in good faith – taking into account what Mr A should've provided and what impact this information had on Liberty's decision to insure him and on what terms.

As I've stated above, Mr A hasn't disputed that the figure he gave in hindsight was inaccurate. And I understand he sought advice from an estate agent when obtaining his figure. But I don't consider this to be a reasonable presentation of risk or answer to the value of a property's rebuild value (as it was listed in the insurance documents – the "building sum insured").

There has been some discussion previously about whether it is fair for Liberty to use a rebuild sum of £115,000 across all five properties. Mr A did insure all of his properties for the same sum (£50,000) indicating he believed they were all of similar value. Liberty has explained they are all similar build which Mr A hasn't disputed, nor has he provided anything to show otherwise. So, I think Liberty's decision to use this sum across all five properties was reasonable in the circumstances and I have no concerns with this.

Mr A has indicated he's unhappy with the broker who sold him the policy and the advice they gave him about the value he gave. However, that is not the complaint I am considering, any matter between him and the broker would need to be addressed separately.

So, I've gone on to consider what impact this has had on Liberty's decision to insure Mr A and/or the terms it would've done so on. It has provided calculations and evidence from its broker supporting that Mr A has paid around 43.5% of the amount he would have done had the building sum been reasonable when input. I'm satisfied this is an accurate indication of the true cost Mr A would've paid - rising his premiums from £231.13 to £531.61 for each property.

Taking into account what the Investigator had said previously about using the remedy under the Insurance Act 2015, Liberty has then provided two calculations as to potential settlements. One using the average clause it initially sought to use, and the second using the proportionate reduction taking into account the premiums paid.

Under the average settlement, it has calculated a settlement sum of £2,150 (after deduction of average and excess). Which is what I understand it has paid Mr A.

Under the proportionate settlement, it has said a settlement sum of £1,971.67 (after proportionate reduction and excess) would be due – suggesting this method would've led to a worse settlement for Mr A. Although by my own calculations both methods would use a figure of around 43.5% and led to the same result.

But in any case, going back to Liberty's decision to rely on its average clause, it seems in this instance this has led to either the same or a more beneficial settlement for Mr A than the alternative available to it. For this reason, I'm currently satisfied its decision to do so did not come at a cost of detriment to Mr A and therefore was fair and reasonable in these circumstances."

I concluded that I wasn't intending to uphold the complaint, nor award any compensation, as it appeared Liberty had provided a fair settlement from the outset. I gave both parties until 30 October 2023 to provide any responses.

Liberty responded to say it agreed with my decision and had nothing further to add. Mr A questioned the settlement – taking into account he had been charged two excesses for claims related to this address.

Our Investigator responded to this point in the first instance, confirming Mr A had been charged two excesses on the basis of there being two separate perils claimed for at this property. So, the matter has been passed back to me for an Ombudsman's final 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.

Following my provisional decision, neither party has given anything material to consider regarding the settlement. So, my thoughts haven't changed, and I see no reason to depart from what I've concluded previously.

Mr A has since challenged Liberty's decision to charge him more than a single excess for claims related to this property. Having reviewed the matter, it's evident to me the events claimed for are separate with separate causes. So, I'm satisfied Liberty's decision to charge for multiple excesses is fair and reasonable in the circumstances.

My final decision

For the above reasons I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 November 2023.

Jack Baldry
Ombudsman