

The complaint

L, a limited company, complains about the way Liberty Mutual Insurance Europe SE dealt with a claim on its covenant indemnity insurance policy and about the amount paid in settlement of the claim.

What happened

L bought a leasehold property and took out an insurance policy to cover the risk of there being covenants relating to the property that were capable of being enforced.

Forfeiture proceedings were brought against L by the freeholder because, although the previous leaseholder had obtained planning permission, they had made alterations without the freeholder's consent and in breach of covenants relating to the property. The proceedings had already been issued before L bought the lease, but L wasn't aware of this.

L's solicitors made a claim on the policy on L's behalf in August 2019. Liberty Mutual said it didn't consider it necessary to instruct its own solicitors; it was happy for L's solicitors to deal with the case and would cover their costs.

The solicitors advised they would make an application to the court for L to be joined to the proceedings and file a defence. They later advised Liberty Mutual the freeholder wasn't keen to negotiate and the court case was proceeding.

In December 2019 the solicitors confirmed to Liberty Mutual that L had been joined to the proceedings and the court had given directions for managing the case.

In June 2020 L's solicitors advised that the case was ongoing, they had filed a counterclaim, and were about to exchange witness statements and instruct counsel. They also said the freeholder was not receptive to negotiations.

Liberty Mutual confirmed it would meet the legal costs and asked to have sight of any correspondence about the way the case was being handled, including any proposals for settlement.

In November 2020 the solicitors reported on outcome of the trial:

- Forfeiture of the lease had not been granted, but L had been ordered to pay £15,000 in damages and to pay some of the freeholder's costs.
- The premises had to be put back as a commercial unit within 12 months, and there would be a claim on the policy for the resulting loss in value.
- They would seek to negotiate a settlement with the freeholder to avoid having to put the property back.

There was ongoing correspondence during 2021 about a settlement based on the loss in value. Liberty Mutual confirmed the reinstatement costs, loss of rent and council tax would be covered, together with legal costs, but said there would be no payment for loss in value as the lease was not forfeited.

L's solicitors disputed this and Liberty Mutual later accepted a claim for loss in value would be covered, but said it was reviewing the amount claimed and seeking its own evidence about the valuation.

Correspondence continued through 2022 about the valuations and some concerns Liberty Mutual had about payment of costs. L's solicitors provided further details of costs and asked for copies of valuations.

In October 2022 Liberty Mutual made an offer to L's solicitors of £114,000 in full and final settlement of the loss of value claim. There was further correspondence about the legal costs.

In February 2023 L's solicitors emailed asking for the loss in value settlement to be paid (having previously agreed the amount) leaving the legal fees to be resolved separately. Liberty Mutual made the payment of £114,000. The outstanding legal costs were paid later.

L complained about how long the claim had taken and said it had been asked to undertake a lot of the work itself. L was also unhappy with the amount paid for the loss in value.

Liberty Mutual didn't change its position and when the complaint was referred to this Service our investigator didn't think it should be upheld. He said:

- It was reasonable for Liberty Mutual to appoint L's solicitors to handle the case and L wasn't required to take on unnecessary work in relation to the claim.
- The case wasn't delayed by any actions Liberty Mutual took.
- The loss in value claim was paid as a full and final settlement, which was accepted by L's solicitors on its behalf.

L put forward further comments which the investigator considered, but these didn't lead him to change his view.

L remains unhappy and has requested an ombudsman's decision. L has raised a number of points in support of the complaint, including:

- L wasn't just asked to undertake administrative tasks but to obtain relief from forfeiture in its capacity as the leaseholder.
- The solicitors were appointed by Liberty Mutual and were acting for them, not for L.
- None of the actions were taken to protect L's position and it was unreasonable for Liberty Mutual to delay the settlement and seek further valuation evidence in order to reduce the amount it paid.

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.

We have received extensive documents and comments from both parties. We were set up to provide an informal alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case. So, while I've considered everything carefully, I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome I've reached.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate

information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy terms set out that Liberty Mutual may deal with claims as follows:

“In the event of any person claiming during the PERIOD OF INSURANCE to be entitled to enforce the LESSEES COVENANTS against the INSURED the INSURER may assume responsibility for dealing with such claim or claims and shall subject to the provisions hereinafter contained meet the cost of so doing. In pursuance of the beforementioned responsibility the INSURER shall be entitled at their discretion to

A) allow the INSURED to instruct its own solicitors to engage in pre-action correspondence and/or to take or defend any proceedings arising out of such claim in which case the INSURER will meet the INSURED's reasonable legal costs incurred in doing so, provided that all steps or actions to be taken are agreed by the INSURER in advance”

The terms go on to say that Liberty Mutual will pay:

“... any loss suffered by the INSURED as owner lessee or mortgagee of the PROPERTY and flowing directly and immediately from the granting of any injunction or the giving of any undertaking or from any award (other than damages or compensation) made by any court or tribunal or any compromise settlement or compounding made by the INSURER of any claim”

And:

“... the market value of the PROPERTY in the event of a forfeiture of the INSURED's Lease of the PROPERTY and where the INSURED has been unsuccessful in establishing or re-establishing any title to or interest in the PROPERTY having taken all reasonable steps so to do”

L is unhappy that Liberty Mutual didn't take over conduct of the claim and deal with everything. The terms allow it to decide whether to do that or allow the policyholder to instruct their own solicitors. L already had solicitors dealing with the matter and Liberty Mutual agreed they should continue to act. As they were familiar with the matter and already acting on it, that was reasonable.

L was covered for a loss it suffered as a result of an award made by the court. In this case, the court granted L relief from forfeiture but directed it to pay some damages and costs, and to put the property back in the condition it had been in before alterations were made.

Liberty Mutual covered the costs and paid a settlement for the loss in value that was caused by L having to reinstate the property. L is unhappy with the amount paid. This was agreed with L's solicitors after lengthy correspondence. Liberty Mutual initially said there was no loss to be compensated for. The solicitors argued the point and this was then accepted. There was further discussion about the extent of the loss and valuation evidence was obtained on this. It was reasonable for Liberty Mutual to seek expert evidence on this and then base its offer on that evidence.

When the offer was put forward, it was clearly said to be in full and final settlement of the loss of value claim. There were still some costs to be agreed but L's solicitors said the offer for the loss of value was accepted and asked for it to be paid while they continued to deal with the other costs.

L may not have signed a document specifically accepting the offer in full and final settlement.

But the offer was made following discussions around the valuation reports. L was represented by solicitors who accepted the settlement on its behalf. So Liberty Mutual made a clear offer, which was accepted, and in these circumstances it was reasonable to pay that amount to settle the loss in value claim.

L says it was told it would need to “assist” with their case, but it had to do a lot more than that, spending a huge amount of time dealing with it. L says it could have been dealt with quicker if Liberty Mutual had appointed someone to deal with the legal claim. I appreciate the court proceedings took a lot of time and effort. But L was a party to those proceedings and the solicitors were acting for L.

I haven’t seen anything showing it was Liberty Mutual’s actions that delayed the court proceedings or prevented a settlement. Offers were made to settle but the other party didn’t accept the offers put forward and so the case proceeded to court.

The solicitors dealt with the claim. Liberty Mutual had little input into the legal claim itself, other than asking the solicitors to keep it updated and discussing what should be paid, in line with the policy terms that it will pay for reasonable costs provided all actions taken are agreed by Liberty Mutual in advance.

As I’ve explained, Liberty Mutual had the option to take over the proceedings but left it in the hands of L’s solicitors, which I’m satisfied was reasonable in the circumstances. If L is unhappy with the way the proceedings were managed or the outcome of those proceedings, that would be a matter between L and the solicitors.

My final decision

My final decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask L to accept or reject my decision before 7 June 2024.

Peter Whiteley
Ombudsman