

## The complaint

D complains Waltons Insurance Brokers Limited treated it unfairly when arranging structural defects insurance.

D is a limited company. It's been represented for the complaint by a company director.

## What happened

D was developing a property. Waltons arranged a structural defects insurance policy for the property. D paid a total of £7,900 for the cover. That was made up of £4,793 premium (inclusive of tax) and £3,106 fees. Waltons acted as the agent of the insurer when arranging the cover. The offer of cover was subject to certain conditions being met. These could be amended by the insurer subject to changes with the development.

An inspection of the pour of concrete for the foundations was one of the requirements. Waltons' surveyor didn't attend the pour in mid-December 2022. That is central to the dispute. The two parties have differing accounts of the discussions prior to, but on the day of, the pour. In summary Waltons say D said it would delay the pour, to a later date, due to weather conditions. D says this is incorrect. Instead it was agreed the pour would go ahead if weather conditions improved enough to meet Waltons' requirements. D says it was agreed, in the event of the pour going ahead, specified photos of the pour and foundations would serve as a substitute for the surveyor being in attendance.

D went ahead with the pour as it considered the weather condition requirements had been met. It provided Waltons with various photos it considered fulfilled the agreement. But this wasn't accepted by the provider of the policy. It was concerned about the temperature on the day and presence of nearby trees shown in photos. It requested D's engineer provide certain information to verify the suitability of the foundations – potentially involving intrusive investigations. This was to be paid for by D. Waltons said if this wasn't provided the policy offer would be withdrawn.

D wasn't happy, considering additional requirements had been inserted after the event. It said if it had been informed invasive testing would be required it would have postponed the pour. In April 2023, having not heard from Waltons for a few months, D requested it pay a full refund of all premiums paid, plus £1,020 to pay for the invasive testing of the foundations and losses resulting from a two-month delay to the project.

There was some back and forth until Waltons issued a formal complaint response in September 2023. It didn't accept it had treated D unfairly or unreasonably. It said as suitable information hadn't been provided by D's engineer it had withdrawn cover – but noted D had also requested cancellation. Waltons didn't agree to D's requests. It said it would provide only a partial refund of premium - in line with its terms and conditions.

D wasn't satisfied with Waltons' response. He referred his complaint to the Financial Ombudsman Service. D said it had lost out financially as the project had been delayed for a few months because of Waltons actions and having to find alternative insurance. It said to

resolve its complaint it would like a full refund of everything paid – minus £70 for one site visit, reimbursement of the foundation testing cost and compensation for inconvenience.

Waltons then offered to refund the full £4,793 premium. It later added a refund of £1,122 of the fees. That was a pro-rata refund of inspection fees – in line with two of seven having taken place. It still intended to retain £1,535 of the remaining fees. Those fees were made up of £420 Waltons' membership fee and £1,115 to cover its time and costs.

Our Investigator acknowledged there had been some confusion around inspection of the foundations. But she felt there had been an opportunity for D to evidence suitability. She felt as D had failed to do so it was reasonable for Waltons to cancel the cover. She felt it was fair for Waltons to retain the costs proportionate to two inspections. She said it was unreasonable for it to retain the membership fee. She said this was related to something that hadn't taken place - marketing and sale of the property. And she was of the opinion Waltons hadn't justified retaining £1,115 of fees. She said a fairer amount for it to retain, to reflect its policy set up and administration costs, would be £200.

So the Investigator recommended D be refunded a total of £7,251 – with simple interest applied from the date D first requested a refund. She didn't recommend Waltons refund the cost of the foundation testing. She didn't recommend it pay any compensation to D. As the Investigator's proposed outcome didn't resolve matters the complaint was 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.

As this is an informal service I'm not going to respond here to every point or piece of evidence D and Waltons have provided. Instead I've focused on those I consider to be key or central to the issue. But I would like to reassure both that I have considered everything submitted.

For me to require Waltons to provide a full refund of all charges I'd need to be persuaded it unfairly withdrew the cover – or that it provided such a poor service it would have been unreasonable to expect D to continue with the policy.

There aren't any call recordings of the discussion between D and Waltons on the day of the pour. So it's a case of one party's account against the other's. I've considered the recollections of both D and the various accounts of Waltons' staff. There isn't enough for me to fairly conclude Waltons misled D on what conditions or evidence would be considered acceptable.

In any event D was provided with an opportunity to provide further evidence to support the foundations being suitable. It decided not to take it up – despite it going on to undertake the relevant testing anyway. So, considering the offer of cover was subject to certain conditions being met, I can't say the decision to withdraw it was unfair or unreasonable. Neither can I fairly say Waltons provided such a poor service that D couldn't reasonably be expected to continue with the policy.

So in light of that I've considered if the refund proposed by Waltons is fair. The policy terms set out, in relation to cancellation, that D's liable to pay for any transactions concluded prior to the end of the relationship. It states Waltons will be entitled to retain commission received and fees charged for 'services provided'.

I don't need to consider the premium element as Waltons has offered to refund it in full.

I'm satisfied by inspection reports that two of seven inspections took place. Those were services provided, so it's reasonable that a pro-rata deduction is made for those.

Waltons did look to retain a £420 'membership fee'. It's a requirement for any firm applying for the structural defects insurance to hold membership on Waltons' register. I haven't seen terms that directly address refund rights of the membership fee when a policy is cancelled. In any event I don't feel it would be fair, in the circumstances, for Waltons to retain the fee.

The membership requirement appears to be related to governance of disputes between a developer, like D, and a future home buyer. The policy was withdrawn in advance of any marketing or sale of the property to a home buyer. So there wasn't any use of, or risk of requirement, for the relevant services. The services weren't 'provided' (as per the above policy term) so I don't consider it fair for the membership fee to be retained.

Waltons did look to retain £1,115 of 'indirect fees'. It said this was to cover its costs and time in relation to sourcing a relevant product for D, ongoing compliance, technical administration, indirect costs and profit.

I accept there were 'services provided' by Waltons to D. Costs will have been incurred in sourcing the cover, processing the application and other administrative work. However, it hasn't provided enough to persuade me services to the value of £1,115 were provided.

Our Investigator suggested a fairer amount for Waltons to retain would be £200. It didn't object to this figure. Neither did it provide any further evidence to support it having incurred higher costs. So in the absence of any further evidence I'm satisfied £200 is a fairer amount for Waltons to retain to cover the cost of services it provided.

For the above reasons Waltons will need to refund D £7,521. It should have refunded that amount when it initially withdrew the offer of cover – or when D requested a refund. That was in April 2023. As it didn't D's been without the use of those funds. So to make up for that Waltons will need to apply simply interest from April 2023 to the date of final settlement.

I'm not going to require Waltons to reimburse the £1,020 cost incurred by D for testing of the foundations. D explained it had the testing done after it had already decided not to continue with this policy. It added it already had cover in place from another insurer who didn't require the testing. Instead D decided to undertake the assessment to cover itself in the event of Waltons followed through on a warning that it might have to disclose the cancellation to other insurers.

So the testing wasn't undertaken to support the application of the Waltons arranged cover or because of any unfair action or mistake of Waltons. I'm not persuaded it was a necessary or proportionate response to Waltons declaration that it may have to disclose the cancellation to other insurers. I don't consider it was making a spiteful or in appropriate threat. Instead it was issuing a standard warning of the potential consequences of a cancellation. Its common and reasonable practice for insurance firms to share, for risk assessment purposes, details of cancellation and claims.

Finally I'm not going to require Waltons to pay any compensation to D. D's outlined how it was caused unnecessary inconvenienced. But I haven't found Waltons to be at fault for the key issue complained about – the dispute around the day of the pour, evidence requirements and the ultimate withdrawal of cover. So I'm not going to require compensation to be paid for any inconvenience D experienced as result of that. Neither am I going to require it to cover the losses D's say it incurred from a two-month delay to the building project.

## **My final decision**

For the reasons given above, Waltons Insurance Brokers Limited must provide D with a refund totalling £7,251. It should apply simple interest at 8% from April 2023 to the date of final settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask D and D to accept or reject my decision before 6 September 2024.

Daniel Martin  
**Ombudsman**