

The complaint

Mr D's complaint is about how a claim was handled by Liberty Mutual Insurance Europe SE ('Liberty Mutual') on his access indemnity insurance policy.

Mr D wants Liberty Mutual to pay him compensation for loss of access to his garage.

In this decision all references to Liberty Mutual include their claims handlers.

What happened

Mr D has an access indemnity insurance policy in place with Liberty Mutual. The policy engages once someone else establishes ownership of the land in question and prevents or attempts to prevent vehicular use to and from Mr D's garage. The policy appears to have been put in place to rectify a defect in title on the basis that the title deeds for Mr D's property and that of his neighbour's only record a right of access for Mr D by foot only and not by car.

In June 2022 Mr D started experiencing problems with his neighbour's daughter parking in front of his garage. He sought help from Liberty Mutual about this. As the obstruction was intermittent- the neighbour's daughter didn't live there- no formal action was taken on Mr D's behalf.

There came a time when the neighbour's property was put on the market at which point that property was being advertised as having a right of parking. This caused Mr D concern because he thought it would result in potential new owners blocking his garage with their cars too. He sought assistance from Liberty Mutual again who appointed Solicitors to help him negotiate the situation with the estate agent selling the property. Although the estate agent provided assurances they would show any prospective buyers the title documents to the property, showing Mr D had a right of access by foot, this didn't really resolve the issue Mr D was worried about. But as there was no physical obstruction to his garage at that time, no further action was taken by Liberty Mutual.

Eventually the property was sold to a new owner. The new owners have now started parking in front of Mr D's garage. Mr D feels he's now lost use of his right of access and doesn't want to challenge his neighbours, given the stress this situation has and would likely continue to cause him.

Mr D's complaint is about the way Liberty Mutual handled his claim. In particular he feels that Liberty Mutual were evasive in their dealings with him, failed to properly address his concerns and didn't explain what amounted to an obstruction. He's also unhappy that Liberty Mutual were unresponsive at times and didn't adequately intervene in the dispute when they should have. As a result, Mr D says he should be compensated for the loss of access to his garage.

Liberty Mutual considered Mr D's complaint and accepted that the level of service they'd provided him with fell below what they would have expected. They accepted that there's more they should have done like following up with Mr D to see what had happened after he'd

corresponded with the neighbour's estate agent and that there were delays in the Solicitors they appointed responding to him. Overall, Liberty Mutual accepted they could have been more proactive in communicating with Mr D, but said they were prepared to rectify the situation now. In particular they offered to pursue the matter in accordance with the policy terms. They said the first step is to instruct Solicitors to write to Mr D's current neighbours and initiate dialogue over the solution Mr D is seeking. If this can't be achieved and Mr D is still prevented use of his garage, then they've said they will consider paying out the amount of indemnity for loss in value of Mr D's property to him. Mr D doesn't want this, so the parties have reached an impasse.

Our investigator considered Mr D's complaint and concluded that Mr D's complaint should be upheld. She thought that Liberty Mutual should pay him £100 in compensation for their service failings, but she didn't comment on what should happen next in terms of Mr D's claim. Liberty Mutual accepted her findings but Mr D did not. He doesn't think this adequately addresses his complaint- and in particular his request for compensation to be paid to him for loss of use of his garage.

In response the investigator explained that a claim for loss of value to Mr D's property would be paid by Liberty Mutual if they determine that he's definitely lost access to his garage which is a legal matter and one that Liberty Mutual will first need to decide. Mr D doesn't agree so the matter 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 uphold Mr D's complaint. I'll explain why. Before doing so I wish to acknowledge both Mr D's strength of feeling about his complaint and the various submissions he's made. Whilst I can assure him that I've read everything he's said, I won't be addressing it all in this decision. Rather I'll concentrate on the crux of his complaint points. That's not intended to be disrespectful, but rather represents the informal nature of the Financial Ombudsman Service.

I'll first address the level of service offered by Liberty Mutual. Liberty Mutual themselves accept there have been failings on their part. Those failings appear to mirror what Mr D has said himself about their lack of proactivity on his claim. In addition I've noted that Liberty Mutual did clarify somewhat later than Mr D wanted, what amounted to a blockage as noted in their claims handler's letter to Mr D dated 25 July 2023. So, the issue that remains for me to determine is what Liberty Mutual need to do to put things right. When considering this, I've also considered what triggers a claim under the policy, namely:

“in the event of any person(s) or corporation establishing ownership of and preventing or attempting to prevent the Insured's user of the Access during the period of insurance”.

So in this case the trigger for help under the policy was both another establishing ownership of **and** (my emphasis) preventing or attempting to prevent Mr D's use of the access he was claiming during the lifetime of the policy. In this case I can see that whilst there were intermittent obstructions to Mr D's right of access, at least until the new owners of the neighbouring property moved in, no one has so far established ownership over the right of access explicitly to Mr D, such that a claim could be triggered on his policy. And this, in my view, adequately explains why Liberty Mutual took a light touch approach to trying to establish whether there was a claim capable of cover and if things could be resolved informally at each stage. So, I can't say that the approaches they took were wrong. I do however agree that they could have dealt with Mr D's concerns in a more responsive way

and that this would have reasonably caused him frustration. Because of this I agree that Liberty Mutual should pay Mr D £100 in compensation for this. But I don't think that they need to pay a claim for compensation for loss of access at present.

The policy sets out the circumstances in which a claim for loss in value to Mr D's property engages. That is in the circumstances I've quoted above. It also says:

"IN DEALING with any claim the Underwriters will at their discretion be entitled to: -

i) take or defend in any court or tribunal in the name of the Insured any proceedings arising out of such claim

ii) exercise in the name of the Insured any rights or remedies available to the Insured in such proceedings including the right to abandon or submit to judgement

iii) compromise settle or compound any such claim

iv) deal with such claim in such manner as they think fit"

In this case Liberty Mutual have set out the way in which they want to deal with Mr D's claim- which is to engage with his neighbours to ascertain if the situation might be resolved and if not to determine whether a claim is payable under the policy for loss in value of the property without a vehicular right of access to Mr D's garage. The policy terms entitle them to do so and I don't think the course of action they're proposing is unreasonable. So, whilst I appreciate why Mr D might not want to engage his new neighbours on what could potentially lead to a dispute and new tensions, I can't say that what Liberty Mutual are proposing is wrong and that they need to do something else in this case. Mr D should note that as things stand, I'm not satisfied that the policy engages because his neighbours have not explicitly established ownership of **and** prevented his use of access. Without knowing what the neighbours have to say about the position, it's not in my view possible to determine this point.

I appreciate my decision will come as a disappointment to Mr D, but I hope I've provided a thorough explanation of why his policy doesn't presently engage for a claim to be paid out to him. In order for it to engage he will need to satisfy the conditions set out within his policy. If Mr D wishes to pursue his claim further he will need to contact Liberty Mutual directly to confirm his agreement to their suggested course of action.

Putting things right

Liberty Mutual should pay Mr D £100 for the failings in the service they provided him with.

My final decision

I uphold Mr D's complaint against Liberty Mutual Insurance Europe SE and direct them to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 June 2024.

Lale Hussein-Venn
Ombudsman