

The complaint

Mrs H's complaint is about a claim she made on her Great Lakes Reinsurance (UK) SE ('Great Lakes') legal expenses insurance policy, during which Great Lakes withdrew funding.

Mrs H feels that Great Lakes treated her unfairly.

All references to Great Lakes in this decision include their claims handlers.

What happened

Mrs H's complaint follows a detailed history of events, which I won't repeat here because they're known to both parties. For the purposes of this specific complaint, I shall only recite the events that are relevant.

Mrs H made a claim on her Great Lakes legal expenses insurance policy to pursue a claim against an insurer.

Great Lakes accepted the claim and appointed Solicitors to act for Mrs H. The Solicitors advised Great Lakes that Mrs H's claim had reasonable prospects of success. As such Great Lakes agreed to fund the claim.

The insurer Mrs H was claiming against accepted liability but disputed the amount Mrs H was claiming for. The Solicitors appointed for Mrs H obtained advice on the value of the claim Mrs H was making from a Barrister. Negotiations to settle the dispute began but there came a point where Mrs H said she wouldn't accept anything less than £143,000 to settle her claim. Her Solicitors advised that this was considerably more than the value the Barrister put on her claim as well as a counteroffer she'd previously agreed to be put to the insurer for £89,000.

Nevertheless, Mrs H continued to take the position she had in respect of settlement. Her Solicitor considered Mrs H's reasons for this and addressed why the amount she was seeking wasn't in line with either hers or the Barrister's advice. Because Mrs H didn't agree the Solicitor said she could no longer represent her.

Great Lakes considered the position and the legal advice provided and concluded that Mrs H was seeking an amount that didn't represent the true value of her claim and that they couldn't continue to cover a claim which didn't accord with the advice of the legal professionals instructed.

Mrs H doesn't agree with the advice, or the position taken by Great Lakes so referred her complaint to the Financial Ombudsman Service. Our investigator considered her complaint and concluded it shouldn't be upheld. Mrs H 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 don't uphold Mrs H's complaint. Before I explain why, I want to assure Mrs H that although I've thought about all of her submissions in this matter, I haven't addressed them all. This isn't intended to be disrespectful; it simply represents the informal nature of the Financial Ombudsman Service. I also want to recognise Mrs H's strength of feeling and the importance of this complaint to her before explaining my findings.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. Mrs H's policy is no exception. That means her claim needed to have over 51% prospects of succeeding in order for Great Lakes to cover it. Her policy also set out that Great Lakes didn't need to continue to cover the claim if they decided that it would be better for her to take a different course of action or they couldn't agree to the claim.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or that it would be better for them to take a different course of action. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Great Lakes did this.

I'm satisfied that the Solicitor and the Barrister instructed for Mrs H were experienced in the area of law she was asking for help with, and I've seen nothing that suggests their advice was based on factual mistakes. The advice given was that she shouldn't be looking to settle her claim for more than the value placed on it. I appreciate Mrs H didn't agree with the advice received, but that's not something I can consider. If Mrs H were to provide an alternative reasoned opinion from a comparable Barrister setting out her claim was worth considerably more, then I would expect Great Lakes to consider that. Equally, if Mrs H provided Great Lakes with any new evidence or information that has now come to light that might change the outcome of the Barrister's assessment, I would expect Great Lakes to refer that back to the Barrister to consider- potentially through a different firm of Solicitors given the current one has declined to act. But as matters stand, I can't say Great Lakes did something wrong by relying on the legal opinion they received.

I appreciate that Mrs H doesn't agree with the way the way her claim was handled. She feels the evidence she has supports her claim is worth much more. But I don't think that means Great Lakes needs to do anything further. In this case she received detailed advice setting out what her claim was worth and agreed to make a counteroffer to the insurer for £89,000 then said she wouldn't accept anything below £143,000 in settlement. The policy says that cover isn't available for:

"Claims which are conducted by you in a manner different from the advice or proper instructions of us or those of the authorised professional."

So Great Lakes didn't need to continue funding the claim where Mrs H's position was out of line with the advice she'd received.

And even though Mrs H took the position she did, Great Lakes still provided her Solicitors with further funding to go back to the Barrister for further advice and to pursue settlement, in the hope the matter could be concluded with a view to helping her. I know Mrs H still didn't agree with the advice given, but I think Great Lakes did all they could to assist her.

Although my decision will be disappointing for Mrs H, I hope I've provided her with a thorough explanation of why I won't be upholding it.

My final decision

For the reasons set out above, I don't uphold Mrs H's complaint against Great Lakes Reinsurance (UK) SE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 16 February 2024.

Lale Hussein-Venn
Ombudsman