

## The complaint

Mr and Mrs C are unhappy with what Great Lakes Reinsurance (UK) SE did after they made a claim on their legal expenses insurance policy.

Although the policy is in joint names, as the complaint has been brought by Mr C, I'll refer to him in this decision.

## What happened

In August 2019 Mr C contacted Great Lakes as he wanted his policy to assist with a claim relating to a property dispute (he said the seller hadn't disclosed the presence of knotweed and it hadn't been identified by the surveyor he instructed). He provided a report in support of his claim from an expert (P) and Great Lakes referred the matter to a panel solicitor for an assessment of its prospects of success.

In January 2020 the panel firm advised the professional negligence claim against the surveyor did have good prospects of success. However, it was unclear if a claim against the seller would have prospects of recovery as one of them had been declared bankrupt and it was unclear where the other was now living. The assessment also said an expert report was required to assess the impact on Mr C's property and the value of the claim. Great Lakes agreed funding for that.

After that report was obtained the panel firm sent a letter of claim to the other side. The firm then sought advice from counsel and obtained a report from an expert (R). I understand that found, while the knotweed was present at the time of the survey, there was insufficient evidence to conclude it would have been visible to the surveyor. In April 2021 the panel firm advised Great Lakes that "*at present the claim does not enjoy reasonable prospects of success and has not been issued*". It said it was in discussion with R to see if further inquiries could establish prospects of at least 51%.

In August 2021 the panel firm asked Great Lakes if it would fund Mr C's expert to answer queries it had about the claim. Great Lakes said as the claim didn't have reasonable prospects of success it wouldn't provide any further funding for it. And this was something Mr C would need to fund himself.

Subsequently Great Lakes agreed to fund a trace report to see if a claim against the vendor could be pursued as R was supportive of this claim. However, that found they didn't own a property and weren't in employment. So the panel firm advised a claim against them wouldn't have reasonable prospects of recovery.

In November 2021 Mr C provided digital modelling from P showing what they believed would have been apparent at the time of the survey. The panel firm sought the view of R on this. He said he didn't think a court would accept this evidence as credible and wasn't prepared to have further involvement with the matter. Mr C asked if Great Lakes would fund a different expert but it wasn't prepared to do so; it said if Mr C obtained a further expert opinion it would review matters.

Mr C contacted Great Lakes again in January 2022 and provided an email from solicitors he'd approached who said prospects of success for his claim were around 60%. Great Lakes said that opinion didn't make clear which claim it related to and asked for clarification on that. It said if there were conflicting opinions on prospects that could be resolved by a barrister. But Mr C would only be able to appoint his own solicitors under the policy from the point at which court proceedings were necessary.

I understand Mr C then pursued matters on a 'no win no fee' basis with his own solicitors and achieved an out of court settlement. He sought reimbursement from Great Lakes of the costs he'd incurred which wouldn't have been the case if funding had been provided under his policy. Great Lakes didn't accept it had been at fault in the handling of the claim.

Our investigator thought it was reasonable of Great Lakes to rely on the legal advice it had been provided with by the panel firm. And it had asked Mr C for further information about the legal advice he'd received in January 2022 but he didn't contact it again until August 2023. By that stage he'd already incurred costs in instructing a non-panel solicitor. As the policy didn't cover costs the insurer hadn't agreed he didn't think Great Lakes did anything wrong in saying it wouldn't reimburse Mr C for these.

Mr C didn't agree. He provided detailed comments on our investigator's view (all of which I've read) and in summary:

- He was unhappy R had refused to review the further evidence he provided which he believed was in contravention of relevant guidance. And he thought R's refusal to do so should have caused Great Lakes to seek a further expert opinion or revert the claim back to the previous position where it was assessed as having good prospects of success.
- He queried what Great Lakes had done in response to the concerns he raised about this and whether it had properly investigated the issues he raised.
- And he said he'd only needed to pursue matters with his own solicitor because of the errors Great Lakes had made in the handling of this claim; it told him that no financial support would be available under the terms of his policy until he was in a position to issue court proceedings.

I issued a provisional decision on the complaint last month. In summary I said:

*The relevant rules and industry guidelines say Great Lakes has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.*

*I've looked first at the terms and conditions of Mr C's policy. That says "we will provide cover in respect of legal costs incurred in bringing about legal action due to any infringement of your legal rights to own and occupy your home". And it goes on to explain that includes "legal costs incurred by you in taking legal action in connection with...disputes over the buying or selling of your home". I don't think it's in dispute the policy could potentially cover the dispute Mr C had.*

*But the policy also says “in order for us or [claims handler] to accept your claim, we or [claims handler] acting on our behalf must deem that there are reasonable prospects of success”. And it defines that as “a 51% or greater chance that you will recover losses or damages (or obtain any other legal remedy that [claims handler] have agreed to, including an enforcement of judgement), make successful defence or make a successful appeal or defence of any appeal in your pursuit of civil proceedings or criminal proceedings”.*

*As an insurer isn't a legal expert we think that should be assessed by a qualified lawyer with suitable experience. Where that's been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion in deciding whether a claim is covered.*

*So I think it was right Great Lakes referred this claim to one of its panel firms so they could assess prospects. And I think the positive prospects assessment that firm produced in January 2020 is properly written and reasoned. However, it appears to have been written by a paralegal. And a paralegal isn't a qualified lawyer. So while they're entitled to produce a prospects assessment our position is that they should be properly supervised by a suitably qualified and experienced lawyer when doing so. I haven't seen any evidence from Great Lakes to show that was the case here.*

*As a result I can't conclude the January 2020 assessment was one Great Lakes could rely on. But as that assessment was positive on the prospects of the professional negligence claim I don't think that's caused any detriment to Mr C. I'm also satisfied it was reasonable of Great Lakes to conclude a claim against the seller of the property wouldn't have reasonable prospects of recovery. It doesn't appear to be in dispute the trace report established they didn't own a property and, as they weren't in employment, an attachment of earnings order wouldn't be possible.*

*Where I have more of a concern is in relation to Great Lakes subsequent actions in relation to the professional negligence claim. After expert advice had been obtained from R, Great Lake said in August 2021 “as the claim does not enjoy reasonable prospects of succeeding, it does not currently meet the policy requirements”. And it said it wouldn't be providing further funding for it. But that appears to have been on the basis of advice from the paralegal at the panel firm who said in April 2021 “at present the claim does not enjoy reasonable prospects of success and has not been issued”.*

*But there's no properly written and reasoned legal opinion supporting that. I asked Great Lakes if it was able to provide this but it hasn't done so. And while I appreciate the panel firm's view appears to have been based on the opinion of R that isn't something Great Lakes appears to have a copy of. Despite me requesting this it hasn't provided that either. In addition the opinion was again provided by the paralegal at the panel firm. I've already explained my concerns in relation to her ability to advise on the claim without supervision. As such I'm not satisfied Great Lakes was entitled to withdraw funding for Mr C's claim in August 2021.*

*I've gone on to think about the impact of that on Mr C and what Great Lakes needs to do to put things right. In doing so I've taken into account that, while R's report doesn't appear to have been provided to Great Lakes, his comments are quoted in a subsequent email from the panel firm to Mr C.*

*And in response to the modelling C obtained the expert said “I definitely would not opine liability based on 3D generated impressions of the JKW [knotweed] produced by a contractor. In my experience, it is inconceivable that PI Insurers would settle a claim out of court on that basis and highly unlikely that a court would accept such evidence of liability as being credible.*

*Therefore, I am not prepared to be involved any further in this matter. I have provided my opinion that there is insufficient evidence to provide expert opinion of a breach of duty in this matter."*

*I appreciate Mr C feels the expert was in breach of his professional duties in refusing to view the further evidence he provided. But if he feels the expert was at fault that's something he'd need to raise with them. I can see the panel firm reviewed the information he'd provided and in correspondence with Mr C in December 2021 explained why, having considered the expert's comments, they felt the further evidence Mr C had provided was unlikely to make a difference. In particular they said "A 3D generation of what [P] consider the Property and Knotweed to have looked like at the time would always be hypothetical as neither yourself nor [P] inspected the Property at that time. [P] would be unable to say definitively that this is what it looked like because the truth is they just don't know".*

*I think that opinion could reasonably be said to be properly written and reasoned and is potentially one Great Lakes could have relied on. And given the comments from the panel firm I'm not persuaded there was more Great Lakes needed to do in response to the points Mr C subsequently raised about the actions of the expert. But I remain concerned that opinion was provided by a paralegal who I haven't seen evidence was properly supervised. And for the reasons I've explained I don't think the April 2021 prospects assessment was one Great Lakes was entitled to rely on in any case.*

*Taking all of that into account I think the fair outcome to this complaint is for Great Lakes to arrange for the negative prospects opinions provided by the paralegal at the panel firm to be reviewed by a suitably qualified and experienced lawyer. And in particular for a properly written and reasoned assessment to be produced explaining the position on that based on the evidence available in April 2021. Subsequent reviews of the opinions from the paralegal should include consideration of any further comments or evidence Mr C provided at those points.*

*If that review confirms the previous position on prospects Great Lakes won't need to take any further action. That's because even if the claim had been correctly considered funding wouldn't have been available for it. However, if it concludes the claim would have had prospects of success Great Lakes will need to reimburse any reasonable claim related costs Mr C incurred from the point that was established. And it will also need to reimburse him for the further costs and success fee that were deducted from his settlement by his own solicitors (as long as the claim continued to enjoy reasonable prospects of success).*

*I appreciate the policy says "all professional fees, expenses, disbursements and any other costs may only be incurred with our prior consent". But in this case I don't think that would fairly apply because if the review finds the claim had prospects of success Mr C would only have incurred those costs as a result of what Great Lakes got wrong. He shouldn't be out of pocket as a result of an error by Great Lakes. And so I think it would be fair for it to cover these regardless of the fact it didn't provide authorisation for them.*

*I also think Mr C will have been caused some avoidable distress and inconvenience as a result of his claim being turned down on the basis of an inadequate prospects assessment. I think that will have caused him uncertainty about the position with his claim at a point when he was already dealing with a difficult situation in relation to his property. In recognition of that I think Great Lakes should pay him £250 (and for the avoidance of doubt that applies regardless of the outcome of the review of prospects I've also directed).*

## **Responses to my provisional decision**

Mr and Mrs C didn't respond. Great Lakes did provide further comments. It said although the majority of background work was carried out by paralegals they were overseen by a fully qualified solicitor. It provided details of the overseeing solicitor in this case. It said ultimately all work was signed off by him and he had a "*complete overview at the time*".

So I need to reach a 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.

I note the further points Great Lakes has made about oversight of paralegals at the panel firm. However, while that gives general detail on how supervisory arrangements for paralegals operate it doesn't evidence in this particular case that the prospects assessments were signed off by the overseeing solicitor.

In any case, as I explained in my provisional decision, my concerns don't only relate to whether the paralegal in this case was properly supervised. As I said, after expert advice had been obtained from R, Great Lake said in August 2021 "*as the claim does not enjoy reasonable prospects of succeeding, it does not currently meet the policy requirements*".

But it had no properly written and reasoned legal opinion in support of that decision (and hasn't provided one in response to my provisional decision). Nor does it appear to have a copy of the expert opinion R provided and on which the prospects assessment appears to have been based. So, regardless of the issues around paralegal supervision, it remains my view that Great Lakes wasn't entitled to withdraw funding for the claim in August 2021.

I explained in my provisional decision what I thought the fair way to put things right was. Great Lakes hasn't made any specific comment on that (and Mr C and Mrs C haven't responded). So I don't have any reason to change what I said about that.

## **Putting things right**

Great Lakes will need to arrange for the negative prospects opinions provided by the paralegal at the panel firm to be reviewed by a suitably qualified and experienced lawyer. And in particular for a properly written and reasoned assessment to be produced explaining the position on that based on the evidence available in April 2021. Subsequent reviews of the opinions from the paralegal should include consideration of any further comments or evidence Mr C provided at those points.

If that review confirms the previous position on prospects Great Lakes won't need to take any further action. However, if it concludes the claim would have had prospects of success Great Lakes will need to reimburse any reasonable claim related costs Mr C incurred from the point that was established. And it will also need to reimburse him for the further costs and success fee that were deducted from his settlement by his own solicitors (as long as the claim continued to enjoy reasonable prospects of success). It will also need to pay Mr C £250 in recognition of the distress and inconvenience it caused him.

## **My final decision**

I've decided to uphold this complaint. Great Lakes Reinsurance (UK) SE will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 29 July 2024.

James Park  
**Ombudsman**