

The complaint

Mr C has complained about the way Great Lakes Insurance SE (Great Lakes) dealt with a claim he made on his legal expenses insurance policy.

All references to Great Lakes include its agents.

What happened

Mr C has been involved in several disputes with his neighbours over the past 12 years. I have summarised these and the events since Mr C first made his claim to Great Lakes below.

When Mr C bought his property in 2006, he was allocated a space to park his car and a space where he could keep his bins on his neighbours' property. He was also granted a right of way along a footpath between his front door and the road.

In 2010 he got into a dispute with his neighbours, and further to the involvement of solicitors, they reached an agreement in 2011 which allowed him to install a chain and a bollard where he parked his car.

2019

Mr C had a legal expenses policy with Great Lakes as part of his home insurance policy. The policy started on 26 July 2019 and ended on 25 July 2020.

In December 2019 Mr C's neighbours wrote to him asking him to stop trespassing over their land, harassing their guests and also to remove any possessions he had from their land. They also took down his bollard and chain.

Mr C got in touch with Great Lakes to make a claim under his legal expenses policy. He said his neighbours had taken over part of his property and had assaulted him and his father. He added that they were damaging his property repeatedly and were denying him his rights under the property deeds. He asked if the lawyer who had dealt with the 2010 dispute could act for him again.

A few days later Great Lakes wrote back asking for Mr C to complete an incident form and to provide further evidence such as photographs, relevant correspondence and his title deeds. In further correspondence it said that it wouldn't pay legal fees incurred prior to its approval of the claim and asked Mr C for a chronology of events. Great Lakes also asked for further information about the 2010 dispute.

2020

Over January and February 2020 Great Lakes and Mr C were in frequent correspondence in relation to finding a legal representative for Mr C. During this time Mr C complained to Great Lakes about delays.

The lawyer Mr C had in mind initially, said he wasn't able to help so Mr C asked Great Lakes to find someone else. Great Lakes got in touch with a solicitor's firm from its panel. The

solicitors said they had acted for Mr C's neighbours in the 2010 dispute and, though there was no conflict, they didn't want to risk compromising Mr C's claim. Mr C then said that the first lawyer was prepared to act for him after all. Great Lakes asked the lawyer to provide a prospects of success assessment and said that the prospects of success and recovery would have to be in excess of 51% in order for it to provide funding.

The lawyer provided an initial assessment on 1 March 2020 but said he could not assist much until he took further instructions and understood the issues. Great Lakes wrote to Mr C on 13 March 2020 to say that it could potentially fund the prospects of success assessment. It also asked for a detailed and extensive chronology of events.

There was further correspondence between Mr C and Great Lakes and also Great Lakes and the lawyer between March and April 2020 with Great Lakes ultimately agreeing to fund the assessment. Mr C again complained about further delays and said that he was being asked to pay for the prospects of success assessment himself.

Mr C wrote to Great Lakes in June 2020 to say the lack of progress was causing him stress and anxiety. Great Lakes responded two days later to say that it had been clear that it would pay for an assessment. It said it didn't know if the lawyer had been provided with enough evidence by Mr C in order to carry out a detailed review and that this was something they would have to settle between themselves.

Around this time the dispute between Mr C and his neighbours escalated further and it resulted in him being put on bail for alleged harassment. Mr C said the bail conditions prevented him from living at his house. He asked Great Lakes to arrange cover for him but it said the policy didn't cover criminal defence costs. Great Lakes paused the claim while the criminal proceedings were ongoing.

In August 2020 the lawyer provided his advice and said that Mr C's claim had reasonable chances of succeeding. He said that assuming Mr C could provide evidence to show that his right of way was permanently interrupted the prospects would be about 80%. Great Lakes said it would ask Mr C for a timeline of events and evidence of permanent interruption of his right of way and use of his property. The lawyer also mentioned the 2010 dispute and wrote a follow up letter in September 2020 setting out the terms of the agreement Mr C had reached with his neighbours in 2011.

2021

In February 2021 Mr C wrote to Great Lakes to say that the criminal case against him was discontinued and said he wanted to carry on with his original claim. Great Lakes responded to say that the solicitor's previous advice was that Mr C would have to demonstrate that his rights were infringed over a set period of time. Great Lakes emailed the lawyer and Mr C to ask them to liaise with each other as to what further information was needed. In March 2021 the lawyer said he was tied up with other cases and was unable to assist further.

On 31 March 2021 another firm of solicitors wrote to Great Lakes to ask if it would pay their fees to represent Mr C. Great Lakes responded a week or so later to say it was awaiting further evidence from Mr C.

On the same day Great Lakes emailed Mr C to say that it required further evidence such as a nuisance log, correspondence, reports to the police etc. Mr C responded the following day attaching a file. He chased Great Lakes on 13 April and 8 May 2021 and said he needed a solicitor as soon as possible.

On 10 May 2021 Great Lakes asked for some further information regarding the 2010 dispute, how it arose and how it was concluded. In an internal email between Great Lakes

and its underwriters, the underwriters said they needed to understand all the issues that arose between Mr C and his neighbours from 2010 in order to determine the date of the event that led to the claim and whether this pre-dated the start of the policy.

On 21 May 2021 Great Lakes wrote to the original lawyer copying in Mr C asking questions about the claim, including how the 2010 dispute started and ended. Mr C responded to say that the 2010 dispute ended with the post and chain installation in 2011 and that the frequent breaches the lawyer had mentioned started in December 2019. The lawyer agreed with Mr C's response. Mr C said, once again that he wanted to complain about delays Great Lakes was causing.

Great Lakes issued a final response letter on 22 June 2021 rejecting Mr C's complaint. It said it had concerns about the date of the event that gave rise to the claim. It added it had been liaising with Mr C's lawyer who stopped responding to it and that without the lawyer's response it wasn't able to proceed.

Nevertheless, Great Lakes spoke to the lawyer the following day and he said that he had seen no evidence nor was he aware of any issues between Mr C and his neighbours between 2011 and 2019. He added that the only aspect Mr C's claim had prospects for was in relation to his parking space but this was difficult to pursue as one of his neighbours involved in the dispute had passed away a few months before. The lawyer told Great Lakes that he had advised Mr C that he didn't think the infringements Mr C wanted to claim for had any grounds and that nothing his neighbours were doing was blocking his right of way to his property.

Great Lakes then agreed to proceed on the basis that the event that led to the claim did not pre-date the policy.

Mr C complained to us in June 2021 saying he wanted a solicitor to help him enforce his legal rights and for Great Lakes to compensate him for the suffering it caused him.

On 29 June 2021 Great Lakes sent the new solicitor its case management report form for her to fill in. It said it would then send her its terms of appointment. The solicitor responded on 12 August 2021 saying she did not have capacity to take the case on.

Mr C updated us in August 2021 to say that Great Lakes had asked him to look for a solicitor himself. He said that one solicitor he approached declined the case as they said a specialist was needed and another said the case was too big for them. He said he'd had similar responses from other solicitors or no response at all. He added that he was unable to rent his property out because of the dispute with his neighbours and was losing £12,000 in rent per year.

Mr C got in touch with Great Lakes on 13 September 2021 to say that he had found a new solicitor. Great Lakes wrote to the solicitors shortly thereafter.

In early November 2021 the solicitors told Mr C that they were not prepared to accept Great Lakes' standard terms. Great Lakes asked them what their specific objection was, and they said their concerns are wholesale in nature.

In an email on 11 November 2021 to the solicitors Great Lakes said it was prepared to agree their fixed fee to assess the claim but if the claim had reasonable prospects the terms would have to be agreed. It added that some of its terms were negotiable should the solicitors wish to discuss them. The solicitors responded to say they were not prepared to accept Great Lakes' terms at any stage and that they were closing their file.

Great Lakes then asked Mr C to provide it with the name and address of an alternative firm of solicitors.

2022

Mr C emailed us on 11 January 2022 to say he had found another solicitor's details. The new solicitor accepted Great Lakes' terms of appointment in February 2022.

Our investigator issued an initial view and said she didn't think that Great Lakes acted fairly. She thought there were delays caused by Great Lakes that could have been avoided, including questions about the 2010 incident which could have been addressed earlier in the process. She said she hadn't seen any evidence that Mr C had incurred a loss of rental income but asked Great Lakes to pay Mr C £400 for the distress and inconvenience it caused him.

Great Lakes accepted the view but Mr C didn't. He said that he would have rented his property out in July 2020 after his neighbour made false claims to the police which denied him access to his property. Our investigator didn't change her view and said the issues with the neighbours could have carried on even if Great Lakes had progressed the claim faster. Mr C didn't agree. He said Great Lakes is responsible for over a two-year delay in providing a solicitor which resulted in further harm to him.

Our investigator then asked Great Lakes for some further information including whether a solicitor had been appointed. She also asked for copies of all the prospects of success assessments carried out in this case.

Mr C also wrote to our investigator to say he is unlikely to be able to work again because of the abuse he has had from his neighbours. He added that his home was unoccupied for two years and that his neighbour was blocking access to electricity. He said a solicitor had been appointed and had asked Mr C's neighbours to restore all his rights but the neighbours said they were selling their property and asked them to deal with the new owner. Mr C added that his new solicitors found that his claim could include damages for deceit, assault, breach of human rights and previous solicitor negligence.

Great Lakes provided correspondence from the new solicitors which said that the various claims Mr C wanted to bring either did not enjoy reasonable chances of success or were disproportionate to pursue.

Our investigator informed Mr C that a new case had been set up for us to consider his complaint about his claim being rejected due to lack of prospects.

Our investigator then issued a further view in relation to this complaint. She maintained her view that Great Lakes should pay Mr C £400 for the distress and inconvenience it caused him. In particular the investigator said that Great Lakes could have made enquiries about the 2010 dispute sooner. Ultimately though she didn't think Great Lakes was responsible for any loss of rent Mr C may have incurred. She said she had not seen any evidence to support such a claim. She added that the main cause of the delays was the difficulty instructing a legal representative which she didn't think was Great Lakes' fault. She said after Great Lakes' panel firm said there was a conflict it was normal for it to ask Mr C to find a solicitor himself particularly due to his location.

Mr C didn't agree. He said that the insurer's delays enabled his neighbours to continue to harass him and that he missed out on six months' rental income while he was on bail. As Mr C didn't agree with the investigator's view the complaint was passed to me for a 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.

Having done so I've decided to uphold it and I agree with the outcome reached by our investigator for largely the same reasons.

This dispute has been going on for some time and I have tried to include as much detail as I could about it in the previous section. Nevertheless, we aim to keep our decisions as brief as possible, so I focused on the events I consider to be the most significant. Also, I should point out that in this decision I am only looking at the complaint Mr C brought to us in June 2021 which was mainly about the delays in Great Lakes appointing a solicitor to act for him. His complaint about the recent prospects of success assessment is being looked at separately so I will not comment on it here.

The policy

The starting point is the policy. The policy provides legal expenses protection for personal injury, home disputes, consumer and personal legal disputes and also employment disputes. The policy says cover will be provided if, among other things, the legal action or criminal prosecution occurred during the period of insurance. It defines this as the period of 12 calendar months beginning with the date of inception of the policy.

Under the "home" section the insurer will provide cover for legal costs incurred in bringing about legal action due to any infringement of the policyholder's legal rights to own and occupy her/his property. And the policy includes cover for taking legal action in connection with the infringement or encroachment of the policyholder's use, enjoyment or rights over her/his property, nuisance or trespass disputes which occur at or in respect of the property.

Under the "consumer and personal legal disputes" section the policy provides cover for legal costs incurred in bringing a claim or beginning civil proceedings against a third party for any physical damage to personal property owned by the policyholder at her/his property.

The "personal injury" section covers legal costs incurred in bringing legal action against a third party following an event which causes personal injury to the policyholder.

The policy says that legal costs include professional fees the policyholder is bound to pay including reasonable fees or expenses incurred by the appointed representative whilst acting for her/him in the pursuit of civil proceedings.

The policy also says that in order for Great Lakes to accept a claim it must deem that there are reasonable prospects of success. The policy defines this as a 51% or greater chance the insured will recover, among others, losses or damages in their pursuit of civil or criminal proceedings or make a successful defence.

It is also a term of the policy that if there is a conflict of interest the insured can choose a non-panel solicitor of their choosing.

I don't think any of the above terms are unusual and they are in many legal expenses policies I am aware of. The term about the prospects of success is also very common and it is something we don't consider to be unfair. We don't expect insurers to fund claims which are unlikely to succeed in the same way that we wouldn't expect a privately funded individual to pursue a claim which is likely to fail or which is likely to cost more to pursue than the likely potential damages. So, I think it's fair and reasonable that Great Lakes relies on these terms.

The event that led to the claim

Great Lakes told Mr C it had concerns that the event that led to the claim was linked to the 2010 dispute and therefore pre-dated the start of the policy. After speaking to his first lawyer it agreed that this was not the case.

I think it was reasonable for Great Lakes to wish to investigate when Mr C's dispute with his neighbours started. As I said above the policy covers events that take place during the policy year and as a "before the event" insurance policy it is designed only to cover disputes that are not anticipated. But I agree with our investigator that these enquiries should have been made sooner. I say this as Mr C mentioned the 2010 dispute when he first made his claim to Great Lakes in 2019. Great Lakes did not raise this as a potential issue until May 2021. I agree with our investigator that this caused some unnecessary delays in the progress of Mr C's claim and therefore caused him a degree of distress and inconvenience.

The criminal matter

When Mr C asked for a solicitor to attend the police interviews with him, Great Lakes relied on an exclusion which says it will not offer any protection under this policy for any defence of legal matters brought against the policyholder. Ultimately the case was withdrawn, and Mr C said a related case against him was unsuccessful.

Great Lakes said that the sections under the policy which were the most relevant to Mr C's claim were the "home" and "consumer and personal legal rights" sections. It said neither of those sections provide cover for criminal matters.

Looking at the policy I think what Great Lakes said is in line with what is in it. Also both sections Great Lakes mentioned, refer to the pursuit and the bringing of claims rather than their defence. The legal rights section also applies to civil proceedings only and legal fees are defined as fees and expenses incurred in the pursuit of civil proceedings. I have also looked at the exclusion that Great Lakes referred to regarding defending claims. It states that the policy does not provide any defence of legal matters brought against Mr C.

However, in the "Cover" section the policy mentions "legal action or criminal prosecutions". And the section regarding the prospects of success also mentions the chances of a successful defence and makes reference to criminal proceedings. Nevertheless, none of the four types of disputes that the policy covers refer to instances where criminal proceedings would be covered. So, overall though I think what Great Lakes has said was in line with the policy, I think the policy could have been drafted better to explain when cover for criminal matters is offered.

And though I am glad to note that the charges against Mr C were ultimately withdrawn, I think this confusion about his cover, though clarified by Great Lakes without much delay, would have caused him unnecessary distress and inconvenience.

The delays

In terms of the delays, I agree with our investigator that Great Lakes could have acted more quickly when it came to investigating the date of the event that led to the claim, as I mentioned above.

Nevertheless, I think the majority of the delays and Mr C's main source of unhappiness stem from the difficulty in instructing a solicitor. And in that respect, I don't think Great Lakes was responsible. After its own panel firm wasn't able to act for Mr C it tried to instruct other solicitors who ultimately either turned the claim down or didn't engage with it to reach an agreement on its terms. And I also note there was a delay in the first lawyer providing his advice on the prospects of success.

Mr C said that the first lawyer had already said that his claim had high prospects of success. I agree but the lawyer also said that Mr C had to provide evidence of permanent infringement of his rights in order for his claim to have reasonable chances of succeeding. And when Great Lakes spoke to the lawyer in June 2021 he indicated that the claim would be difficult to pursue. Nevertheless, Great Lakes did not withdraw cover and continued to look for solicitor who had capacity to take the claim on and provide a new prospects of success assessment. I thought that was fair and reasonable.

I also note that due to Mr C's location and the fact that he was in a different jurisdiction Great Lakes' panel list was very limited and that it was relying on him to find solicitors to represent him. In the circumstances I didn't think this was unreasonable.

Loss of rent

Mr C said that his neighbours made false allegations against him which resulted in him being arrested and placed on bail. He said this prevented him from using his property and that he would have rented it out had Great Lakes acted for him. He said Great Lakes' failure to instruct a solicitor caused him this loss.

Like our investigator I have also not seen any evidence that Mr C was intending on renting the property out. And I am not sure I agree that Great Lakes' actions prevented him from renting the property out in any event. Also, as our investigator said, even if a solicitor had been instructed earlier this doesn't mean that the dispute would have come to an end immediately. And in any event, I don't think the delay in finding a solicitor was down to Great Lakes as I said above. Also, as our investigator said there is no way of knowing whether the property would have been rented out or not. For these reasons, I will not ask Great Lakes to compensate Mr C for any loss of rental income.

I appreciate that this has been an extremely difficult time for Mr C. Neighbour disputes are never pleasant. I also note that he says he lost his father during that time which must have also been very difficult for him. Nevertheless, I think the majority of his frustration and unhappiness was caused by the various parties including the solicitors involved in this case and not Great Lakes.

As I said above, I think Great Lakes should have clarified the issue with the event that gave rise to a claim sooner and could have been clearer about the criminal proceedings cover. And I also note Mr C raised various complaints before Great Lakes finally provided a final response. For these reasons, I think it should pay Mr C £400 compensation for the distress and inconvenience it caused him; and I note it has already agreed to this.

Putting things right

Great Lakes Insurance SE must pay Mr C £400 compensation.

My final decision

For the reasons above, I've decided to uphold this complaint. Great Lakes Insurance SE must pay Mr C £400 for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 November 2022.

Anastasia Serdari
Ombudsman