

## **The complaint**

Mr E's complaint is about the handling of his claim under his legal expenses insurance policy with certain underwriters at Society of Lloyd's.

## **What happened**

I issued a provisional decision on this matter in January 2021, the main part of which is copied below:

"Mr E was involved in a family court case in 2013. He was unhappy with the legal representation provided to him and so made a claim in 2013 under his policy with the underwriters for cover to take a professional negligence claim against his solicitors and the barrister.

The underwriters arranged for one of their panel solicitors to assess the claim. They did not consider there were reasonable prospects of his legal cases succeeding, which is a pre-requisite of cover under the policy, so the underwriters refused the claims.

In 2018, Mr E made another claim to take action against the solicitors and barrister that acted for him in 2013. Again, panel solicitors said there were no reasonable prospects of success for either case.

In September 2019, Mr E sent in a legal opinion from a barrister about his potential claim against the barrister who had acted for him in 2013 for the underwriters to consider. The barrister also provided some addendums to his advice, and ultimately concluded that Mr E had reasonable prospects of success, subject to a number of caveats about the evidence.

The underwriters arranged for its panel solicitors to review this advice. They disagreed that there were reasonable prospects and so the underwriters again refused funding. In addition, the potential claim against the barrister became time-barred on 17 October 2019, so no claim could be made anyway.

There was apparently no further communication about this claim until November 2020 when Mr E sent in the same opinions again. The underwriters thought these were new opinions and so set up a claim and passed it to its panel solicitors again and also obtained another barrister's opinion following a conference with Mr E. However, it was then realised the claim against the barrister was already time-barred and so the underwriters refused the claim again. I understand the underwriters reimbursed the cost of Mr E's barrister in November 2020.

Mr E is very unhappy about the refusal of the claim. He says the underwriters have deliberately tried to avoid his claim since 2013. Mr E says that if it were not for negligence on the part of the barrister in 2013, he would have been granted a joint or sole residence order for his child and more contact, instead of only having once a week contact.

He wants £50,000 from the underwriters to settle this complaint, which is what he says he spent on legal fees to safeguard his daughter as a result of the court case in 2013 going against him; and a finding that the underwriters deliberately avoided his claim.

One of our Investigators looked into the matter. He recommended the complaint be upheld. The investigator said that Mr E had established he had a valid claim under the policy on 9 October 2019, before the legal claim was time-barred on 17 October 2019. The underwriters should have accepted the claim, rather than have it assessed for prospects again by its own solicitors. However, the Investigator also said that there would still have only been eight days to instruct a solicitor and issue proceedings. The Investigator didn't think this was likely to have been possible. He therefore didn't think that there was enough evidence to make the underwriters pay compensation for the lost opportunity to issue proceedings against the barrister. However, he thought that some compensation was appropriate for raising Mr E's expectations in November 2020 and proceeding with the claim when it had been time-barred a year earlier. The Investigator recommended compensation of £800 for this.

Mr E does not accept the Investigator's assessment. Mr E has made a number of complaints with the underwriters and there are multiple issues raised. I have summarised as far as possible the points made by Mr E in support of his complaint (including those made to the underwriters direct and to us via his MP):

- Since 2013, the panel solicitors have deliberately avoided dealing with his claim by misrepresenting the facts and lying about his prospects of success and about the contents of court transcripts.
- The panel solicitors fraudulently fabricated their opinion on the merits of his case.
- The underwriters had a duty to challenge their solicitors when they know they are being dishonest.
- The panel solicitors have lied to say he is time-barred and are maliciously refusing the claim.
- The underwriters should have provided £10,000 funding in October 2019, so he could issue proceedings before the limitation date and protect his claim but they deliberately withheld this.
- Alternatively, the underwriters could have had a clerk or secretary go and pay the court fee, so his claim against the barrister was protected.
- His barrister's first opinion, dated 5 September 2019, did not change and the underwriters should have passed the matter to solicitors on receipt of his first advice.
- In November 2020 the underwriters accepted the same opinions proved prospects of success but didn't comment on the fact it had refused to accept that opinion for 14 months beforehand.
- If the underwriters were wrong to refer the matter to be assessed by a solicitor again in October 2019, then he should be awarded his damages.
- Had they allowed his barrister to act at a reduced fee, allowed his own solicitors to act or agreed to repay him the issue fee, he could have protected his claim and it would have been settled out of court.
- The underwriters took a year to reimburse his barrister's fees and he needed that money to pay for further legal costs. Because of this delay, he was unable to get other legal opinions on his other cases, which are now also time-barred.
- He doesn't understand why the underwriters refused to deal with his claim for cover to take proceedings against the solicitors and barrister as one case as both parties were involved in the 2013 family court case.
- The panel solicitors said he had a good case against the solicitors who acted for him in 2013.

- The Investigator is covering for the underwriters and this is misconduct in public office.
- The Investigator ignored his barrister's opinion that the underwriters have breached his insurance contract with him by refusing his claim.
- The underwriters have ignored his requests for correspondence to be sent to him by post and also by email, which is required due to his disabilities and assist him maintaining a structured file of his case.
- The underwriters have also ignored his request to be provided with the contact names, email addresses and telephone numbers of all solicitors, firms and internal staff who have dealt with his claims.
- The underwriters have victimized him by changing claims-handlers.
- He has provided a call recording of a conversation with a complaints handler at Society of Lloyd's in which he told Mr E he would look into all the breaches of contract by the underwriters and their deliberate avoidance of his claim for the previous five years but he failed to do so and removed this from his complaint dishonestly, which meant the investigator wouldn't look into it either.
- He feels he is being exploited because of his disabilities.

As stated, I have summarised Mr E's main complaint points and the main evidence. I have not included every point he has made but the crux of the matter is that Mr E is adamant his claim for cover to pursue a legal case against his barrister has been wrongly refused and should have been met before it was time-barred.

As the Investigator was unable to resolve the complaint, it has been passed to me.

Mr E has asked for me to contact him by phone to discuss the case before issuing my final decision. Deciding ombudsmen don't routinely talk to either party to the complaint, as fairness would usually require that both parties be involved in any discussion at the same time.

We may decide it is necessary to do so, if there is information that is unclear or a dispute about the facts of the case that we consider can only be clarified by discussing it with the parties.

Mr E has made his case clearly both in writing to the investigator, including how stressful the situation has been for him, and I have been provided with all the correspondence and communications between Mr E and the underwriters. I have considered all the evidence provided, including all the call recordings Mr E has provided to us. While there is a lot of information and a long history to this matter, the evidence and positions of both parties is sufficiently clear and so I don't consider it is necessary to discuss this case with the parties in order to fairly determine the matter.

### **What I've provisionally 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.

Mr E has made a number of claims and complaints with the underwriters, some of which have been ongoing for a considerable time and have some overlap. For the avoidance of doubt, I am only considering the complaint about the handling of his potential claim against the barrister who acted for Mr E in 2013.

### **Handling of the claim in September/October 2019**

Mr E's policy provides cover for professional negligence claims. However, like other legal expenses insurance policies, this is subject to a requirement that any legal case have a reasonable chance of succeeding in court in order to be covered under the policy. We would consider this to mean it has to be more likely than not (*i.e.* more than 50%, so it would have to be at least 51%) chance of the legal case succeeding. This is not unusual or unfair.

The underwriters arranged for panel solicitors to consider the claim but they didn't think there were sufficient prospects of success. They provided an assessment in March 2018 which seems to me to have provided full reasons why they reached the conclusion they did. I note the solicitors also warned of the limitation date of 17 October 2019 for any proceedings to be issued against the barrister.

The claim was refused on the basis of this opinion. I do not think the decision made then was unfair or unreasonable, given the legal opinion about the prospects of the case. The underwriters are entitled to rely on that opinion, unless there is something patently flawed about it. I do not consider there was anything that would mean the underwriters should have considered that the legal advice in 2018 was patently flawed.

Mr E had the option of providing a legal opinion of his own to counter this, which he did but not until September 2019. The first opinion from his own barrister, dated 5 September 2019, did not however support Mr E. The barrister said the prospects of succeeding in a claim against the trial barrister were below 51%: *"For the reasons given above, I'm afraid I cannot conclude that the prospects of establishing causation or of obtaining damages are 51% or more. Indeed, I am bound to say that the chances are low."*

The barrister also wrote four addendums to this advice, two of which were received on 5 September 2019 (the same day as the initial opinion), the third on 20 September 2019 and the fourth on 9 October 2019.

The addendums were written after receiving further information from Mr E, including sound recordings which he says were available for use at the court hearing in 2013 but which the trial barrister had failed to use. In his second addendum the barrister said that if these had been presented to the court at the time, he thinks it is likely (*i.e.* more than 51%) that a different decision would have been made in 2013.

The barrister couldn't say what the outcome might have been and only goes as far as saying it is possible Mr E might recover the costs he expended in principle. The barrister also listed eight caveats to his advice on the chances of success, including that there is an assumption the barrister had the recordings referred to before the hearing; he had not seen the instructions to the barrister; it is difficult to assess what difference this evidence would have made to the outcome of the family proceedings, he is not a family practitioner and while the court's decision may have been different, it is *"impossible to say what the result would have been"*.

The fourth addendum, dated 9 October 2019, made clear that he thought there were reasonable prospects of the case succeeding but this was still subject to the same caveats. The underwriters queried the initial opinion and the first three addendums, as they were not satisfied these changed the position on the claim. I do not think its responses were unreasonable, given these documents did not establish that its previous decision to refuse the claim was wrong and the caveats listed by the barrister meant there was more to assess.

I also note the underwriters responded promptly – in the main on the same day – to all Mr E's communications in September 2019. There were sometimes several communications between the parties on the same day, all responded to promptly. I am not therefore

persuaded there was any delay on its part in progressing the matter at that point, deliberate or otherwise.

It is clear from his email of 1 October 2019 to the underwriters that Mr E was aware that the time limit was approaching and he asked if it would pay him £10,000 (which is what he said the court issue fee would be) in order to issue protective proceedings.

The underwriters responded on 2 October 2019 to say if he needed to *“protect your legal position then this is something you will need to do at your own expense.”*

In Mr E's response he said he had been threatened with cancellation of his policy previously if he issued proceedings himself. However, I've not seen anything to support that. The policy says that a policyholder should not take legal action without the underwriters' knowledge but that is not the case here.

At this stage there was no valid claim under the policy and therefore no reason for the underwriters to take any action.

The risk of the claim being time-barred was clear. Mr E said the underwriters were deliberately delaying matters. He wrote an email on 5 October 2019, accusing the claims-handler of deliberately delaying responding to him, as *“they know time barred soon and I'm out of country so I can't make protective application at court to save my claim.”*

Again, I am not persuaded there was any delay on the underwriters' part in dealing with the matter.

I agree with the Investigator that it was only the fourth addendum from Mr E's barrister that made the position on his advice clear enough for the underwriters to act. This addendum was sent to the underwriters on 9 October 2019.

It is what happened next that is critical. At this stage there were eight days to go before the limitation period in which to issue proceedings against the barrister would expire. The underwriters sent the file to panel solicitors the same day (9 October 2019) to ask them to act under the terms of the policy, saying in the letter of instruction:

*“I attach all the correspondence received from the insured and would be grateful if you could now act on their behalf under the terms of their legal expenses cover... Cover will continue for so long as you believe that there are reasonable prospects of success, and that the claim is otherwise covered by the policy”.*

Mr E however, told the underwriters he was not happy with panel solicitors acting. He said he would probably like the barrister who had given him the written opinions to act for him but the underwriters said there would still need to be a solicitor with day to day responsibility for the case.

On 11 October 2019, the underwriters asked for details of solicitors Mr E wanted to use and told him he would need to protect his legal position if necessary and it would not be forwarding funds to pay for this.

On 14 October 2019 the underwriters wrote to say the first panel solicitors were unable to take the case and they were trying another firm however, if they couldn't take the instruction either *“you will need to provide details of your own solicitors who are able to take on the case”*.

The second firm of solicitors replied on 14 October 2019 to ask for the documents and instructions but said they would not be in a position to prepare an application and issue it by the limitation date. The solicitors said Mr E would have to take responsibility for issuing the application with the court. The underwriters replied the same day, sending the solicitors the documents they needed.

On 15 October 2019, underwriters say they are able to get panel solicitors to look at case but only on the proviso that Mr E issues protective proceedings in the meantime.

The solicitors did look into the matter and concluded that they didn't agree there were prospects of success. By then the claim was time-barred. I do not think the underwriters acted unfairly or unreasonably in the way they handled the claim at this point. They also acted as promptly as reasonably possible to each communication and referred it to panel solicitors as soon as it could.

Even if it should have referred the matter to a barrister instead for another merits assessment (which I don't agree was appropriate) I do not think the outcome would have been any different, as that would have taken time for them to assess and would not have progressed the legal claim any quicker. There would still have been the same issues with getting a solicitor to issue and so it would still have been time barred. And I am not persuaded there is any evidence that the underwriters deliberately delayed matters in order to prevent Mr E from pursuing his legal claim.

It has been suggested that the solicitors shouldn't have reviewed the merits of the legal claim again (having had Mr E's barrister's opinion) but they will always do so as there is a requirement that any claim has reasonable prospects throughout its life (and this can change depending on the evidence that comes out etc). And I do not think it reasonable to expect solicitors to simply issue proceedings without doing their own assessment of the case.

Overall, I do not consider that the underwriters could have done anything more in October/November 2019.

*Should the underwriters have paid Mr E so he could issue proceedings himself? And, did the underwriters prevent Mr E from having the opportunity to take proceedings against his former barrister?*

For the reasons set out above, it is my opinion the underwriters progressed the claim as soon as reasonably possible after receiving the opinion on 9 October 2019 (and before that I do not consider it needed to accept the claim). Two panel solicitors said they could not act in time to issue before the expiry of the limitation date. The underwriters also offered to fund Mr E's own choice of solicitors but he wrote to the underwriters on 15 October 2019 to say it was unfair to give him such short notice to find a solicitor to issue the claim and "*several firms have said there is not time*" suggesting he had tried to get his own firm to do so. And as far as I understand it, the barrister would not have been able to do it on Mr E's behalf.

Mr E is also adamant that the underwriters could have simply issued the proceedings, or should have either provided him with £10,000 or an assurance that it would reimburse him the £10,000 issue fee if he borrowed it.

There is no independent evidence to support that this is what the court issue fee would have been. The underwriters have said the court issue fee would be based on the value of the legal claim being made and as far as I am aware, there has been no legal assessment of the value of the claim. But in any event, I am not persuaded that the underwriters acted incorrectly in not providing the money or the assurance Mr E asked for. While the policy

does cover disbursements, this is only when incurred by an authorised representative. There is no provision in the policy, and I do not think it would be a reasonable expectation, that the underwriters should pay up front (or provide an assurance it would reimburse) a sum for unconfirmed disbursements for a litigant in person to issue proceedings.

Mr E says the underwriters ignored his request about the issue fee but this is not correct. In my opinion, far from ignoring it they made it clear that they would not pay it upfront and warned Mr E he would need to protect his position. While I can understand the cost of the issue fee might have been prohibitive, Mr E does suggest he would have been able to borrow the money (which is why he wanted assurance from the underwriters they would pay him back) so might have been possible. And as mentioned above, he had also written on 5 October 2019 that he was “*out of country so I can’t make protective application at court to save my claim.*”

It seems to me that the underwriters acted as quickly as they reasonably could once the opinion had been received on 9 October 2019 and, having considered everything, I am not persuaded it has been established that the claim became time-barred due to anything the underwriters did wrong. I am not therefore persuaded that it would be reasonable to make any financial award to compensate him for this lost opportunity.

#### Breach of contract

Mr E has also provided a copy of a legal advice on a potential action against the underwriters for breach of contract by not meeting this claim. It says Mr E was aware of the limitation date but could not afford to issue proceedings, as he could not afford the court issue fee, without the cover applied for under the policy. The advice says he would have to prove this to show he mitigated any loss. And there would also have to be proof that the barrister who acted in 2013 had known the existence of evidence Mr E says he should have used.

The advice suggests there might be grounds for a claim against the underwriters but does not seem to reach any conclusion about this.

I do not think this adds anything to the complaint.

#### Advice provided by the underwriters’ panel solicitors

Mr E has said that the fact he obtained a favourable barrister’s opinion proves that the underwriters’ solicitors who provided advice on the same potential claim lied when they said he did not have reasonable prospects. He says this applies to the panel solicitors who were involved previously as well as those involved in 2019 and 2020 and this is proof that the underwriters have tried to avoid his claim from the outset. I do not agree.

Lawyers, like most other professionals will on occasion reach different conclusions based on the same information and evidence. This is why the underwriters gave Mr E the opportunity to obtain his own advice and agreed to consider it if it was different from the advice it had received in 2013/4 and 2018, on the potential claim he wanted to bring against the barrister.

There is no evidence that the panel solicitors were not suitably qualified and experienced to advise on the matter or that they did not consider this matter in accordance with their professional obligations.

Where we are presented with conflicting legal opinions, it is not within our remit to decide which one is correct, only to assess if the underwriters acted fairly and reasonably in the

handling of the insurance claim. There is nothing obviously flawed with any of the legal assessments I have seen from the panel solicitors. The fact they reached a different conclusion on the merits of his legal claim does not mean the underwriters were deliberately trying to avoid his claim. And it does not mean that they should have accepted the claim any sooner than 9 October 2019.

### Is the case time-barred?

Mr E has also said he thinks it is incorrect his claim is time-barred. I am assuming this is because the note of conference with the barrister instructed in 2020 says he was aware the limitation dates could be disregarded, if there were "*fraud or concealment*".

There is no evidence to support that the limitation dates would be extended in this case and the barrister was certain that they couldn't: "*because we cannot overcome this Limitation Act hurdle then any claim will fail and therefore any discussion of negligence or causation (being the merits test) or quantum is academic because this is [a] claim that will not get off the ground because it is time barred*".

I have not seen any other legal opinion which would mean this advice should be disregarded as incorrect. As the claim was time-barred with effect from October 2019, I do not consider the underwriters need to provide any further legal funds.

### The underwriters' actions in 2020

In late 2020 Mr E sent the underwriters the same legal opinions that he had sent in September and October 2019. The claims-handler didn't realise they had already been seen or that the claim had been time-barred the year before.

The claim was passed to a panel solicitor and advice was sought from barrister, who saw Mr E in conference (as mentioned above). He stated the time-bar could not be overcome and so any other investigation into the merits of the case, causation or quantum was not warranted.

This should clearly not have happened. It also led to confusion about the complaint Mr E subsequently brought. While I have no reason to think the underwriters acted in anything other than good faith, this error meant there was inconvenience caused, as Mr E attended a conference with the barrister and undoubtedly spent some considerable time dealing with the matter. It also raised Mr E's expectations that his legal case might be progressable. I agree with the Investigator that some compensation is warranted for this and agree that the sum of £800 is not unreasonable.

### Claim against solicitors who acted for Mr E in 2013

Mr E has also said the underwriters should have permitted him to join together his potential claims against the solicitors and the barrister that acted for him in 2013, and the solicitors that advised in 2019 confirmed he had a good case against the solicitors.

I am not persuaded this is a reasonable request and it would be entitled to consider these as separate claims.

I am also not persuaded that the solicitor's advice Mr E refers to says what he asserts. The solicitor didn't say the solicitors that acted in 2013 were negligent but that they would be responsible for deciding which witnesses should be called. (Part of Mr E's claim with the barrister being that he did not cross-examine witnesses he thought would have made a difference to the outcome of his case.) That is not the same as saying they were negligent in



deciding to not call witnesses he thought should have been called, only that it was their responsibility and not the barrister's. The solicitors might have had good reason to not call certain witnesses. (I know Mr E will dispute this and say these witnesses were critical but I must make clear I am not making a determination whether this is right or not. I am only determining whether this established that the underwriters should have provided cover for a claim against the 2013 solicitors and for the reasons given, I do not.) In any event, the solicitor also states that any claim against the 2013 solicitors is already out of time.

#### Payment of Mr E's barrister's fees

Mr E is unhappy that the underwriters took over a year to reimburse the fees he paid his barrister and he needed that money to pay for further legal costs. He says that because of this delay, he was unable to get other legal opinions on his other cases which are now also time-barred.

The fees should have been reimbursed sooner than they were. The underwriters have offered to pay interest if Mr E is able to provide evidence he submitted the invoices earlier than November 2020. I think it would be reasonable for interest to be paid from the date Mr E paid for the invoices to the date of reimbursement. I have not seen any evidence of any other loss arising solely from this delay, so do not propose to make any further award in relation to this.

#### Other matters

Mr E has raised a number of other points, including that the complaints handler deliberately left out of his final response to the complaint details around the underwriters deliberate attempts to avoid his claim by way of various breaches of contract, even though he confirmed in a telephone call to Mr E that he would include that in his consideration of the complaint.

I am not persuaded there has been any attempt to manipulate the complaint procedure in this way. I am not able to consider some of the historic aspects of Mr E's matter, going back to 2013/2014, but have considered generally his allegation that the underwriters have tried to avoid his claim and that it has breached his contract. For the reasons given above, I do not intend to uphold these aspects of Mr E's complaint.

Mr E also complained to the underwriters that they were not providing written communications by post and email as he had requested. I understand they have more recently been doing so and I do not therefore consider anything more needs to be done in this regard.

While individual names were provided to Mr E on any written communication and individuals would ordinarily identify themselves when talking to Mr E on the phone, I understand he wanted a list of all contact details. He mentioned it will make it easier for him to track his claims and chase up responses.

The underwriters were not prepared to do this. I do not think this was necessary for them to do and do not propose to make any direction in relation to this.

#### **My provisional decision**

I uphold this complaint in part and require Society of Lloyd's to pay Mr E:

1. the sum of £800 compensation for the distress and

- inconvenience caused by its handling of his claim; and
2. interest at 8% simple per annum on the barrister's fees from 2019, from the date Mr E paid the fees to the date of reimbursement, subject to appropriate proof of payment."

## Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further arguments or information they want considered.

Society of Lloyd's has confirmed it accepts my provisional decision, except with regard to the interest I proposed it should pay on Mr E's barrister's fees. It says the underwriters paid the invoice promptly after receiving it and could not have paid this any earlier than they did, so it is unfair to add interest for any period of time before it received the invoice.

Mr E does not accept my provisional decision. He has sent over 40 emails in response, together with several documents (including copies of court transcripts, witness statements and transcripts of calls between him and others involved in this matter; medical evidence relating to his daughter and a recording of a call between him and his daughter). Mr E's MP has also written to us on his behalf again. I have summarised the points made by Mr E and his MP below. However, as many of the points have already been raised previously I have not repeated them all. Mr E states that:

- a) I have said his barrister's first opinion was dated 5 September 2019 but it was dated 11 August 2019, which meant the underwriters had 40 days and not eight days to pay the court fee and issue his claim. The underwriters lied about the date it was received.
- b) I also concealed the strength of the second addendum from his barrister dated 5 September 2019, which confirmed his case had reasonable prospects. So his claim should have been progressed on 5 September 2019, not 9 October 2019.
- c) I said there was no evidence of how much the court fee would be. He was advised to pay the maximum fee due to the value of his claim (£50,000), which would be 5% of his claim for a claim worth £10,000 to £200,000. We should contact his adviser and ask if that was what he was told and also about his advice about the negligence of his barrister and the Children and Family Court Advisory and Support Service ("CAFCASS", which he says lied to the court in 2013).
- d) The solicitors gave verbal confirmation that the solicitors and barrister had been negligent but retracted that after the underwriters knew about the £10,000 court fee. He has provided a transcript of that call.
- e) In 2020 based on the same barrister's opinions, the underwriters were going to pay the £10,000 court fee. He has provided a copy of that recording.
- f) He had the claim forms completed already, they just needed to be filed at court and the fee paid, which anyone from the underwriters could have done.
- g) The policy says that once there is a legal opinion confirming he had reasonable prospects, the underwriters should pay all necessary disbursements. I have covered up this breach of his policy.
- h) I said there is no evidence of negligence or that the underwriters have breached the policy terms "*to claim avoid and conceal negligence. There is tons of evidence*" but all his evidence has been ignored.
- i) I have misrepresented the panel solicitor's opinion regarding the solicitors that acted for him in the family proceedings. It is clear the solicitor said they were negligent in not making sure certain witnesses were called to give evidence in court, so his barrister could cross-examine them.

- j) He has complained several times since 2014 that only one paralegal was willing to talk to him in person about his case. How can a solicitor do a report without talking to the client?
- k) I have not mentioned the evidence of the barrister covering up and removing evidence.
- l) I have concealed the underwriters' excuse for not reimbursing his barrister's fees in 2019; and have lied by saying that he needed to send proof he had submitted the invoices sooner than 2020 in order to get the interest on his fees.
- m) The only reason the underwriters refused to reimburse the barrister's fees and the court issue fee was to cause his claim to be time-barred.
- n) The panel solicitors have lied about his case being time-barred, as the clock starts from the most recent act of fraud, which was in 2019 when altered court documents were reproduced.
- o) I have deliberately not named in my provisional decision the solicitors involved in order to be confusing.
- p) I ignored the solicitor's advice supporting his claim, which he provided to the underwriters in 2018.
- q) The Investigator said the underwriters should not have had the barrister's opinion reviewed by solicitors in October 2019 and I have tried to conceal this in order to deliberately prevent him getting compensation, which is misconduct in a public office.
- r) Why did the underwriters refer the case to its panel solicitors when the solicitors said they couldn't issue the claim? He was never told they would not have time to issue the proceedings. He was being set up to be time-barred.
- s) It was a claims-handler that refused to allow his claim, not the underwriters.
- t) It is not right that a solicitor should be able to overturn the evidence from his barrister. According to the policy terms it should have gone to arbitration.
- u) His barrister stated that the fact it didn't go to arbitration is a breach of his contract and I have concealed that.
- v) Why have I not pasted copies of his barrister's opinion in my decision?
- w) I have ignored the evidence and concealed the truth and acted dishonestly.
- x) I have also refused to consider what happened in 2013/2014

Mr E has also asked that we provide him with an indexed copy of all the evidence I've relied on and provided by the underwriters.

It is my understanding that Mr E has received all the emails I relied on in my provisional decision (he was a party to most of them) as well as the other evidence relied on, such as the barrister's opinions. The Investigator asked him to specify if there was any communication or other evidence I had referred to that he had not already seen and he has not done so. I am therefore reasonably satisfied Mr E has already seen all the evidence relied on in my provisional decision. We are not required to provide it again indexed for him.

Mr E also asked for another meeting to discuss the case. He says this is needed to go through all the papers and evidence, as I have omitted so much evidence from my provisional decision. Mr E says not meeting or talking with him will prevent a fair assessment of his complaint.

Mr E has provided a substantial amount of evidence in support of his complaint and has expressed his position clearly. He would like a meeting with me to go through the evidence which he thinks I have not considered properly and to ensure I consider the points he thinks are relevant.

Mr E does not agree with my interpretation of the evidence which is why he wants to discuss it. In my opinion, this is not necessary in order for me to fairly determine this matter.

Mr E has also indicated through his MP that if the case is not upheld then he intends to pursue a prosecution against me for misconduct in public office.

### **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.

However, I have not read all the papers from the family court case in 2013/14 recently submitted and I have not listened to the phone call between Mr E and his daughter, as these are not relevant to my consideration of this complaint. Mr E is adamant that the negligence of the barrister in 2013 and the strength of his case against him is self-evident from those documents. However, it is not for me to assess whether the outcome of the 2013 case should have been different, or if his allegations against his daughter's mother and her family are correct, only whether the underwriters acted fairly and reasonably in the consideration of his insurance claim. In so doing, I am not required to determine if different evidence should have been presented to the courts in 2013, whether the social services, CAFCASS, the court or the barrister and solicitors acting for him then should have done anything differently.

Most of Mr E's points are also the same as previously made and set out and addressed in my provisional decision. However, I have considered again all the relevant evidence. I explained in my provisional decision that I had summarised some of Mr E's points and could not address everything Mr E had raised, this does not mean that I have concealed aspects of his case or important evidence. I have focussed on the evidence that I consider relevant to the consideration of his complaint about the refusal of his insurance claim.

#### *Solicitor's opinion in 2018*

Mr E says I have ignored the opinion he provided from a solicitor in June 2018 in support of his case. I have seen a letter written by a solicitor to the Legal Ombudsman stating there had been failings on the part of the barrister that acted in 2013.

The underwriters didn't accept this as evidence that the claim under the policy should be met as it was not a formal opinion on the prospects of the case. The underwriters had already received the opinion from panel solicitors that the claim did not have reasonable prospects of success and I concluded in my provisional decision that it did not act unreasonably in relying on that opinion to refuse Mr E's claim in 2018 and there was no evidence that the panel solicitor's opinion was flawed. The underwriters told Mr E it would consider the matter again, if he was able to provide a barrister's opinion that his case did have reasonable prospects. Mr E provided a barrister's opinion in September 2019. I remain of the opinion that the decision on the claim made in 2018 was not unfair or unreasonable, including not accepting the solicitor's letter dated June 2018.

#### *Dates of Mr E's barrister's opinions*

Mr E says that the first advice received from his barrister was dated 18 August 2019, which gave the underwriter plenty of time to issue proceedings on his behalf.

The advices and addendums are not in fact dated, so it is not clear when they were written or provided to Mr E. The dates relied on in my provisional decision are the dates that the opinion and addendums were received by the underwriters.

The first advice was received by the underwriters on 5 September 2019. Though Mr E says the underwriters lied about this being the date, other correspondence around the same time supports that it was received on this date.

However, even if it had been received in August 2019, it was not supportive of Mr E's claim. The barrister said: *"I'm afraid I cannot conclude that the prospects of establishing causation or of obtaining damages are 51% or more. Indeed, I am bound to say that the chances are low."* Therefore, even if it had been received on 18 August 2019 (which is not proven) it would not have meant Mr E's claim would have been progressed then as the barrister said the chances of the claim succeeding were low.

Mr E also says the underwriters' claims-handlers were not legally qualified and so should not have "sat on" his barrister's opinions and should have instructed solicitors to deal with the matter straight away. I do not agree that this is a reasonable expectation. The claims-handlers are qualified to determine if evidence has been provided to establish a valid claim under the policy and they are acting on behalf of the underwriters in doing so.

Mr E also says the second addendum (which he does not seem to dispute was received by the underwriters on 5 September 2019) confirmed he had reasonable chance of succeeding and the underwriters should therefore have instructed solicitors on that date, which would also have given plenty of time to issue proceedings. He says I have concealed the strength of that addendum in support of his case.

The second addendum said that the case in 2013 might have had a different outcome if the evidence Mr E wanted presented to the court had been considered. As the underwriters pointed out, this is not the same as saying that there is a more than 51% chance of succeeding against the barrister that represented him in 2013. There were also several caveats to his advice, which could affect the prospects of the case significantly. This might be what the barrister meant but it is not clearly stated in this addendum and so I do not agree that this addendum was enough to have required the underwriters to progress his claim.

For the reasons set out in my provisional decision, I remain of the opinion that it was not until the fourth addendum was received on 9 October 2019, that the underwriters were in a position to confirm potential cover under the policy. And by then there were only eight days before the claim became time-barred.

Mr E says the panel solicitors and the underwriters had proof of the abuse of his daughter but sought to conceal it and cover it up in order to refuse his claim. There is simply no evidence to support such an allegation. The underwriters were not considering the evidence that he wanted put to the family court in 2013, only whether he had a valid claim under the policy.

Mr E also says he was not told the panel solicitors would not have time to issue the proceedings. I do not agree this is correct.

As set out in my provisional decision, the underwriters made clear to Mr E the risk of his claim being time-barred. But in any case, for the reasons set out, I consider they did all they could to progress the claim as quickly as they reasonably could in September and October 2019. Having considered everything, I am not persuaded the claim became time-barred due to anything the underwriters did wrong.

I therefore consider that it would not be reasonable to make any financial award to compensate Mr E for this lost opportunity.

Court issue fee

Mr E also says the policy provides that any disbursements (including court fees) should be paid as soon as he provided the favourable barrister's opinion and that the underwriters agreed to cover his claim until they heard he needed a £10,000 issue fee.

I provisionally determined that it was not reasonable to expect the underwriters to have paid Mr E £10,000 to issue proceedings himself (or for it to have done so) without an authorised representative involved. In part, this was because that there was no convincing evidence that the fee would have been £10,000.

Mr E has provided reference to a government website, which says that the court issue fee would normally be 5% of the value of the claim being made, which he has said is £50,000. Even if I accept that is the value of Mr E's potential claim against the barrister (though it has not been evidenced), 5% of this figure would be £2,500, not £10,000. However, the guidance is that if the claim amount is left blank in the court application, then the fee is £10,000. So I remain of the opinion that the correct fee was not clear. And, while the policy does cover disbursements, this is only when incurred by an authorised representative.

I therefore am still of the opinion that the refusal to pay Mr E £10,000 (or provide an assurance it would reimburse this sum) for unconfirmed disbursements for a litigant in person to issue proceedings was not unreasonable.

Mr E's submission that his cover was only withdrawn when the underwriters found out they would have to pay £10,000 in court fees is not borne out by the evidence. He also says the only reason the underwriters refused to pay this cost was to deliberately make his claim out of time. I do not agree that there is any evidence to support this. As set out in my provisional decision, the underwriters had no obligation to provide him with this payment in October 2019 and while the claim was on the face of it accepted again in 2020, this was because of a misunderstanding and the handlers didn't realise that it was already time-barred.

#### Opinion from panel solicitors

Mr E is also still adamant that the panel solicitor that provided advice in October 2019 dishonestly changed his opinion. I am not persuaded the call between Mr E and the solicitor confirms that the solicitor was expressing a formal opinion that Mr E's case had reasonable prospects. It is clear in that call that the solicitor had not read everything at that point and was in effect saying that if the evidence confirmed what Mr E was alleging then that would be negligence. However, even if I am wrong about this, and the solicitor did change his mind when he came to write his opinion for whatever the reason, he was entitled to do so as this was his written opinion and there is no reason I can see why this should be disregarded. *And* the fact remains that the claim was already time-barred by then, so even if the solicitor did change his mind about the prospects of the legal case, it does not make a difference to the outcome of this claim or complaint.

#### Claim against solicitors who acted for Mr E in 2013

Mr E says I have misrepresented the panel solicitor's opinion regarding the solicitors that acted for him in the family proceedings. Mr E is adamant that the solicitor said they were negligent in not making sure certain witnesses were called to court to give evidence, so his barrister could cross-examine them. Mr E also says he has complained several times since 2014 that only one paralegal was willing to talk to him in person about his case; and it is not possible for a solicitor to report on the case, without talking to him.

I do not think it is necessary for me to establish which panel solicitors or their employees Mr E did or did not discuss his potential cases with. If they had felt the need to clarify any

matters in the paperwork with Mr E, then it seems to me they would have done so. Not speaking to him does not mean their opinions should not be relied on.

The panel solicitors advice regarding the potential claim against the barrister, made reference to the fact that he would only have been able to cross-examine witnesses that had been called to give evidence to the court and it was the solicitors that were acting for Mr E at the time that were responsible for deciding which witnesses to call. He did not state that the solicitors were wrong not to call the witnesses Mr E now says should have been there. And in any event, the solicitor notes that any claim against the solicitor is also time-barred. Therefore even if I am wrong in my reading of his advice, that does not change Mr E's position.

#### Is his claim time-barred?

Mr E says an act of fraud on the part of the barrister that acted for him in 2013 and CAFCASS in 2019 (he alleges they removed and covered up evidence) starts the clock running again, so his claim is not time-barred.

As stated in my provisional decision, the barrister that advised Mr E in a conference in 2020 was certain the limitation date could not be extended, or re-wound: *"because we cannot overcome this Limitation Act hurdle then any claim will fail and therefore any discussion of negligence or causation (being the merits test) or quantum is academic because this is [a] claim that will not get off the ground because it is time barred"*.

While Mr E is convinced this is wrong, without any legal expert opinion to establish this is incorrect, I remain of the opinion that I do not consider the underwriters should provide any further legal funds for this potential claim, as it was time-barred with effect from October 2019.

Mr E is also adamant that the underwriters deliberately made sure his claim was time-barred. For the reasons set out in my provisional decision and above, I do not agree. The underwriters acted as promptly as they reasonably could once they had received the opinion from Mr E's barrister that his claim had reasonable prospects of success. It also made clear to him that there would be issues with getting a solicitor to be able to issue proceedings in time and that he would therefore need to do this to protect his claim. Mr E was also well aware of this, having sought his own legal advice on this and been told it would be difficult to do. He also mentioned that he was out of the country and couldn't issue the proceedings himself.

#### Should panel solicitors have reviewed the merits of his potential case against the 2013 barrister?

Mr E says that having provided a favourable opinion from his barrister, the underwriters should have referred the claim for arbitration instead of asking its panel solicitors to review the merits again.

The underwriters confirmed it accepted the claim in October 2019 and so referred it to panel solicitors to act for Mr E. They could not get a panel solicitor that could issue proceedings in time (and neither it seems could Mr E).

The underwriters were not specifically referring the claim for further assessment at that stage, but any solicitor will carry out their own assessment on a case before proceedings with it and I am not therefore persuaded it was wrong for the solicitors to reach their own opinion on this case. It would not be reasonable to expect solicitors to simply issue proceedings without doing their own assessment of the case.

I also do not consider the underwriters should have referred the insurance claim to arbitration or obtained another barrister's opinion at that stage. And, even if it should have done, I do not think it would have made any difference to the outcome of the claim or complaint, as it seems to me unlikely that either of these options would have reached a conclusion before the claim was time-barred. Overall, I do not consider that the underwriters could have done anything more in October and November 2019.

#### Handling of the claim since 2013/2014

Mr E says the underwriters have deliberately tried to avoid his claim since 2013/2014 and I have refused to consider this.

As stated in my provisional decision, Mr E raised a number of specific issues in 2013 and 2014, which I do not think are necessary for me to consider in order to fairly determine his complaint that the underwriters have wrongfully refused his claim since then. For the reasons set out above, I remain of the opinion that there is no evidence that the underwriters wrongfully refused his claim and have not considered his claim fairly and reasonably according to the terms of the policy throughout.

#### Barrister's fees

I agreed with Mr E in my provisional decision that the underwriters should have reimbursed his barristers' fees sooner than it did. It had said in October 2019 that they would not reimburse the fees because they didn't think they had established Mr E had a valid claim.

I do not agree this was fair. I said that the underwriters had explained that if he could provide proof he had submitted the invoice earlier than 2020, then it would agree to pay interest. I did not agree this was reasonable. To the contrary, I concluded that they should pay interest from the date Mr E paid his barrister's fees for those opinions. The underwriters are entitled to proof of when they were paid but I agreed and accepted that it should have reimbursed Mr E for this sooner.

The underwriters do not agree that interest should be paid, as it says it paid the invoice as soon as it was received in 2020. However, it was aware of the fees in 2019 and the refusal to pay them then was not reasonable. I therefore remain of the opinion that interest should be paid on the fees from the date Mr E paid them to the date of reimbursement.

#### Other matters

Mr E has also said I have not used the names of the solicitor's firms involved in order to deliberately be confusing. This is not true. As all our decisions are published we anonymise the details of any other party involved, other than the name of the respondent firm and the deciding ombudsman. I have tried to set out my decision as clearly as possible, which has been challenging given the long history and the large amount of information that needed to be considered.

Mr E has also repeatedly said it was not the underwriters that refused the claim and were not making the decisions on his case but an individual claims-handler. I set out at the outset of my provisional decision that the claims handlers act on behalf of the underwriters.

Mr E also says again that the underwriters refused to provide him with a list of contact names and email addresses which has prevented him from creating a file for himself. I did not think it was unreasonable for it to decline to do this and am still of this opinion.



Mr E also said the underwriters had not made reasonable adjustments in the way it wrote to him (by email and hard copy) and have victimised him by changing claims-handlers. I am not persuaded by this. It is almost inevitable that there will be a change of personnel during the course of a claim and I cannot see any evidence that the underwriters have treated him unfairly in this regard. They accepted they had not always written to him in the way he had asked but it has now put those adjustments in place, so I do not consider I need to take this point any further.

### **My final decision**

I uphold this complaint in part and require certain underwriters at Society of Lloyd's to pay Mr E:

1. the sum of £800 compensation for the distress and inconvenience caused by its handling of his claim; and
2. interest at 8% simple per annum on the barrister's fees from 2019, from the date Mr E paid the fees to the date of reimbursement, subject to appropriate proof of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 19 April 2022.

Harriet McCarthy  
**Ombudsman**