

## The complaint

Mr D complains that Scots Consultants (London) Ltd trading as Coversure Insurance Services (Teddington) ("Coversure") mis-sold him a legal expenses insurance policy as it did not include legal defence cover.

## What happened

Mr D took out a legal expenses insurance policy through his broker, Coversure. He had been a customer of Coversure's for around 11 years where they had provided his professional property insurance, but he had previously made it known to his broker that he required comprehensive legal expenses cover.

Mr D made a claim for assistance with a property dispute after he received pre-action correspondence from a third-party property developer ("the claimant") that owned a neighbouring property. The developer claimed that Mr D had unlawfully installed bollards in a passageway that vehicles used to access their property, which they said restricted access. It wasn't in dispute that Mr D owned the land, so the claimant therefore sought a declaration that a right of way existed by way of a prescriptive easement, as well as an injunction against Mr D with regards to the obstruction of that right of way; and a claim for damages for any losses caused by the obstruction and associated delay.

After initially being told that he had legal defence cover by Coversure, he was subsequently informed that his claim would not be covered, as the policy only provided cover to *pursue* a claim for nuisance and trespass; it didn't extend to the defence of these or any other property claims.

Mr D complained that Coversure failed to provide adequate legal expenses cover with his property owners' insurance policy as it didn't provide legal defence cover. He said that he had specified to Coversure that he required comprehensive legal expenses insurance that would provide cover for both pursuing and defending all common property disputes, including boundary disputes, that might be brought against him. He says he was assured on numerous occasions that legal defence expenses formed part of his cover, only to discover that it did not when he needed to claim.

Coversure upheld Mr D's mis-sale complaint and acknowledged that they had given him the wrong advice. The broker offered £2,500 in full and final settlement of the complaint. However, Mr D rejected this as he had to instruct and fund his own solicitors to defend the legal action, which far exceeded the offer put forwards by Coversure. He says that the broker should have provided him with a full indemnity to defend the claim.

Mr D also submits that Coversure's negligence prejudiced his ability to defend himself due to the costs involved that he would have to cover. He says he felt he had no other option but to accept the claimant's settlement proposal, which involved him conceding the right of way across his property, removing the bollards and paying 70% of the claimant's legal costs (amounting to around £24,000) as well as his own legal fees.

Mr D submits that if he had the benefit of insurance, he could have maintained a

comprehensive defence such that the likely outcome would have been the claimant withdrawing their claim. However, as a result of the settlement, a unilateral notice was registered in favour of the property developer over Mr D's property. He says his property has been significantly devalued, and in order to remove the rights that the property developer has now acquired he will need to pay them compensation.

So, as well as covering Mr D's legal fees, he says that Coversure should also compensate him for the cost of removing the unilateral notice, the loss of opportunity in being able to develop his property, as well as the decrease in value of his property.

Our investigator upheld the complaint. He was satisfied the policy had been mis-sold by Coversure such that it should cover Mr D's legal costs, but he didn't think the broker would be responsible for covering the consequential losses claimed by Mr D. He recommended that a cost draftsman be appointed to determine what the reasonable legal costs would be. Both parties disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in October 2022, I said I was minded to uphold it and set out the following reasoning:

*Did Coversure mis-sell the policy?*

*Mr D says that due to a previous boundary dispute a few years prior, he gave Coversure clear instructions that all policies moving forwards were to have comprehensive legal expenses cover in place for legal defence costs against all common property disputes.*

*There is no written evidence of these requests being made to Coversure at the time. And Coversure said the renewal of the policy in July 2019 was also agreed verbally. However, based on the call recordings I've listened to between Mr D and the broker when discussing his complaint, it's clear that Coversure were also under the impression that he had legal defence cover in place. Indeed, the broker also sent Mr D an email on 14 May 2020 attaching a copy of his policy terms and conditions, which it incorrectly stated was a 'legal defence' policy.*

*It isn't clear why the broker was under this impression, as there is no mention of legal defence cover within the policy wording; it only provides cover to pursue claims of nuisance and trespass. Coversure also verbally admitted liability for this mistake during its telephone conversations with Mr D, where it said it would be taking responsibility, which it also set out in its final response letter:*

*"I also advised to you verbally at the renewal that the policy provided cover for this under the Legal section of the AXA Insurance policy...I have now reviewed the cover provided by the legal section of your policy and whilst it does provide some cover for trespass and nuisance it only provides cover in respect of your pursuing a claim for nuisance and trespass not defending yourself with regard to this action...In this matter my advice was incorrect which means I uphold your complaint".*

*The broker said that Mr D had only requested comprehensive cover with regards to nuisance and trespass claims. But I've not seen anything to suggest that this is what Mr D had specifically asked for. Therefore, based on the evidence available, I think it's likely that Mr D did request a level of cover that would provide for more than just pursuing nuisance and trespass claims, but that would extend to covering him for both pursuing and defending all common property disputes. However, he was not provided with such a policy by Coversure and so wrongly assumed he had this level of cover in place.*

*Coversure have confirmed that it sold the policy to Mr D on an advised basis, which means they had a regulatory duty to ensure it was suitable for the demands and needs of the insured (see, for example, the Financial Conduct Authority Handbook, general principles and insurance: conduct of business sourcebook).*

*Coversure ought reasonably to have been aware that such cover did not form part of the policy. Indeed, it is not mentioned anywhere within the policy document. And having known what Mr D's insurance requirements were – and as the broker that was recommending the policy to him – they ought to have checked the terms and conditions to ensure it was suitable for his needs. I do not think a broker exercising the care and skill that most reasonable, prudent brokers would expect, would have concluded that this policy was suitable for Mr D based on the requirements he had specified.*

*Given the importance that Mr D says he placed upon having comprehensive legal protection cover in place, Coversure ought to have highlighted that it did not include legal defence cover for property disputes. But I have not seen any evidence that this was highlighted or brought to Mr D's attention by the broker. Had they done so, I do not think he would have agreed to take out the particular policy underwritten by AXA and would've likely continued his search for a policy that did provide legal defence cover, and which would have covered the loss he has since suffered.*

*Which policy would Mr D have likely taken out?*

*Coversure say they are not aware of other products on the market that would have covered Mr D's defence being brought against him by the property developer. However, Mr D has since provided copies of alternative landlord insurance (underwritten by Allianz/Markel) that covers both the pursual and defence of property disputes:*

*"We will pay costs to obtain damages or other legal remedy for:*

- 1. Trespass on your property*
- 2. Nuisance from another affecting your property*
- 3. The defence of another's claimed right of way over your property..."***

*The policies Mr D has brought to my attention were on the market in 2019 (i.e. before proceedings were brought against him by the property developer and at the time he renewed his policy through Coversure). So, if Coversure had brought the limitations of cover to his attention at the point of sale/renewal, I'm satisfied he wouldn't have taken it out, and could have likely found cover elsewhere that did provide legal defence cover for his claim. In other words, but for Coversure's failure to recommend a suitable policy and/or highlight the lack of legal defence cover, Mr D would have had adequate cover in place for his legal expenses to have potentially been covered (subject to the remaining terms and conditions of the policy, of course).*

*Would Mr D's claim have likely been covered under the alternative policy?*

*As outlined above, the alternative policy Mr D said he would have taken out covers legal costs in order to defend another's claimed right of way over their property. In Mr D's case, the claimant property developer was seeking a declaration that a right of way existed through the accessway by way of a prescriptive easement. Should that right of way have been declared, the claimant was further seeking an injunction*

*forcing Mr D to remove the obstructive bollards. So, I'm satisfied there would have been an insured event here for the policy to respond to, as Mr D was seeking to defend a claimed right of way over his property.*

*However, a key requirement of this (and the vast majority) of legal expenses insurance policies require that the claim have reasonable prospects of success in excess of 51%:*

### **Prospects of success**

*[The insurer] will make a decision on whether to cover your claim based on a legal opinion from your representative...on whether your claim has at least a 51% chance of*

- successfully pursuing your case and securing a legal and/or financial remedy*
- not being found liable in a civil (not criminal) case against you*

*If there is 50% or less chance of the above, we will not provide cover.*

*So, the insurer of any alternative policy would have required Mr D's legal representative to advise on whether his defence had reasonable prospects of succeeding.*

*Despite not having insurance funding in place, Mr D instructed counsel to advise on the prospects of his case.*

*Counsel couldn't give firm advice on prospects because the claimant had not set out in detail what facts they were to rely on, or how they proposed to prove them in establishing the right of way. He was therefore unable to express in percentage terms what the prospects were of Mr D's defence succeeding. However, based on the evidence that was available, counsel was of the preliminary view that the claim by the property developer faced a number of hurdles and was likely to fail.*

*I appreciate that counsel did not express in percentage terms what the prospects of Mr D succeeding would have been. However, a follow up opinion was subsequently given by Mr D's solicitor in light of further developments and responses from the claimant, which did say that Mr D did in theory have a more than 50% chance of winning his case, albeit there were some weaknesses and other reasons (including costs) as to why he ought to settle, (which is what he eventually did).*

*So, in light of the opinions of both Mr D's solicitor and barrister, it seems likely that Mr D's claim would have satisfied the policy requirement of enjoying reasonable prospects of success. As a result, I'm satisfied it would have likely been covered and Mr D would have received insurance funding for his defence, but for Coversure's failure to recommend a policy that provided such cover. I therefore intend asking the broker to compensate Mr D's losses in this regard.*

### **How should Coversure put things right?**

*When a customer has suffered a loss as a result of wrongdoing or negligence on the part of a business, it has long been the approach of this service to direct the business to put the customer back in the position they would have been but for the negligence. So, it's necessary to consider what position Mr D would have likely been in had his claim been funded by insurance.*

*Based on the policies Mr D has provided, an insurer would have indemnified Mr D for his legal costs, which includes:*

### **Costs**

#### **Own costs**

- *The legal or professional costs (including any disbursements such as Counsel's or expert fees) reasonably charged to you by your representative.*

#### **Other party costs**

- *In civil proceedings, the legal costs incurred by the party you are in dispute with that a Court or Tribunal orders you to pay or that you, with our prior written agreement, agree to pay under the terms of a settlement...*

*So, it's clear that an insurer would have covered Mr D's own legal expenses, as well as those he had to pay to the claimant as part of the settlement agreement. This was accepted in line with advice from his solicitor, so it seems an insurer would have likely agreed to the terms as well, particularly given the risk of costs significantly escalating if matters proceeded to trial. As a result, I intend asking Coversure to cover Mr D's legal costs that would have been covered under the alternative policy, up to an indemnity limit of £50,000 (the reasons for which will follow).*

#### **Consequential losses**

*Mr D says that he was forced to accept the claimant's settlement proposal due to the rapidly increasing costs he would've had to cover without having insurance funding in place. He says that if he had the benefit of insurance funding, he could have maintained a comprehensive defence that would have resulted in the claimant withdrawing their claim, and therefore would not have had to register a unilateral notice against his property. However, I'm not persuaded this would have been the case.*

*While I appreciate Mr D had been advised by his solicitor that his case had reasonable prospects of success, there are other factors that I think would have likely prevented him from pursuing his defence any further – even with the benefit of insurance funding.*

*First, I've considered the indemnity limit that would have likely been available to Mr D had his claim been covered. The indemnity limit applicable to the policy Mr D took out with Coversure was for £50,000. He says he requested for this to be increased to £100,000 on 5 May 2020. But this was after he had already received the pre-action correspondence from the claimant in February 2020. A policyholder cannot make amendments to their insurance in anticipation of a potential claim, so I don't think it was unreasonable for Coversure to deny this.*

*I appreciate that, in hindsight, Mr D would have wanted a higher indemnity limit given the potential costs of litigation he was facing. If Mr D had placed great importance on having an indemnity of at least £100,000, it seems he would have requested this from the broker upon renewal or at least at the point he asked to have comprehensive legal cover put in place. But I've not seen any evidence to suggest that he ever requested a £100,000 indemnity limit before he knew of any action being taken against him by the claimant.*

*The policy schedule issued upon renewal of Mr D's policy taken out through Coversure states that legal expenses formed part of his cover (albeit without specifying that this did not include legal defence cover) and that the limit of any one claim was for £50,000. This was issued on 29 July 2019. I appreciate that Mr D may not have seen this. But as a commercial customer, he ought reasonably to have been aware of the indemnity limits applicable to his policy. However, I cannot see that he challenged the broker on this level of cover upon renewal of his policy, which leads me to believe he was satisfied with this level of indemnity.*

*As a result, I'm not persuaded he would have sought a higher indemnity limit, or would've had any reason to seek a higher indemnity limit in July 2019, had he taken out cover elsewhere if Coversure informed him that his policy did not include legal defence cover. This is the level of indemnity he has been paying premiums for up until now.*

*Mr D says he has been advised that the minimum level of cover one should have in place for commercial and residential property insurance is £100,000. I understand that property disputes can be expensive. But then there will also be many disputes that can be resolved with an indemnity limit of £50,000, which is a level of cover that some landlords may choose on the basis of paying cheaper premiums.*

*So, although the type of legal expenses cover sold to Mr D may not have been suitable (in that it did not cover legal defence claims), I've not seen anything to suggest that a £50,000 indemnity limit would have been an unsuitable recommendation. And on balance, I don't think it would be fair and reasonable to retrospectively grant a £100,000 indemnity limit to Mr D, just because he would have opted for this level of cover in hindsight.*

*Therefore, I have considered what would have likely happened if Mr D had a £50,000 indemnity limit in place.*

*When Mr D received the settlement proposal from the claimant, their costs were already around £30,000. They proposed that Mr D pay 70% of their costs (amounting to £24,000). And while I appreciate Mr D considers he could have secured better terms; I can't ignore that this is largely speculative. In his advice dated 4 May 2021, the solicitor highlighted that while Mr D's defence had merit if he were to proceed to trial, it wasn't without significant risk. The claimant had a QC fighting their case and had a witness that was willing to testify under oath. Mr D had a witness statement from a third party, but they were not willing to give evidence in court, which therefore weakened his defence as a result.*

*The solicitor advised Mr D that costs were likely to significantly escalate, with the claimant's cost budget being in the region of £100,000. He was warned that he could face a potential liability in excess of £150,000 if the case went against him. Mr D's own solicitors' costs were also within the region of £22,000, as well as paying over £4,000 for counsel's opinion on his defence. So, even if he didn't accept the settlement offer, it's likely his indemnity would have been exhausted long before the conclusion of his case if it went to trial (particularly with the cost of instructing counsel to represent him). And with the not insignificant risk of a potential cost liability of £150,000, I'm not persuaded Mr D would have chosen to take that risk, which would have involved him spending a significant amount of his own money to fund his defence at the point his indemnity was exhausted.*

*Mr D has also greatly emphasised that he was extremely anxious to settle the case, and that it was causing him a great deal of trauma. So it further seems unlikely that*

*he would have chosen to reject the claimant's settlement offer, which would have all roughly fallen within a £50,000 indemnity limit (including his own legal fees).*

*As a result, I'm not persuaded that Mr D would have likely achieved a more favourable result even with the benefit of insurance funding. I therefore do not intend asking Coversure to cover the consequential losses he has requested as a result of the settlement agreement, as it seems likely he would have always had to concede the right of way.*

#### *Costs incurred pursuing the complaint with the Financial Ombudsman Service*

*Mr D also submits that I should make a further award to cover his solicitor's costs incurred in bringing his complaint to this service.*

*The power to award costs is set out in the rules that govern our procedures. The guidance to the relevant rule is set out in the Financial Conduct Authority Handbook (DISP 3.7.10) which states:*

*'In most cases complainants should not need to have professional advisers to bring complaints to the Financial Ombudsman Service, so awards of costs are unlikely to be common'.*

*I appreciate this guidance talks about the costs involved in bringing a complaint to our service. But our service also takes the same approach to considering any costs involved in appointing professional advisers to make a complaint to a business in the first instance as well. And the Financial Ombudsman Service only awards compensation for such professional fees where, in the ombudsman's view, it was necessary for the consumer to have incurred these fees in order to bring the complaint, which I do not consider it was.*

*I've not seen anything to suggest that Mr D could not have pursued a complaint himself with Coversure, and subsequently to this service. This office considers complaints in line with relevant law, regulations, good industry practice, as well as in line with what is fair and reasonable – irrespective of how a case is presented. And if Coversure mis-sold legal expenses cover to Mr D, we would have always asked them to put things right (again, irrespective of how the case was presented by either side). Indeed, Mr D has been able to articulate his arguments quite clearly in his correspondence with this service in any event.*

*So, I do not accept that Mr D would have only been successful in his complaint if he had professional representation. I therefore do not consider it appropriate to make a costs award in these circumstances, and I do not intend asking Coversure to cover them.*

#### *Distress and inconvenience*

*One thing that has been clear to me throughout my consideration of Mr D's complaint is the significant impact Coversure's error has had on him. Being left without insurance cover, facing the prospect of losing a significant amount of money defending himself against a large company, and having to pay his own legal fees has caused him considerable stress, anxiety, and trauma.*

*I understand that the inherent uncertainty of litigation can be stressful in itself. But this was significantly exacerbated by Coversure's failure to put adequate cover in place. I can also see that he was misled by Coversure into initially believing that he*

*did have legal defence cover in place, which led to him initially taking a bullish approach with the property developer instead of considering whether to comply with the claimant's demands to remove the bollards from the outset.*

*When Coversure's error later came to light, he was also given assurances that they would take full liability and that it would all be sorted under their professional indemnity insurance. Instead, Mr D was offered a sum of £2,500 in full and final settlement of his complaint, which did not entail the broker taking liability like they said they would.*

*I have also taken into account the considerable amount of time that Mr D has put into bringing his complaint, including putting together and annotating hundreds of documents as part of his submissions. And overall, I'm satisfied that Coversure should compensate Mr D, so I intend awarding £2,000 for the distress and inconvenience caused by their mis-selling of the policy and handling of his claim/complaint. I appreciate this award is substantial, but I consider it to be fair, reasonable and proportionate in light of the distress Mr D has suffered.*

I invited further comments and evidence from both parties in response to my provisional findings. Mr D and his representative responded and put forwards further evidence and submissions. In summary:

- He does not consider that a £50,000 indemnity limit was a suitable recommendation and has pointed to other policies he would have taken out that offer an indemnity of £100,000.
- The removal of the bollards took place voluntarily before the settlement offer was submitted. He would have been in a strong position to negotiate a favourable settlement because he had removed one of the key obstacles to the property developer's willingness to negotiate. He therefore doesn't accept the suggestion that his ability to secure better terms is largely speculative, and has submitted further evidence relating to the merits of the claimant's legal claim in this regard.
- No reference has been made to other decisions made by the service that he has brought to my attention.

Coversure also responded with the following comments:

- It does not consider the 8% simple interest that has been proposed on top of the monetary award to be fair as it is unreasonably punitive, and a court would not likely award the same.
- The £2,000 compensation awarded for distress and inconvenience is also unduly punitive considering the broker will be covering the legal costs.

### **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.

Mr D and his representative have put forward considerable further submissions in response to my provisional decision, and I've read and considered everything they've sent in. But I don't intend to respond in similar detail. My provisional decision sets out in full my reasons for upholding the complaint, and those reasons still remain. So, I'll focus on what I consider to be the key points Mr D has raised in response. If I don't mention a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. Instead, it's just that I don't



feel the need to reference it in order to explain my decision. This isn't intended as a discourtesy – it's just a reflection of the informal nature of our service.

I also note that Mr D has referenced numerous final decisions made by this service which he feels are highly relevant to his complaint. However, our service does not make reference to previous cases decided by ombudsmen within final decisions. While we aim to be consistent, our service does not operate on a system of precedent like the courts. Each case is decided on its own individual merits – not based on what has been decided by ombudsmen in other cases. As such, I have based on my decision on what I consider to be fair and reasonable in all the circumstances of Mr D's individual case.

#### Indemnity limit

Mr D has submitted copies of policy documents and application forms that show he could have taken out a policy with legal defence cover with an indemnity limit of £100,000 or more. And I appreciate that the particular policies he has submitted do provide such a level of indemnity. However, as I set out in my provisional decision, I cannot see that he ever requested such a level of indemnity from Coversure, or that having at least £100,000 of cover formed one of his key requirements at the time. I understand that with hindsight, Mr D would have chosen to have this level of cover. But I've got to take into account what Mr D would have likely done at the time he renewed his policy with Coversure in 2019, i.e. *before* he knew of any potential legal action being brought against him.

Mr D was close to bringing a legal expenses claim in the past when he was having issues with the previous tenant of the neighbouring premises. But despite this, he had still only paid premiums for a level of cover that would afford an indemnity of £50,000. It therefore seems unlikely he would've chosen to pay additional premiums for an increased indemnity before knowing of any potential legal action being brought against him.

I accept that Mr D's cover was inadequate insofar as it did not cover legal defence costs. And while I agree he would have likely sought an alternative policy that did cover this, I've not seen enough persuasive evidence to suggest he would have specifically sought a higher indemnity at the time (without the benefit of hindsight of course). And as I've explained, the level of indemnity for which Mr D had paid premiums was for £50,000 worth of cover. I therefore do not consider it would be fair and reasonable to expect the broker to now have to cover more than Mr D had paid for, given I don't think a £50,000 level of indemnity would have been unsuitable.

#### Consequential losses

Mr D has submitted further documents relating to the legal claim brought against him by the property developer, as he feels strongly that the property developer did not need access over his land, and that he could have negotiated a better settlement.

I've looked at all the evidence Mr D has provided. However, it is not within the remit or expertise of this service to determine whether the property developer's legal claim had merit or not. We therefore look to the advice a policyholder received at the relevant time from their appointed legal professionals, which is why I have based my assumptions on both the opinion Mr D received from counsel, as well as that of his solicitor in relation to the settlement offer made by the claimant.

At the time the settlement offer was received, Mr D was advised by his solicitor that the claimant had a QC fighting their case and had a witness that was willing to testify under oath. Mr D also had a witness statement from a third party, but they were not willing to give evidence in court, which he was told had weakened his defence as a result. He was also warned that he could face potential liability in excess of £150,000 if the case went against him. So it is in this context that I have considered what action Mr D would have likely taken if

he had a legal defence policy in place with an indemnity of £50,000.

I appreciate that Mr D removed the bollards before the settlement offer was received from the claimant. He submits that having legal expenses insurance in place would have put him in a much better position to negotiate. Mr D has also submitted the witness statement he had in support of his case. However, it's clear from Mr D's solicitor's advice of 4 May 2021 that the claimant was not willing to give evidence in court, which his solicitor at the time said weakened his defence.

Mr D says the claimant did not need to win the case to develop their site and seems to suggest that pursuing any further legal action would have been unimportant to the property developer. But I don't think it can be said that the claimant would've simply abandoned the legal action if Mr D rejected the settlement offer. Indeed, the claimant still felt the matter important enough to pursue legal action against Mr D to establish the right of way – even after he had removed the obstructive bollards. And while I accept they were willing to negotiate, I've not seen any persuasive evidence to demonstrate that they would have conceded as easily as Mr D has suggested, particularly after they had already incurred costs of over £30,000 (which any claimant would have been keen to recover from the defendant).

So, while I've considered everything Mr D has said about what he would have done, I'm not persuaded that a litigant with such ample resources as the claimant (that had already incurred significant costs) would have necessarily felt pressured to settle, simply because Mr D had a legal expenses policy in place.

I understand Mr D and his representative may strongly be of the opinion that he would have achieved a better settlement. But I still consider this suggestion to be too speculative in nature to fairly and reasonably hold Coversure responsible for his consequential losses. There is nothing I've seen by way of independent or contemporaneous evidence that would support this assertion.

Even if Mr D *could* have secured a better settlement, it's still far too uncertain to say on what terms that settlement would have been. And with such ambiguity, any consequential losses would not have been foreseeable, and so it would not be possible to determine what Coversure could reasonably be held liable for.

As I've also set out previously in my provisional decision, Mr D would have also faced the prospects of his indemnity limit being exhausted long before the conclusion of his case if it did proceed to trial. So, taking this into account, along with the fact that Mr D was anxious to settle the matter as quickly as possible, I think it's more likely than not that he would have still chosen to accept the settlement terms offered by the claimant, rather than running the risk of paying significant costs. My conclusions therefore remain the same in that I do not consider it would be fair and reasonable to ask Coversure to compensate Mr D for his consequential losses.

### Compensation

Coversure submits that the £2,00 compensation I have awarded is too high. I acknowledge it is a substantial amount of compensation, but I do not consider it to be severe. Awards of compensation are not designed to be punitive on a firm or to act as a deterrent, but instead to recognise the severity of the impact a firm's wrongdoing has had on its customer.

The power to make such an award is provided for in DISP Rule 3.7.2 of the *Financial Conduct Authority Handbook*, which sets out that I can award *fair compensation* for distress or inconvenience experienced by a customer. I appreciate that Coversure will now be covering Mr D's legal fees. But that is what the broker should have done from the outset.

The compensation awarded is to further recognise the significant distress and anxiety caused to Mr D, which I have already set out in my provisional decision.

I consider £2,000 to be a fair and proportionate reflection of the impact Coversure's actions have had on Mr D, and see no reason to alter this in light of the broker's submissions.

### Interest

I appreciate that Coversure considers an award of 8% simple interest to be unduly punitive. However, it has long been the approach of this service to award 8% simple interest on top of money awards, which we consider to be an appropriate rate to reflect the cost of being deprived of money the complainant would've otherwise had, but for the firm's error. This takes into account various factors, including the typical cost of borrowing that a consumer or small business would have to pay, were they to borrow to cover the loss, for example

In this instance, if Coversure had put the correct cover in place for Mr D, he wouldn't have had to cover his legal costs himself as they would've been covered by the insurer. As a result, Mr D has been deprived of this money, so I consider it appropriate to award 8% simple interest per annum on any amount he has paid himself, from the point he has paid it (of which Coversure can request reasonable evidence) until the date of settlement.

For the avoidance of doubt, the "date of settlement" in this context refers to the date Coversure settle the claim in line with the direction set out in this final decision (as opposed to the date of settlement reached between Mr D and the claimant).

### **My final decision**

For the reasons given above, I uphold this complaint and direct Scots Consultants (London) Ltd trading as Coversure Insurance Services (Teddington) to:

- Pay Mr D's legal costs (including those of the claimant as part of the settlement agreement) up to £50,000.
- Pay 8% simple interest per annum on those costs from the date Mr D paid them until the date of settlement.
- Pay Mr D £2,000 in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 November 2022.

Jack Ferris  
**Ombudsman**