

The complaint

Miss N's complaint is about Great Lakes Insurance SE's handling of a claim under the legal expenses section of her home insurance policy.

Great Lakes is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Great Lakes has accepted it is accountable for the actions of the agent, in my decision, any reference to Great Lakes includes the actions of the agents.

What happened

In late 2018, Miss N made a claim under her policy with Great Lakes for cover to take professional negligence proceedings against a solicitor and barrister who had acted for her in an employment tribunal claim in 2016.

Great Lakes accepted the claim and agreed to fund Miss N's own chosen solicitors to pursue the matter. In mid-2020, the solicitors obtained a barrister's opinion on the claims Miss N wanted to make and the barrister advised that the prospects of success were less than 51%. As it is a pre-requisite of cover under the policy that any claim has reasonable prospects of success, which it said would be more than 51% chance, Great Lakes said it could not continue to fund the case. I understand the solicitors continued to correspond but Great Lakes maintained its position. It confirmed again that there was no longer any cover under the policy in September 2021.

In November 2021, Miss N contacted Great Lakes to say she had new information that supported her claim. Great Lakes told her that it would consider any further barrister's opinion that was supportive of her claim but she would need to obtain this at her own expense.

In January 2022 Miss N told Great Lakes she had obtained advice from another barrister who had told her the claim had a 59% chance of success. Great Lakes said it would need this in writing as well as confirmation the claim was proportionate to pursue. Great Lakes said that if it then led to reinstatement of her cover, it would reimburse the cost of the barrister's written opinion.

Miss N did not provide a written barrister's opinion. However, Miss N contacted Great Lakes again in April 2022, to say she had obtained a pension report, which helped support her claim, and that she had also issued protective proceedings. Great Lakes confirmed again it needed a written opinion on the prospects of the claim.

As far as I can see, there was no other communication until December 2022, when Miss N provided another update on her claim (that it had come to light that the previous solicitors had miscalculated her loss of pension in the tribunal claim) and asked again for cover to continue her claim.

Great Lakes did not respond to this until June 2023, despite Miss N chasing. Great Lakes accept this was not reasonable and offered £500 compensation for the delay. However, it

maintained its position on the claim, as a supportive written barrister's opinion had not been provided.

Miss N is very unhappy with this. She says her barrister told her she had a 59% chance of success but would not put this in writing. The barrister contacted her and confirmed she'd be happy to continue with the case, even after her solicitors came off the record as acting for her as they were no longer being paid by Great Lakes, which confirms she thinks her claim had a good chance. Due to the long delays by Great Lakes, Miss N says she had to withdraw her court case and she is now time-barred. This was extremely distressing after such a long-running dispute and she has lost the chance to recover around £350,000 in damages and she has to pay legal costs and is being pursued for around another £27,000 by the solicitors.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that Great Lakes was entitled to withdraw cover in 2021 and as no other contrary legal opinion, in support of Miss N's claim, had been provided, it was not liable for any of the costs incurred since then. The Investigator agreed there had been unnecessary delay in answering Miss N's correspondence from December 2022 to June 2023. He considered the £500 compensation already offered for this to be reasonable.

The Investigator did not consider Great Lakes's delay in responding to Miss N meant it was responsible for the fact that Miss N was not able to proceed with her legal claim and is now time barred, as its position would have likely been the same as before, *i.e.* it would still have needed a written legal opinion to be able to reconsider the claim.

Miss N does not accept the Investigator's assessment, so the matter has been passed to me. Miss N says she has spoken to four different barristers who have all said they would never give a percentage chance of success to clients, so she questions how was she expected to provide a figure? Miss N says the evidence that the barrister was going to continue with her case is enough to say the claim had prospects of success.

Miss n also says that if Great Lakes had responded to her in time the claim would not have been withdrawn. The withdrawal of her claim caused her great trauma, stress and enormous financial loss, as her claim was worth over £500,000. She does not accept the £500 compensation offered, which she says is an insult.

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.

All legal expenses insurance policies I am aware of require any legal case to have a reasonable chance of succeeding in court in order to be covered under the policy. We would consider this to mean that it would need to be more likely than not (*i.e.* a 51% or more chance) of the legal case succeeding, throughout the life of the case. This is not unfair or unreasonable, as an legal expenses insurer cannot reasonably be expected to fund expensive litigation the prospects of success of which are speculative or uncertain.

Miss D's policy reflects this as follows:

"The insurance does not cover ...

the pursuit, continued pursuit or defence of any claim if we consider it is unlikely a reasonable settlement will be obtained or where the likely settlement amount is disproportionate compared with the time and expense incurred..."

We may require (at our discretion) you at your expense to obtain the opinion of an expert or counsel on the merits of a claim or legal proceedings. If we subsequently agree to accept the claim, the costs of such opinion will be covered.

If after receiving a claim or during the course of a claim we decide that:

- 1. your prospects of success are insufficient;*
- 2. would be better for you to take a different course of action*
- 3. we cannot agree to the claim.*

We will write to you giving our reason and we will not then be bound to pay any further professional fees for this claim. “

Where an insurer has rejected a claim for lack of prospects, it isn't for us to evaluate the merits of the legal case. Instead, we look at whether the insurer has considered the insurance claim fairly.

Miss N's solicitors, who had conduct of the case for some time, obtained a barrister's opinion that said her claim was not likely to succeed. I have seen no convincing evidence that the advice should not reasonably have been relied on, for example there is no evidence that the opinion was patently flawed. I therefore consider Great Lakes was entitled to withdraw cover when it did, based on this advice.

Miss N then contacted Great Lakes sometime later to say she had been advised by another barrister that her claim had a reasonable chance of success and she also subsequently got some further information about her loss of pension that she says supported her claim.

Great Lakes told her it would reconsider cover, if she provided this in writing. Miss N says the barrister told her she could not put a percentage figure in writing. Miss N says that four barristers have told her they would never give a client a percentage chance of success. Although I note Miss N told Great Lakes the barrister had told her 59%. If Miss N's barrister did not want to put a figure in writing, she could still have provided a written opinion on the case and state whether it was more likely than not that Miss N would succeed. This is a matter of routine for many barristers and I do not think it was an unreasonable requirement from Great Lakes.

I note the barrister offered to continue with the case but that does not mean that Miss N's claim meets the criteria for funding under the policy. Even a case that has less than 51% chance of success has some chance. Having considered the matter carefully, I am satisfied that Great Lakes was entitled to withdraw cover and I am not persuaded that it acted unreasonably in not reinstating cover without a written legal opinion to counter the barrister's opinion that it had already paid for.

I do note the delays in responding to Miss N's communication in December 2022. However, I agree with the Investigator that it is unlikely that Miss N's position would have been any different, even if Great Lakes had responded sooner than it did. I say this because I do not think it was obliged to do anything with the information Miss N provided in December 2022. It was not in a position to consider if the information Miss N provided about the pension calculations meant there were prospects of success, as Great lakes is an insurer and therefore not qualified to assess the legal claim itself; it would still have needed a legal opinion about that. So, it seems to me likely Great Lakes would have maintained its position that Miss N would need to provide a written barrister's opinion in support of her claim.

Given this, I also do not consider that there is any convincing evidence to support that the claim would have been resolved successfully, if it were not for the delays on Great Lakes's part between December 2022 and June 2023.

I can see this has been a long and stressful saga for Miss N. However, Great Lakes is not responsible for any costs incurred after it stated it was withdrawing cover and I am not persuaded it is responsible for Miss N's lost chance to pursue the case to court. I do acknowledge the delay in responding to Miss N will have caused her additional and avoidable distress. I agree that the £500 compensation already offered is reasonable for this. I do not therefore intend to ask it to do anything further.

My final decision

I do not uphold this complaint. Great Lakes Insurance SE has already made an offer to pay £500 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Great Lakes Insurance SE should pay Miss N £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 7 April 2025.

Harriet McCarthy
Ombudsman