Final Decision

31 July 2024

Introduction

Mrs A instructed St Helens Law Ltd (hereafter referred to as “the firm”) to act for her in a claim against an NHS Trust in XXXX. The firm’s work was funded by a conditional fee agreement (CFA) also known as a “no win no fee” basis.

The claim settled in XXXX with Mrs A being awarded £50,000 plus legal fees and disbursements following a joint settlement meeting.

From this fee, £12,500 has deducted for the firm’s success fee and £13,980 has been deducted for an ATE (after the event) insurance premium. Mrs A was left with £23,520.

The following complaint points have been accepted by this office for investigation:

1. The firm told Mrs A that she could use her insurance policy but did not do so;

2. Mrs A is unhappy with the after the event policy taken out by the firm;

3. The firm’s costs were excessive and were not explained adequately; and

4. The firm’s complaint handling was poor.

My colleague’s Case Decision, dated 10 January 2024, concluded that the firm’s service was of a reasonable standard in respect of complaint points one and three but unreasonable for complaint points two and four. My colleague put forward a remedy of £12,490.

Mrs A accepted the Case Decision in her email of 17 January 2024. The firm replied to the Case Decision in emails of 24 and 29 January 2024 and 1 February 2024.

I issued a Provisional Decision on 16 April 2024 which concluded the service to be reasonable for complaint points one, two and three but unreasonable for complaint point four. I recommended a remedy of £750. This was accepted by the firm but not by Mrs A. Mrs A explained her reasons for not accepting the Decision in her email of 20 May 2024.

Following the comments from Mrs A which stressed that the firm had spoken with her in an initial meeting about use of a home insurance policy, I reviewed the evidence again and changed my view, issuing a second Provisional Decision on 27 June 2024. In this decision I upheld complaints one, two and four. I put forward a remedy which included that the firm's legal fees be refunded, the cost of the ATE policy be reimbursed and £500 compensation be provided. This came to a total remedy of £26,980.

Mrs A has accepted my second Provisional Decision in an email of 28 June 2024 but the firm haven't, and explained their reasons for this in their letter of 11 July 2024. The firm's objections mainly relate to complaint point one and four, and I will address their points within my decision below. If any comment has not been included or responded do, this doesn't mean it hasn't been considered.

Conclusion

1. **The firm told Mrs A that she could use her insurance policy but did not do so.**

1.1. In my Provisional Decision of 27 June 2024 I concluded the firms service had been unreasonable because the use of an insurance policy had been discussed but there was a lack of evidence to show the firm explained this would be financially advantageous to Mrs A.

1.2. Mrs A accepts this conclusion, but the firm do not.

1.3. The firm have asked why I haven't shared the comments Mrs A made that led me to change my conclusion on this complaint point. It is not this office's process to share the parties' comments to the other party, as these comments are for the Ombudsman. I did however summarise at paragraph 1.2 and 1.3 what the basis of Mrs A comments were.

1.4. I will not repeat the information from my provisional decision, but will recap the main points.

1.5. The firm's position to this office has been that Mrs A decided in the initial meeting not to use the insurance policy she had to fund her claim, and she didn't provide policy details to them when their engagement and CFA documents asked for this if she wanted to use it. I agree Mrs A didn't provide her policy details until the end of the matter.

1.6. Mrs A has drawn attention to the fact the policy was discussed at the initial meeting with the firm, which was stated to have taken place on XXXX. The firm's attendance note of this date states there was a meeting and funding options were discussed but no further detail is provided.

1.7. In the firm's letter of XXXX the fee earner recalled that in that meeting the use of a policy was discussed but they had made clear the drawbacks of doing so were that a panel firm would have to be used instead of this firm and there could be delays while the insurer approved stages of work.

1.8. I concluded the firms service was unreasonable in my Provisional Decision because it was inferred the firm were aware of a policy (hence the discussion about this as a funding option) but failed to point out that using it would mean costs of the claim would be covered.

1.9. The firm have objected to my conclusion and I will now address their points.

1.10. The firm now say the initial meeting didn't take place on XXXX. The attendance note is dated XXXX, and doesn't detail that the meeting took place at an earlier date. The firm state the engagement letter of XXXX refers to a meeting the day before.

1.11. I had written my Provisional Decision on the basis that the meeting took place before the engagement information was provided so this does not alter my decision. The point made by the firm, serves to add to my view that where discussion had taken place about possible methods of funding, the firm's letter should have reflected this information. It also serves to highlight that the firm's attendance note, which lacked sufficient detail in the first instance, is also incorrectly dated.

1.12. The firm have challenged that they weren't given any specific policy details in the first meeting and they only discussed policy cover generally in the meeting. The fact the firm discussed the use of a policy means they were likely aware this was a possibility of funding. Where a firm is aware of this possibility, it is my view that it would be expected for the firm to encourage its use given the financial advantage it gives to the client. There is no evidence to support the firm made this clear, which is a significant failure when considering the regulator's code of conduct about acting in the client's best interests.

1.13. I also note that the firm, by only pointing out disadvantages of using the policy, had led Mrs A to a decision whereby she shouldn't use it when there was an important financial reason why she should. By the firm highlighting the disadvantages of the policy, it is unsurprising that she did not provide the policy details to them.

1.14. This is also problematic because lawyers are expected to act with independence and not act if there is an own interest conflict or a significant risk of such a conflict. In this case, it seems that there were competing interests, with the firm's own interests in being instructed being at odds with the client's interests in receiving the benefit of insurance coverage and in instructing panel solicitors. It seems to me the firm placed its own interests of becoming instructed to deal with the claim above the best interests of Mrs A.

1.15. Another of the firm's objections is that Mrs A can't claim she thought the policy was being used when she received CFA and ATE information from the firm.

1.16. It is possible a lay person wouldn't know that policy details would have to be given beforehand and agreement by the policy provider given before the firm's work could be "covered". The fact Mrs A contacted her policy provider after the firm advised of costs reinforces this. She also emailed the firm on XXXX to show them the provider's response, saying "I think we will be OK", further supporting the view she wasn't aware of how the policy cover worked. She clearly thought it could be used retrospectively.

1.17. The firm add that they shouldn't be held responsible for Mrs A not knowing how the policy worked or not having read the policy. As it was their duty to discuss these points with her, I disagree.

1.18. In addition, Mrs A has already commented she didn't get much time to consider the documents before having to sign them and was reliant on the firm to guide her and was told to trust them. I can't ignore that the circumstances of this case include that Mrs A was undergoing oncology treatment at this time, which would mean she was more likely to rely on the firm than check things for herself. Had the attendance note been sufficiently detailed I could consider the information the firm provided to see if it was clearly explained how each funding option worked. As it stands the firm have previously stated to this office Mrs A decided in the initial meeting not to use the policy she had, so she wouldn't have asked or been informed of how it was to be used.

1.19. The firm have raised that there is a lack of evidence the policy was in place as of XXXX which is when it would have needed to be in place for cover to be granted.

1.20. I have asked Mrs A for evidence the policy was in place in XXXX or a copy of the policy. She has provided an email from her insurer as follows to confirm her policy did have legal expenses cover in XXXX:

1.21. The above reaffirms my previous decision, so I haven't issued a further provisional decision based on this further evidence as it simply reinforces my conclusions.

1.22. In addition to this, it is my understanding that a legal expenses policy would be approved for a claim where there was merit and value to pursuing the claim. I consider both of these criteria would have been satisfied as the firm used a CFA which relies on the same criteria having been met. If the claim lacked merit or there was no financial value to pursuing it, the CFA wouldn't have been a valid option for the firm to offer. The fact it was means both criteria were met, and so a legal expenses policy would also have been able to be used.

1.23. The firm also challenge that in the initial meeting the possibility of pre-existing cover was discussed, but Mrs A never made the firm aware of any particular policy being in place. If the firm had talked Mrs A out of using

this, then she wouldn't have provided these details despite the follow up engagement letter. If she also didn't understand that the policy would need to be applied at the outset as well, she wouldn't have understood the need to provide it at the relevant juncture.

1.24. The firm have further added that they would have encouraged use of an existing policy if made aware of it, as it would cover their costs without any risk. However, the firm stated in their XXXX correspondence that they recalled telling Mrs A the disadvantage of using such a policy was that she would have to use a panel firm and this firm would be precluded from acting.

1.25. I therefore maintain the points made in my Provisional Decision that the firm failed to make Mrs A aware of the main advantage to using existing policy cover being that she wouldn't have to pay any costs. This was not in her best interests, which is contrary to the regulator's expectations.

1.26. In addition, it seems that the firm acted despite there being an own interest conflict (or at least a significant risk of such a conflict), which is also contrary to the regulator's expectations. Again, the firm failed to make Mrs A aware of the main advantage to using existing policy cover being that she wouldn't have to pay any costs.

1.27. There is a lack of evidence of any properly informed decision having been had in the initial meeting, which is expected by way of a sufficiently detailed attendance note or follow up correspondence.

1.28. I am not persuaded by the firm's comments and therefore endorse the conclusion in my Provisional Decision of 27 June 2024.

2. Mrs A is unhappy with the after the event policy taken out by the firm.

2.1. In my Provisional Decision of 27 June 2024 I concluded that based on the review of complaint point one, it wasn't suitable to source an ATE policy at all, as the use of an existing insurance policy would mean no such cost needed to be incurred.

2.2. Mrs A accepted this conclusion but the firm didn't, based on their reasons for rejecting my conclusion of complaint point one. I have already

addressed these points above in section one so will not repeat my responses.

2.3. I am not persuaded by the firm's objections and so maintain the conclusion that the firm's service was unreasonable.

3. The firm's costs were excessive and were not explained adequately.

3.1. In my Provisional Decision of 27 June 2024 I concluded the firm's service had been reasonable because the information was clearly presented at the outset of the retainer as to a success fee being charged and why the firm had set it to 100% then capped it at 25%.

3.2. Neither party has objected to this conclusion.

3.3. The firm have evidenced there was a risk-based approach and that they explained to Mrs A how they came to the 100% success fee in information provided with their CFA.

3.4. I am therefore satisfied the firm's service was reasonable in setting the success fee to be 100% of their basic charges in the first place, as they have evidence to show the risks they identified for this specific case, which justifies that it wasn't excessive. I am also satisfied the firm have been reasonable in communicating the costs involved to Mrs A before they obtained the policy, so she could make an informed decision.

4. The firm's complaint handling was poor.

4.1. In my Provisional Decision of 27 June 2024, I concluded the firm's service was unreasonable because they protracted the matter by referring complaints to the ATE insurer and the insurer's regulator.

4.2. Mrs A has not objected to this conclusion, but the firm say Mrs A implicitly agreed to the firm's course of action which was to challenge the premium. The firm had previously accepted the same conclusion in an earlier Provisional Decision of 16 April.

4.3. Mrs A expressed her dissatisfaction to the firm on XXXX by email, stating that she was shocked beyond belief to learn how much she would actually receive from her claim after deductions. The firm responded on XXXX to say they would take the matter of the cost of the ATE premium up with the

insurer’s regulator but wanted to know if they could transfer the settlement funds over in the meantime.

4.4. The firm now challenge that Mrs A accepted that the fee earner was “hopefully going to look into this for us". The firm say Mrs A was referring to the firm challenging the extent of the premium, which they did. The firm say there would have been no point in them dealing with part of the complaint whilst the complaint to the insurer’s regulator was ongoing, as the two were intrinsically tied together. The firm say this shows that Mrs A impliedly agreed to the time-consuming course of action they proposed.

4.5. Whilst I understand Mrs A was willing for the firm to look into challenging the costs, she did tell the firm on XXXX that she didn’t consider her complaint was about the insurance company. That is when the firm started to address the use of an ATE insurer over the insurance policy Mrs A had believed she could use.

4.6. The firm have commented that they haven’t seen a letter of XXXX. It was an email, as follows, and is in the evidence bundle sent to the firm:

[redacted]

4.7. A formal complaint was made to the firm on XXXX, and the firm responded on XXXX asking for copies of documents and again on XXXX asking for a copy of the original complaint. This was provided but on XXXX the firm advised they couldn’t open the attachment and once received, would respond in five working days.

4.8. The firm later confirmed on XXXX their response would be given in five working days, but on XXXX emailed Mrs A and said there was a lot of information to review and that they couldn’t find a copy of her previous complaint from 16 months before. The firm offered a discussion at their office if this was acceptable to Mrs A. The firm chased for a response on XXXX and XXXX, and were told by Mrs A on XXXX she was back under oncology care and also had two young children to look after, so couldn’t reply quickly.

4.9. Mrs A's email clearly stresses she wanted a written response to her complaint, and was unable to meet as suggested due to her health and the emotional impact the entire matter had taken on her.

4.10. The firm's response of XXXX responded to the issues of how the claim was funded and the need for an ATE insurance policy.

4.11. The firm weren't able to locate information they needed in XXXX to be able to respond to the complaint, after having said they would reply in five working days. This was unreasonable. The firm then chased Mrs A for information on successive days, and ignored the fact she wanted a written response not a meeting, which they offered. This was also unreasonable.

4.12. Whilst I accept Mrs A agreed for the firm to challenge the matter initially, I can't ignore that she told the firm her issue wasn't really with the ATE insurer and the firm continued to follow this course of action, or that from the date of the first complaint the firm took 15 months to respond.

4.13. I am not persuaded by the firm's objections and maintain the firm's service was unreasonable.

Remedy

I am directing the remedy as set out in my Provisional Decision of 27 June 2024, and as a copy of that decision is provided with this one, I will not repeat the details. Ultimately, no reasonable person would incur costs unnecessarily if they had the option not to.

I will instead summarise that to address the impact of complaint point one, the firm should refund their fees of £12,500 and reimburse the ATE policy which cost £13,980. This is because were it not for their unreasonable service, Mrs A would have used her existing policy cover and not paid any fees or premiums.

There should also be compensation for the emotional impact of stress this service failure has caused Mrs A from XXXX onwards, during which time she continued to receive oncology treatment. This in itself would have been gruelling, and to have endured unnecessary stress in addition to this, in my view, warrants a significant award.

To address the impact of complaint point four, the firm should pay compensation as their complaint handling exacerbated an already unreasonable service and elongated the matter.

The total compensation is to be £500, which falls within this office's significant award category. This makes the total the firm need to pay Mrs A £26,980 (legal fees plus ATE premium plus compensation).

Final Decision

Therefore, my final decision is that there has been unreasonable service that requires a remedy and direct that the firm pay Mrs A £26,980.

Provisional Decision

27 June 2024

Introduction

Mrs A instructed St Helens Law Ltd (hereafter referred to as "the firm") to act for her in a claim against an NHS Trust in XXXX. The firm's work was funded by a conditional fee agreement (CFA) also known as a "no win no fee" basis.

The claim settled in XXXX with Mrs A being awarded £50,000 plus legal fees and disbursements following a joint settlement meeting.

From this fee, £12,500 has deducted for the firm's success fee and £13,980 has been deducted for an ATE (after the event) insurance premium. Mrs A was left with £23,520.

The following complaint points have been accepted by this office for investigation:

1. **The firm told Mrs A that she could use her insurance policy but did not do so;**
2. **Mrs A is unhappy with the after the event policy taken out by the firm;**
3. **The firm's costs were excessive and were not explained adequately; and**
4. **The firm's complaint handling was poor.**

My colleague's Case Decision, dated 10 January 2024, concluded that the firm's service was of a reasonable standard in respect of complaint points one and three but unreasonable for complaint points two and four. My colleague put forward a remedy of £12,490.

Mrs A accepted the Case Decision in her email of 17 January 2024. The firm replied to the Case Decision in emails of 24 and 29 January 2024 and 1 February 2024.

I issued a Provisional Decision on 16 April 2024 which concluded the service to be reasonable for complaint points one, two and three but unreasonable for complaint

point four. I recommended a remedy of £750. This was accepted by the firm in an email of 29 April but not by Mrs A. Mrs A explained her reasons for not accepting the Decision in her email of 20 May 2024.

I have since reviewed the comments raised in response to the decision of 16 April 2024 and my findings and the remedy I intend to direct is now significantly different.

My role as an ombudsman is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

When determining what is 'fair and reasonable', I am expected to take into account (but I am not bound by) what decision a court might make, relevant regulatory rules and what I consider to be good practice.

I confirm that I have taken such factors into account, and the decision that I set out below, is what, in my opinion, I consider to be fair and reasonable in all the circumstances of this case.

Conclusion

1. **The firm told Mrs A that she could use her insurance policy but did not do so.**

1.1. In my Provisional Decision of 16 April, I concluded the firm's service had been reasonable because despite requests to provide any existing insurance policy details to fund her claim, this wasn't provided to the firm until after the claim settled.

1.2. The firm accepted this conclusion, but Mrs A did not. Mrs A stressed how the existing policy had been discussed at the initial meeting and she was under the impression it was being used. She also raised at this time she was asked by the firm to trust them, and she did so.

1.3. Mrs A highlighted that it is difficult for her to prove the firm were aware of the policy or that she gave the details of it, and it is for the firm to have such records available.

1.4. The firm say a policy was discussed in an initial meeting, but Mrs A decided to not use this due to the issues the firm outlined.

1.5. The attendance note of the initial meeting which took place at Mrs A's home on XXXX simply states the firm attended Mrs A to take instructions, and advise on procedure, funding and evidence. No further detail is provided.

1.6. After Mrs A's claim settled by agreement, she sent the firm details of her policy cover by email on XXXX. She forwarded her policy details and an email from the policy holder which acknowledged she had a policy in place at the relevant time which could be used to assist with a medical negligence claim.

1.7. The firm's letter of the same date stated this couldn't be used to fund her claim because they would have had to contact her insurer at the outset. The firm explained they recalled discussing methods of funding with Mrs A at an initial meeting and that she had mentioned a home contents cover. The firm also state in this letter they were unaware of the existence of the policy. The two statements can't both be true.

1.8. In another letter to Mrs A dated XXXX the firm explained that when they attended Mrs A at her home, they did discuss funding options and the benefits and disadvantages of these. The letter states:

"I explained to you the advantages and disadvantages of each way going forward. One was to use your contents cover and the other was to use [ATE insurer].

The difficulty that you faced was that had you used you contents insurers I would probably have been precluded from acting for you as although you have freedom of choice of lawyers that only applies post issue of Court proceedings. A further downside of using [ATE insurer] was the success fee and the deduction of premium.

The other issue was that a legal expenses provider in a content policy would expect to be asked at each turn for consent to proceed. A lot of time is wasted on these cases checking and reporting in. That was a further factor against using your insurance."

1.9. The above extract is concerning, because I consider there would have to be a significantly disadvantageous reason presented as to why a client shouldn't use an existing legal expenses insurance (LEI) policy they have which would not result in any costs to them in pursuing a claim.

1.10. It is expected by this office and the firm's regulator for the firm to act fairly and act in the best interests of their client at all times. To say that reasons not to use an LEI policy include not being able to use this specific firm and potential delay to the claim are in my view, not good reasons not to use an LEI policy. The most obvious advantage to using an existing LEI policy it is to not incur any costs, and it is my view that any reasonable person would opt not to incur costs if they could be avoided. I haven't seen any evidence that the firm explained this to Mrs A in XXXX.

1.11. Furthermore, there is no evidence of a properly informed decision having been made by Mrs A. I would expect to see, where a firm has given reasonable advice, for there to be a record of a client being made fully aware of financial and other implications of not using their existing LEI policy. I would expect a firm to fully document this type of advice and discussion, for its own protection as much as anything else. The attendance note I mentioned at 1.3 is not sufficient in this regard.

1.12. I haven't seen any evidence that shows the firm made Mrs A aware that had she used her existing LEI policy, no costs would be incurred for legal fees, success fees or other insurance premiums. Had the firm been acting in Mrs A's best interests, knowing this policy existed, they ought to have encouraged its use because to not do so would financially disadvantage her.

1.13. I have considered the fact that the firm sent Mrs A engagement information on XXXX which included reference to her checking if she had any existing insurance and placing the onus on Mrs A to contact them if she wanted to use such a policy to fund the claim.

1.14. The letters do not reflect that Mrs A had discussed this with the firm or that they had told her there were disadvantages to using it, without explaining that there was a financial advantage to doing so. I therefore consider it is misleading for the firm to now seek to rely on this correspondence as reasons the client ought to have raised the point and insisted to use the existing LEI policy.

1.15. The evidence shows the firm acknowledged after the retainer ended that funding options were discussed, and an existing policy was one of them. The firm's correspondence infers they accept she could have used this policy. If they didn't think it was possible to use the policy, they wouldn't

have gone on to explain what the disadvantages of using it were. In any event the disadvantages they described were not justified.

1.16. I haven't seen any evidence which shows the firm advised in a reasonable manner to use this policy, despite their being great financial advantage to Mrs A in doing so, and therefore consider the firm's service has been unreasonable in this regard. Ultimately, the firm were aware of the policy but failed to utilise this or explain why it should be used

2. Mrs A is unhappy with the after the event policy taken out by the firm.

2.1. In my Provisional Decision of 16 April, I concluded the firm's service had been reasonable because there I didn't find anything obviously unsuitable about the policy that was sought.

2.2. The firm accepted this conclusion, but Mrs A did not. Mrs A stressed that during this time she gave her full trust to the firm, as she was undergoing cancer treatment and had to be isolated due to the ongoing treatment during the covid pandemic. She says she wasn't given ample time to read through all the documentation and she placed trust in the firm to act in her best interests. She also recalls being told the case wasn't worth more than £100,000.

2.3. This was a relevant point because Mrs A's view that this was an unsuitable policy was based on the fact the premiums of the policy the firm sourced for her were for a claim worth over £100,000.

2.4. For clarity, the ATE premium charged was £13,440 which represented a stage A premium (before proceedings were issued) of £3,000 plus the stage B premium (after proceedings were issued) of £9,000 plus interest of 12%.

2.5. Based on my views set out under complaint point one, between paragraphs 1.3 and 1.13 I conclude that the ATE was unsuitable because it wasn't necessary to use.

2.6. An email of XXXX from the existing LEI cover provider to Mrs A confirmed she had LEI cover on her policy and it could be used to pursue a medical negligence claim. Had this been used, no ATE policy would have been required.

2.7. Accordingly, I find the firm's service to be unreasonable in this regard.

3. The firm's costs were excessive and were not explained adequately.

3.1. In my Provisional Decision of 16 April, I concluded the firm's service had been reasonable because the information was clearly presented at the outset of the retainer as to a success fee being charged and why the firm had set it to 100% then capped it at 25%.

3.2. The firm accepted this conclusion, and Mrs A didn't raise any comment in response.

3.3. As this matter was funded by a CFA and only a success fee was charged, I am seeking to determine whether the basis of the charges was both reasonable and properly explained to Mrs A. Both elements must be fulfilled for the information to be considered reasonable.

3.4. As per the firm's email of XXXX the firm's success fee was £12,500 which represented 25% of the total settlement amount of £50,000. This is in line with the information Mrs A was provided the firm's engagement letter of XXXX, where they set out the following information about their charges:

> ***2a. Conditional Fee Agreement & Adverse Costs Insurance***
> *Our firm will be acting for you under a Conditional Fee Agreement (essentially a No Win, No Fee agreement), so that if your claim is unsuccessful, you will not liable for this firm's costs. If you win, we are entitled to take a deduction from your damages which can never be more than 25% of any damages awarded to you.*

3.5. Mrs A signed a CFA which set out within schedule 1 that the firm's success fee was set at 100% of their basic charges and the maximum limit of 25% would be charged of that success fee. The information the firm provided included that the success fee of 100% reflected the following:

(a) the fact that if you lose we will not earn anything;
(b) our assessment of the risks of your case;
(c) any other appropriate matters;
(d) the fact that if you win we will not be paid our basic charges until the end of the claim;
(e) our arrangements with you about paying expenses and disbursements.
(f) the arrangements about payment of our costs if your opponent makes a Part 36 offer or payment which you reject on our advice and your claim for damages goes ahead to trial where you recover damages that are less that that offer or payment.

3.6. When asked to justify why the success fee was set at 100% of their basic charge, the firm have replied to this office that:

Whilst there was a very good chance of breach of duty being established, causation was likely to be strongly disputed. We were aware that a number of medical reports would be required (at great expense) and a lot of work done to establish causation which was disputed all the way up to the joint settlement meeting which was held just one month ([XXXX]) prior to the 3 day trial which was listed for [XXXX].

3.7. The firm's explanation is supported by a CFA risk assessment document for Mrs A's case where they had identified a number of risks. The risks identified were:

- Needing to obtain and review medical records
- Inherent risks of litigation
- Large value of claim
- Risk of failing to beat a part 36 offer
- Withdrawal of instructions
- Problems arising after exchange of LOD or statements of expert evidence not previously aware of
- Probability of causation arguments

3.8. On the basis of the above risks being applicable, the firm set their success fee at 100% and I can't say this was obviously wrong given the number of risks they identified for Mrs A's case. It is my view that due consideration was given and is supported by the firm's CFA risk assessment document.

3.9. My next consideration is whether it was properly explained to Mrs A how the firm came to their 100% success fee. In *Herbert v HH Law* (2019) it was found that the client had not approved the success fee, because "approval" was not satisfied by mere consent to the type or amount of costs to be incurred; it had to be "informed consent". I shall employ the

same standard in my analysis of whether the firm's service was reasonable in properly explaining the success fee to Mrs A.

3.10. The firm say a copy of the risk assessment is within Schedule One of the CFA. I have looked at Schedule One and there is no reference to an accompanying risk assessment. Schedule One outlined that the firm set the success fee at 100% of their basic charges, to be capped at 25%. The firm justified setting it to 100% based on the following:

Schedule 1

Success fee

The success fee is set at [100] % of our basic charges where the claim concludes at trial; or [100]% where the claim concludes before a trial has commenced.

The success fee percentage reflects the following:

(a) the fact that if you lose we will not earn anything;
(b) our assessment of the risks of your case;
(c) any other appropriate matters;
(d) the fact that if you win we will not be paid our basic charges until the end of the claim;
(e) our arrangements with you about paying expenses and disbursements.
(f) the arrangements about payment of our costs if your opponent makes a Part 36 offer or payment which you reject on our advice and your claim for damages goes ahead to trial where you recover damages that are less that that offer or payment.

3.11. I consider the above is evidence that the firm went beyond merely stating the type of charge (success fee) and amount (100%) by explaining in bullet point form within Schedule One how they had come to the percentage they did.

3.12. I am therefore satisfied the firm's service was reasonable in setting the success fee to be 100% of their basic charges in the first place, as they have evidence to show the risks they identified for this specific case, which justifies that it wasn't excessive. I am also satisfied the firm have been reasonable in communicating the costs involved to Mrs A before they obtained the policy, so she could make an informed decision.

4. The firm's complaint handling was poor.

4.1. In my Provisional Decision of 16 April, I concluded the firm's service had been unreasonable because despite requests to provide any existing insurance policy details to fund her claim, this wasn't provided to the firm until after the claim settled.

4.2. The firm accepted this conclusion, and Mrs A didn't raise any comment in response.

4.3. Mrs A expressed her dissatisfaction to the firm on XXXX by email, stating that she was shocked beyond belief to learn how much she would actually receive from her claim after deductions. The firm responded on XXXX to say they would take the matter up the cost of the ATE premium with the FOS but wanted to know if they could transfer the settlement funds over in the meantime.

4.4. Mrs A responded on the same date, confirming the funds could be transferred but she didn't want this impacting the complaint. This shows she still expected a complaint response.

4.5. Mrs A chased the firm for a response to the complaint on XXXX indicating no update had been given since she raised her complaint.

4.6. The firm responded on XXXX and explained a complaint could only be taken to the FOS once they had exhausted the internal complaints procedure with the insurer, and would ask the insurer if this was the case.

4.7. The firm then pursued a complaint through the FOS on Mrs A's behalf, updating her on XXXX that it would take some time and they would keep her posted, which they did on XXXX and XXXX.

4.8. On XXXX Mrs A clarified to the firm she didn't consider her complaint was about the insurance company, and that is when the firm started to address the use of an ATE insurer over the insurance policy Mrs A had believed she could use.

4.9. A formal complaint was made to the firm on XXXX, and the firm responded on XXXX asking for copies of documents and again on XXXX asking for a copy of the original complaint. This was provided but on XXXX the firm advised they couldn't open the attachment and once received, would respond in five working days.

4.10. The firm later confirmed on XXXX their response would be given in five working days, but on XXXX emailed Mrs A and said there was a lot of information to review and that they couldn't find a copy of her previous complaint from 16 months before. The firm offered a discussion at their

office if this was acceptable to Mrs A. The firm chased for a response on XXXX and XXXX and were told by Mrs A on XXXX she was back under oncology care and also had two young children to look after, so couldn't reply quickly.

4.11. Mrs A's email clearly stresses she wanted a written response to her complaint, and was unable to meet as suggested due to her health and the emotional impact the entire matter had taken on her.

4.12. The firm's response of XXXX responded to the issues of how the claim was funded and the need for an ATE insurance policy.

4.13. It is my view that the firm unnecessarily protracted the complaints procedure by making complaints on Mrs A's behalf to the ATE insurer and the FOS. This in turn led to the firm's complaint response taking 15 months, which was unreasonable. I have set out my view on impact and remedy at the end of my decision.

Remedy

I have found the firm's service to be unreasonable in regard to complaint points one, two and four.

Whilst I found the firm's service to be reasonable in respect of complaint three, the impact of complaint one essentially overrides this in respect of the remedy I intend to direct.

In concluding the firm knew Mrs A had an existing policy cover she could use and not using the policy without sufficiently good reason, the firm have failed to act reasonably. I say this because LEI policies ensure that, subject to terms and conditions, policyholders will not have to pay a success fee or an insurance premium if they win their case and still pay nothing if their claim doesn't succeed.

I am satisfied that Mrs A's policy existed and would have more likely than not covered her claim, as per the email from her policy provider on XXXX. I am satisfied the firm were aware the policy existed, despite not having the specific details of it, as they referred to it in their own correspondence when recalling why it wasn't used. Further to this, the claim clearly had prospects as the firm pursued it under a no win no fee agreement which inherently requires prospects of success to exist at a

minimum of 51%. The culmination of this factors means the existing LEI policy could have been used.

There is no evidence the firm made clear that use of the LEI policy meant no further costs would be incurred. It is my view that no reasonable person would choose to incur costs where they did not need to.

It follows, that to put Mrs A in the position she would have been had she received a reasonable service, the firm should refund both their success fee and the costs of the ATE premium, as these costs could have been entirely avoided.

The firm's success fee was £12,500 and the ATE premium cost £13,980.

In addition, to acknowledge the unreasonable complaints handling and the fact Mrs A has been subjected to unnecessary stress since raising these issues with the firm since her email of XXXX, I consider an emotional impact payment is warranted.

Whilst it is difficult to put a sum on such an impact, I am guided by this office's criteria for compensation awards. I consider a compensation sum of £500 is appropriate as it reflects our significant category award.

I have not awarded a higher sum because the main impact of the firm's unreasonable service has been financial loss, which is rectified by the direction to refund the sums lost from her claim settlement. I have not awarded a lower sum because this issue will have caused undeniable stress and inconvenience due to the time it has been ongoing and because Mrs A has been undergoing treatment for cancer during this time. I am satisfied that the firm's unreasonable service will have affected her physical and mental wellbeing during this already difficult period.

The total remedy I am looking to direct the firm to pay Mrs A is therefore:

- A refund of the £12,500 success fee;
- Reimbursement of the £13,980 paid for the ATE insurance; and
- £500 compensation.

Provisional Decision

Therefore, my Provisional Decision is that I find there has been poor service that does require a remedy and I intend to direct that the firm pay Mrs A £26,980.