

Final Decision**CIFO Reference Number: 23-000478****Complainant: Mrs K and Mrs M****Respondent: Palladium Insurance Limited****Complaint**

Mrs K and Mrs M (a relative) complain about Palladium's decision to void an 'After the Event' Legal (ATE) Expenses Insurance policy, leaving them to pay significant legal costs. They want Palladium to cover these costs.

While the complaint is in joint names, for ease of reading, I will mostly refer to Mrs K.

Background

I set out the background to this complaint in a Provisional Decision dated 2 April 2025, a copy is attached to this final decision.

Mrs K initiated legal proceedings against five defendants in relation to proceeds from her late husband's estate. To cover her legal costs, Mrs K agreed an ATE insurance policy with Palladium around November 2019. The premium of more than £90,000 only became payable if Mrs K's claim succeeded.

Mrs K was introduced to two of the defendants by an accountant in 2004, one of whom was 'apparently' a practising solicitor. The other defendant was a company in which he was involved. For ease I'll collectively refer to these defendants as 'A', there being no material confusion in doing so given the parts they played. Mrs K instructed that defendant to act in relation to probate matters of her late husband's estate.

In 2013, Mrs M instructed one of the other defendants to act in a conveyancing matter. For ease, I'll refer to these defendants as 'B', there being no material confusion for this determination given the parts they played.

Proceeds of the sale were to be sent to A's 'client account'. However, A

misappropriated the sale proceeds, and this led to legal proceedings being initiated. This was settled with summary judgment being issued (more than £2m) but as I understand was never paid.

The unresolved matter that eventually went to trial (between 10 and 12 May 2021) was against defendants B acting in the conveyancing matter. The issue in dispute was whether the duty of care extended to investigating the 'solicitor' appointed in 2004 (defendant A). The importance of this for Mrs K was the fact that the 'solicitor' had in fact been struck off for misappropriating funds from client accounts and had served a custodial sentence. As such, and at the relevant time, that individual was not entitled to practise law as a solicitor.

At trial, the judge did not find in Mrs K's favour and based on aspects of what the judge had determined, Palladium declared the policy void and so treated it as if it never existed. This left Mrs K with a liability to pay significant legal costs, which she subsequently discharged.

I don't intend to rehearse the full details as the parties are aware of the background circumstances. They have also had the opportunity to read and comment on my provisional findings.

In summary, I explained why I wasn't satisfied Palladium had demonstrated, on the balance of probabilities, that Mrs K and Mrs M were dishonest such that it was fair to treat the insurance policy as void. I was minded to uphold the complaint.

I found the proposal form for the policy showed Mrs M had signed a Letter of Authority and the fact she couldn't remember signing it was not evidence of fraud, misrepresentation, or unreasonable conduct in my view. And indeed, the Letter of Authority was identified as a main weakness in the case. So, at the point Mrs K was proposing to purchase the insurance policy I was satisfied it was more likely than not:

- Palladium was on notice of the position that Mrs M had signed the Letter of Authority but could not remember doing so.
- The claim related to a proposed action against the solicitor defendants for negligence in paying property sale proceeds in breach of "*...a common law duty of care to provide all advice and services to a standard to be expected from a reasonably competent professional.*"

- The proposal form set out further particulars surrounding the alleged negligence, but the crux of the proposal in the context of this complaint is essentially encompassed in the points above.

I also provisionally found that at the underwriting stage Mrs K and Mrs M, through their solicitors, had provided relevant information on the main issues to be litigated. Their solicitors were in regular contact with Palladium and Palladium's underwriting decision clearly factored in the weakness(es) in the case, yet nonetheless Palladium made an informed decision to underwrite the risk. And this continued throughout the course of litigation as Mrs K's solicitors kept Palladium up to date with developments as required by the policy.

I addressed other issues including Palladium's submissions on Mrs K's Senior Counsel's assessment on the prospects of success and that he, along with Mrs K's solicitors, had appeared to have acted in good faith. And while Senior Counsel's assessment of prospects may have been wrong, opposing legal teams often disagree on the outcomes of issues to be determined at court.

I addressed Palladium's submissions about the trial approved judgment of which Palladium's position was, in summary, that the trial judge's comments were "highly condemnatory". In dealing with Palladium's points, I provisionally concluded that the trial judge expressed some doubt about the lack of honesty with some evidence at trial about the importance of the security of a solicitor's client account Mrs K had stated. However, I wasn't persuaded the judgment demonstrated fundamental dishonesty. I said it was open to the trial judge to be far more direct about Mrs K and Mrs M and their evidence, but he did not so express, in my view.

Finally, it's relevant to say that in my provisional decision I addressed a further issue of the impact on the claim made, and the alleged lack of honesty about the Letter of Authority. The issue related to whether Mrs M had signed it, and I outlined that it was conceded in the proposal form from the outset that Mrs M's signature was present.

So, having considered the circumstances in totality, I was persuaded the proposal form gave details of the weaknesses in the case, including that Mrs M had signed the Letter of Authority. And at the underwriting stage Mrs K and Mrs M, through their solicitors, had provided relevant information on the main issues to be litigated. Their solicitors were in regular contact with Palladium, and Palladium's underwriting decision clearly factored in the weakness in the case. I was satisfied Palladium made

an informed decision to underwrite the risk. And this continued throughout the course of litigation as Mrs K's solicitors kept Palladium up to date with developments as required by the policy.

While much had been said by Palladium that there was never a 'duty of care' action to make, the proposal form outlined sufficient information and was supported by Senior Counsel opining the claim had reasonable prospects of success. I accepted the judge didn't always find some of Mrs K's and Mrs M's evidence credible, but it was open to the judge to be far more condemnatory and direct about the witnesses and their evidence. I was not persuaded the judge's words should be inferred or interpreted as a euphemism for being deliberately dishonest.

I explained what I considered to be a fair way of putting things right, requiring Palladium to:

- Reinstate the insurance policy.
- Remove any recording of the policy being declared void.
- Reimburse the legal fees Mrs K paid (with simple interest at 8% per annum).
- Pay Mrs K £1,000 compensation for distress and inconvenience.
- And as CIFO's statutory binding limit of £150,000 will be exceeded by the redress above, I recommended that Palladium pay anything in excess of our binding limit.

Replies to Provisional Decision

Mrs K, through her representative, accepted my Provisional Decision.

Palladium submitted two replies explaining why it disagreed, and I'll summarise the main points raised. Palladium said that Mrs K's claim would have failed had it been taken to court in the normal way rather than bringing it to the Channel Islands Financial Ombudsman. Palladium considers that Mrs K will have received this advice from her solicitors, who chose not to bring a claim to court. In Palladium's opinion, Mrs K was effectively avoiding a costs order and by bringing her complaint to this organisation, it takes advantage of the fact there are no costs or risks involved or a need to give evidence under oath.

Palladium has also said there's a lack of detailed consideration within the Provisional Decision regarding the principle that parties in a contract of insurance must act in good faith. Palladium states the decision does not set out views on

whether the policyholders acted in good faith. Palladium set out why it believes the trial judge's remarks about the policyholders demonstrated a lack of good faith on their part.

In a subsequent reply, Palladium raised the following issues:

- The judgment and evidence taken together show a true picture of the complainants' conduct, subject of a HMRC tax investigation and the role defendant A played.
- The funds of the sold property at the centre of the court case were not sent to Mrs M, the supposed legal owner, but circa £200,000 were drip-fed by defendant A to Mrs K. Defendant A also dealt with offshore investments in tax havens.
- It is clear funds entrusted to defendant A were derived from a property transaction designed to reduce or avoid tax.
- The idea that Mrs K didn't want the funds to be sent to A is plainly dishonest.
- It was only when the funds were misappropriated that Mrs K shifted position to say she didn't want the money transferred to him.
- The judge found the complainants, in the clearest possible terms, dishonest (para 62) around the deliberate narrative *vis-à-vis* the security of a solicitor's client account. The judge's words are as close as it ever gets to calling the complainants fundamentally dishonest.
- The complainants are high net worth individuals with means to bring a claim against Palladium but likely received advice that they'd lose.
- A finding in the complainants' favour would be unjust and condone dishonesty and tax evasion.

Findings

I have reconsidered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint.

Where necessary and/or appropriate, I reach my conclusions on the balance of probabilities, that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

It's appropriate to explain that the Channel Islands Financial Ombudsman is an alternative to court. We are set up in law to investigate and resolve complaints about financial services providers. There are of course limits on what we can and can't look at but in this case Mrs K was entitled to raise a complaint with us about Palladium.

Our remit is different to the courts, for example we don't hear evidence on oath like a court would and our determinations are based on what, in the Ombudsman's opinion, is fair and reasonable in all the circumstances of the case.

The starting point of Palladium's relationship with Mrs K and Mrs M was the proposal form. There is a section at the start as follows:

The following duties apply when completing this proposal.

If the proposer is a consumer (i.e. an individual acting for purposes unrelated to their trade, business or profession) all questions must be answered fully, honestly, and to the best of the proposer's knowledge. Reasonable care must be taken to ensure that the information given is correct.

If the proposer is not a consumer then all material circumstances must be disclosed. This includes anything that may influence whether or not this proposal is accepted, or the terms offered. If there is any doubt if something is material, then please disclose it.

Every material representation as to a matter of fact must be substantially correct, and every material representation as to a matter of expectation or belief must be made in good faith.

If any of the duties above are breached then there may be one or more of the following consequences: the policy may be cancelled, any claim may be rejected in part or in full, additional policy terms may be imposed, or the premium may be increased.

Palladium's position, as evident in its submissions from Counsel (4 October 2024), is to draw attention to the disparity between how Mrs K presented the original claim, and the true state which became apparent at trial. It is stated that Palladium was dishonestly led by the policyholders that they had been the victim of a firm of solicitors who had breached their duty of care by improperly transferring a substantial sum to a fraudster who then misappropriated the money.

I remain satisfied that the information contained within the proposal form was sufficiently detailed and the weaknesses in the case articulated. I'm not persuaded the details given in this form were knowingly false, knowingly misleading or dishonest. The issue of signing the letter of authority (Palladium's main point) was specifically outlined as a weakness in which it was conceded Mrs M's signature appeared.

It's also apparent, and well known to all parties, that the fraudster was exactly as described and misappropriated Mrs K's funds. Indeed, defence Counsel at trial accepted that Mrs K genuinely believed the fraudster was a solicitor and had complete trust in him (para 55).

So, when proposing the insurance, I'm satisfied that, on balance, the information was put forward in good faith. It's not, in my view, unreasonable to put forward a position that a person doesn't recall doing something like signing a form/letter but conceding that it's likely the signature is theirs. The fact the relative couldn't specifically remember signing it is not in and of itself evidence of fraud, misrepresentation, or unreasonable conduct in my view. Indeed, there is specific information given in the proposal form that an expert witness had found it likely the signature was Mrs M's.

Therefore, at the point of underwriting the policy I'm persuaded Palladium had relevant detailed information to make an informed decision as to whether it would underwrite the policy or not. There was a continuing duty for Mrs K to cooperate with her legal representative and, through her solicitors, to keep Palladium up to date with developments in the litigation. In my Provisional Decision I explained why I was persuaded Mrs K complied with this and I'm not persuaded to change my provisional view, which was:

I should also comment on Palladium's observation of Mrs K's Senior Counsel's assessment on the prospects of success. In short, Palladium's point here is that given the lack of a cause of action as pleaded, the prospects of success could not have been as stated by Senior Counsel. While the 'breach of duty' issue was set out from the start, Senior Counsel's further comments (an email of 10 June 2020) on the matter were provided to Palladium (the following day). Prior to that point there was regular correspondence between Mrs K's solicitors (with contributions from Senior Counsel) and Palladium. It's apparent that Palladium's Head of Litigation (email 1 October 2019 refers) had sight of and indeed reviewed the documentation provided...and although Senior Counsel's view on prospects may have been wrong, I'm not satisfied that's reason enough for Palladium to use this as a reason to void the policy and deny the claim.

I now turn to the trial and more specifically comments from the trial judge as this is the main source evidence that Palladium refers to in demonstrating the policyholders were dishonest and not acting in good faith. Included within Palladium's submissions are the following:

- Judges assess credibility as opposed to routinely condemning witnesses as liars.

- The sense from the judge's comments is not that the policyholders were honest yet inaccurate. He refers to "selective memories" and this should not be disregarded.

I won't repeat in full what I said in my Provisional Decision as I specified in that decision matters relevant to Mrs K and Mrs M's evidence and credibility. There remained the continuing applicability of the policy terms and conditions, including around the policyholders:

- Failure / delay in providing instructions to the legal representative.
- Unreasonable conduct.
- Fundamental dishonesty.

The policy terms and conditions in focus are as follows:

3. WHAT IS NOT COVERED BY THIS INSURANCE POLICY

Unless We agree in writing, We will not cover You for any Insured Costs which:

3.1. are incurred in a Claim which is Discontinued without Our written agreement;

3.2. are incurred in a Claim which (in Our opinion, or the opinion of Your Legal Representative) does not have Reasonable Prospects of Success at any time during the period of cover;

3.3. are payable or not recoverable as a result of:

3.3.1. Your failure and / or delay in providing instructions to Your Legal Representative; and / or

3.3.2. Your unreasonable conduct; and / or

3.3.3. fundamental dishonesty.

Section 6 of the policy details the relevant terms and requirements about 'Control of the Claim':

6.1. If You do not comply with any part of clauses 6.2 and 6.3 We may cancel this Policy, in which case clause 14 will apply. If We decide to do so, We will inform You and / or Your Legal Representative in writing. You will be liable to pay Us for any loss caused to Us by Your failure to comply.

6.2. You must do the following:

6.2.1. co-operate fully with and follow Your Legal Representative's advice and promptly provide Your Legal Representative with any information that Your Legal Representative may request in relation to the Claim;

6.2.2. sign all documents reasonably required by Your Legal Representative to progress Your Claim;

6.2.3. allow Us access to all reports and opinions relating to the Claim that We ask to see including Your Legal Representative's file and where necessary instruct Your Legal Representative to produce such documentation, advice or information immediately to Us;

6.2.4. make sure that the information You give to Your Legal Representative is accurate, and that You do not do anything which could prejudice Your Claim;

6.2.5. go to all court hearings, medical examinations or other appointments that Your Legal Representative asks You to attend.

6.3. You must do the following (and / or procure that Your Legal Representative does the following on Your behalf):

6.3.1. take all reasonable steps to keep Insured Costs to a minimum;

6.3.2. notify Us before appointing any expert or costs draftsman in connection with an assessment of the Insured Costs; Palladium Insurance Limited is licensed by the Guernsey Financial Services Commission

6.3.3. take all action possible to recover any costs, charges or fees We may have paid or be liable to pay under this Policy and pay any such amounts recovered to Us. In any event, You authorise Us to recover, in Your name, any payments We have made on Your behalf. We are entitled to take full control of any claim to recover from third parties any payments We have made on Your behalf. You must cooperate with Our efforts to do so whether by providing information, evidence or such other assistance as We may reasonably require;

6.3.4. allow Us to appoint a barrister and ask for their opinion on the value of Your Claim and the Prospects of Success;

6.3.5. *tell Us as soon as reasonably possible if the Defendant makes a payment into court or any offer to settle the Claim;*

6.3.6. *tell Us as soon as reasonably possible of the Conclusion of Your Claim;*

6.3.7. *notify Us before discontinuing or agreeing to the dismissal of Your Claim;*

6.3.8. *provide Us with any information that We reasonably require in handling Your Claim under this Policy; and*

6.3.9. *provide Us with details of all Court Orders and directions.*

The judge said of Mrs M “*I gained the impression overall that she was a defensive witness who had decided to be unhelpful.*” And of Mrs K, he said “*Like [Mrs M], her memory appeared to be selective almost as if they had both decided to say that they could not remember anything useful about the transaction.*” And I note the defendant’s Senior Counsel (para 55) was said to have accepted that Mrs K genuinely believed the fraudster was a solicitor and had complete trust in him. Indeed, the judge said (para 68) “*I accept that [Mrs K] trusted [the fraudster] implicitly and [Mrs M] wanted to do what would make [Mrs K] happy.*” Relevant in my view, at paragraph 69, the judge said of Mrs K that when she eventually reported the matter to the police, she suggested that the [Solicitor Defendants] had paid the money to [the fraudster] without any authority to do so, “***no doubt forgetting that she had asked [Mrs M] to sign a letter giving such authority***” (my emphasis).

In conclusion, I accept parts of the trial judge’s comments refer to the policyholders’ credibility. But I don’t find there’s sufficient and direct commentary that persuades me they were fundamentally dishonest, showed unreasonable conduct, failed to disclose or misrepresented facts or made untrue statements from purchasing the policy to the trial conclusion. They turned out not to be persuasive witnesses, but overall, I’m not persuaded the judgment sufficiently demonstrates dishonesty to an extent that I find it a fair and reasonable outcome for Palladium to void the policy and decline the claim. Indeed, in my Provisional Decision I noted the judge said of Mrs K and Mrs M:

*The fact that both of them emphasised how important [security of a client’s account] was against a background of remembering virtually nothing else makes me doubt whether this was in fact an honest recollection and **suspect it is more something***

which has become reinforced over the years against a background of understandable resentment about being victims of a fraudster (my emphasis).

It is appropriate when considering what is fair and reasonable in all the circumstances of the case to re-iterate my provisional findings about the impact on the insurance claim:

“The question the judge had to determine was not whether a duty of care was owed (plainly it was between a solicitor and their client) but rather the extent of the duty of care in the particular circumstances of the case. The relevant paragraphs of the judgment are 86 to 96 but paragraph 91 is key where the judge determined that the solicitor was entitled to accept the Letter of Authority as confirmation the sale proceeds should be paid into a third party’s account. Palladium’s Counsel’s assertion is that had Mrs K and Mrs M told the truth from the outset, Palladium would never have underwritten the risk. This strongly implies that the most pertinent issue therefore was the lack of honesty about the Letter of Authority.

In the section ‘Finding of Facts’, the judge made specific findings regarding the Letter of Authority, that Mrs K and Mrs M read it before Mrs M signed and Mrs K must have approved of the contents. And the judge made a specific finding that Mrs M signed the letter. It’s apparent to me that the issue of whether Mrs M signed the letter was conceded in the proposal form, not least through the disclosure of expert evidence the signature was Mrs M’s.

Taking the circumstances in totality, I am persuaded that the proposal form gave details of the weaknesses in the case, including that Mrs M had signed the Letter of Authority. While much has been said by Palladium that there was never a ‘duty of care’ action to make, the proposal form outlines sufficient information and was supported by Senior Counsel opining the claim had reasonable prospects of success. I accept the judge didn’t always find the Mrs K’s and Mrs M’s evidence credible, but it was open to the judge to be far more condemnatory and direct about the witnesses and their evidence. I am not persuaded the judge’s words should be inferred or interpreted here as a euphemism for being deliberately dishonest.”

Having reflected carefully and reconsidered all the information, I’m satisfied that Mrs K’s claim for cover under the policy should have succeeded. For reasons explained, Senior Counsel acting for Mrs K had opined that there were reasonable prospects of success, and the main issue / weakness in the case (signature on Letter of Authority) was conceded in the proposal form. Moreover, Mrs K’s solicitors

explained in the proposal form how this would be mitigated, namely that the defendant was under a duty to ensure their client (Mrs K) was giving informed consent. On the issue of this breach, Senior Counsel had stated there were reasonable prospects of success. And, while the trial judge did make some comments on the credibility issue at points, there were other comments that taken together, do not persuade me that Mrs K and Mrs M were fundamentally dishonest or had misrepresented the claim in the way Palladium asserts. The claim was, in my opinion, presented genuinely and to the best of Mrs K's knowledge. Taking all this into account, I'm satisfied Mrs K and Mrs M acted in good faith, but as importantly in line with the policy requirements.

Palladium has referred to a tax investigation and alluded to Mrs K and Mrs M being subject to that. Other than referring to documentation already provided I've not seen anything that persuades me the complainants were being investigated or that there were adverse findings against them. It's apparent that Mrs K's husband was the subject after his death and during probate. The fact that Mrs K had accountants represent her with HMRC during the investigation and that a substantial amount of tax was paid to HMRC is not evidence of criminal wrongdoing on her part.

Palladium has referred to paragraph 62 of the judgement and I addressed this in my Provisional Decision, the relevant extract being:

The fact that both of them emphasised how important [security of a client's account] was against a background of remembering virtually nothing else makes me doubt whether this was in fact an honest recollection and suspect it is more something which has become reinforced over the years against a

background of understandable resentment about being victims of a fraudster

(my emphasis).

I haven't read and concluded that this part of the judgement is evidence of fundamental dishonesty, rather that it raises an issue of honesty but equally could be a belief 'reinforced...against a background of understandable resentment'. It was open to the judge to be far more direct about Mrs K and Mrs M and their evidence, but he was not. And, having reconsidered the judgment I reach the same conclusion I did in my Provisional Decision.

I determine that, in my opinion, it was unfair of Palladium in the circumstances to have declared the policy void for deliberate fraud and/or misrepresentation and/or misleading information at presentation of, and during the claim.

My decision

My final decision is that I uphold this complaint.

To settle it, Palladium Insurance Limited must do the following:

1. Reinstate the policy.
2. Remove any recording of the policy being declared void.
3. Reimburse the legal fees Mrs K paid (with simple interest at 8% per annum from the date paid to the date of refund).
4. Pay Mrs K £1,000 compensation for distress and inconvenience.

CIFO's statutory binding limit of £150,000 will be exceeded by the redress above. The amount in excess is a non-binding recommendation, which I request Palladium pays.

Sean Hamilton
Ombudsman

Date: 21 August 2025

Provisional Decision**CIFO Reference Number: 23-000478 Complainant:****Mrs K and Mrs M****Respondent: Palladium Insurance Limited****Complaint**

Mrs K and her relative complain about Palladium's decision to void an 'After the Event' Legal (ATE) Expenses Insurance policy, leaving them to pay significant legal costs. They want Palladium to cover these costs.

While the complaint is in joint names, for ease of reading, I will mostly refer to Mrs K.

Background

While the parties are aware of the background, and as such I don't intend to rehearse all the details, it's appropriate to set out a summary to contextualise the complaint.

Mrs K initiated legal proceedings against five defendants in relation to proceeds from her late husband's estate. To cover her legal costs, Mrs K agreed an ATE insurance policy with Palladium around November 2019. The premium of more than £90,000 only became payable if Mrs K's claim succeeded.

Mrs K was introduced to two of the defendants by an accountant in 2004, one of whom was 'apparently' a practising solicitor. The other defendant was a company in which he was involved. For ease I'll collectively refer to these defendants as 'A', there being no material confusion in doing so given the parts they played. Mrs K instructed that defendant to act in relation to probate

matters of her late husband's estate.

In 2013, [Mrs M] instructed one of the other defendants to act in a conveyancing matter. For ease, I'll refer to these defendants as 'B', there being no material confusion for this determination given the parts they played.

Proceeds of the sale were to be sent to A's 'client account'. However, A misappropriated the sale proceeds, and this led to legal proceedings being initiated. This was settled with summary judgment being issued (more than £2m) but as I understand was never paid.

The unresolved matter that eventually went to trial (between 10 and 12 May 2021) was against defendants B acting in the conveyancing matter. The issue in dispute was whether the duty of care extended to investigating the 'solicitor' appointed in 2004 (defendant A). The importance of this for Mrs K was the fact that the 'solicitor' had in fact been struck off for misappropriating funds from client accounts and had served a custodial sentence. As such, and at the relevant time, that individual was not entitled to practise law as a solicitor.

At trial, the judge did not find in Mrs K's favour and based on aspects of what the judge had determined, Palladium declared the policy void and so treated it as if it never existed. This left Mrs K with a liability to pay significant legal costs, which she subsequently discharged.

Palladium, in justifying its decision, referred to parts of the insurance policy concerning non-disclosure or misrepresentation of facts or untrue statements made by the policyholder or their legal representative. This applied at the inception of the policy and throughout the course of any claim.

I think it's helpful to refer to the fact that most of the correspondence concerning Palladium's decision has been conducted between instructed solicitors on both sides. Palladium's solicitors pointed to 'concerns' about the information given in the 'Proposal Form' which is the initial step in applying for ATE cover. Such concerns include, but are not limited to:

- A lack of memory (the relative) in signing a 'Letter of Authority' but advancing a basis upon which she would have signed it.
- Although recognising her signature on the Authority and poor recollection as a weakness, asserted that the defendant failed to ensure she was giving informed consent.

- This was at odds with the relative's knowledge of the benefits offered by regulated client accounts.
- Despite holes in the Claimants' story and a lack of a cause of action, Counsel put prospects of success between 63% and 72%.
- It was asserted that it was impossible to understand the Claimants' legal team's optimism.

Palladium's solicitors referred to the policy coverage, terms and conditions in explaining why it refused to pay Mrs K's claim and had taken the additional step in declaring the policy void. Moreover, Palladium referred to and relied on the trial judge's comments during the 3-day trial, which it described as "highly condemnatory". I won't rehearse the passages the solicitors cited but they interpreted the judgement along the following points:

- Mrs K and her relative were dishonest and unreliable witnesses.
- They fully consented to the sale proceeds being paid to the solicitor (and his firm), who misappropriated the funds.
- When Mrs K reported to police that the proceeds had been paid without her authority, that was clearly untrue. It was more the case that when the solicitor started to let them down, they looked for an insurer to cover their loss and were prepared to lie.
- There was no cause of action because it was not within a solicitor's scope in a conveyancing transaction to advise on the wisdom or otherwise of paying sale proceeds to a third party.

Other issues Palladium's solicitors raised included the fact that the Underwriter concluded the judgement revealed the claim never had a reasonable prospect of success. Mrs K's 'story' as presented at inception and throughout the claim was fundamentally dishonest. But even if true, did not give rise to a course of action so Counsel's advice was impossible to reconcile.

In addition, the Underwriter's right to avoid the policy arose from Mrs K's deliberate fraud and/or misrepresentation at presentation and during the

claim. The policy terms and conditions gave a specific right to the insurer to take this action.

CIFO initial assessment

An adjudicator set out her opinion, which focused on whether it was fair and reasonable for Palladium to treat the policy as if it never existed by declaring it 'void'. She reviewed two specific parts of the policy in section 3 (What is not covered...) and section 11 (Fraud and Misrepresentation). She reviewed the court transcript and judgement concluding the matter in issue was whether a duty of care was owed to the Ks.

The adjudicator was not persuaded the judge's comments about Mrs K and her relative amounted to a finding that their evidence was dishonest. She noted that in most trials one party's evidence is found to be more credible but that doesn't equate to a lack of honesty on the part of the other party. She also said the judge didn't find any element of contributory negligence on the Ks' part. The adjudicator did not agree with Palladium that the comments of the Judge evidenced non-disclosure or misrepresentation of material facts, and said:

Had the judge been of the view that Mrs K or Mrs M were being dishonest in their evidence, this would be directly relevant to the issue of contributory negligence. The judge concluded "I do not think that Mrs M was negligent in signing the 2nd May 2013 letter. A man who she thought was a solicitor and trusted legal adviser had asked her to sign the letter and I suspect she just thought it was routine for the proceeds to be paid to the facilitator who had brokered the transaction. Once completion had taken place it was an odd decision taken by Mrs K to leave the money with [A]".

Furthermore, the adjudicator noted the trial took place some years after the events and Palladium was aware from the outset that there were issues of conflicting evidence, to be determined by a court. She wasn't persuaded Mrs K and Mrs M were fundamentally dishonest in the insurance claim, and Palladium could have reassessed the 'prospects of success'. She recommended that the complaint be upheld. To put things right, the adjudicator recommended that Mrs K be put in the position she would have been had the policy not been voided:

- The policy be reinstated, remove any recording of the policy being declared void.
- Reimburse the legal fees Mrs K paid (with interest).
- Pay Mrs K £1,000 in compensation for distress and inconvenience.
- As redress would be above CIFO's statutory binding limit of £150,000 the amount in excess was a non-binding recommendation.

Palladium's response

Palladium instructed Counsel to submit a response on its behalf, which goes to some twenty-three pages. Mrs K's representative has seen a copy and so I do not intend to rehearse its content. As CIFO is not a court or required to follow a court process, I've read and digested the contents and will briefly summarise some main points. This is not to underplay the information the parties have provided, rather reflecting the informality of our process.

The thrust of the submission points to five specific matters about the CIFO adjudicator's recommendation:

- Failing to acknowledge the existence of inconsistencies and non- disclosures in Mrs K's and Mrs M's evidence.
- Failing to acknowledge 'as close to an express finding of dishonesty...' by the judge, for example when he said, "*...makes me doubt whether this was in fact an honest recollection.*"
- Misunderstanding of the determinative question the judge was required to make a ruling on. The question was not 'whether the defendant owed a duty of care', as the adjudicator believed. Rather, the questions the judge was required to decide related to the extent of the duties owed and whether they were breached. Framed this way, the "*...incredible and dishonest evidence fatally damaged their prospects of success in relation to these questions.*"
- Overstating the relevance of the judge not making a finding of contributory negligence against Mrs K and Mrs M. The contributory negligence related to the issue of not making a demand for the money transferred to the defendant that held themselves out as a 'practising solicitor'. This is separate to the issue of honesty regarding representations to one of the other defendants (a solicitor's firm)

about whether that defendant was authorised to pay proceeds of a property sale to one of the other defendants.

- It was wrong for the adjudicator to rely on a 'missed opportunity' to reassess the prospects of success at trial as, in substance, Palladium's decisions were reliant on representations in the Proposal form.

Provisional Findings

I have considered all the available evidence and arguments to decide what is, in my opinion, fair and reasonable in the individual circumstances of this complaint.

Where necessary and/or appropriate, I reach my conclusions on the balance of probabilities; that is, what I consider is most likely to have happened, in light of the evidence that is available and the wider surrounding circumstances.

Policy background

The starting point for my consideration is the policy terms and conditions as this sets out the contractual agreement between Mrs K and Palladium. While a document of some fourteen pages, which both parties have, I'll refer to the aspects I consider relevant to my decision as what, in my opinion, is fair and reasonable in all the circumstances.

The policy schedule sets out the summary of cover as "Opponent's costs and disbursements only", starting on 8 November 2019. And the key facts document, under 'Significant Exclusions or Limitations', states Palladium will not settle any claim against the policy benefits where there has been dishonesty, fraud, violence, or a criminal act. Section 11 of the policy sets out the terms around Fraud and Misrepresentation, and of relevance is that, among other things, Palladium can cancel or void the policy and refuse a claim.

In addition, there will be no settlement for any claim arising from circumstances which any policyholder was aware of or should have been aware of at policy inception but did not disclose. And, under section 3 of the policy, there's no cover for insured costs which are payable or not

recoverable as a result of the policyholder's unreasonable conduct and or fundamental dishonesty.

After the Event insurance

Typically, there are two types of policy, 'Before the Event' (BTE) and as here, 'After the Event' (ATE). They are sold in quite different circumstances: BTE policies are usually taken out where legal claims are not in contemplation or known about. The maximum amount of legal expenses covered (defined in each policy) under BTE is typically around £50,000, sometimes up to £100,000. As these policies don't cover potential legal issues a policyholder should reasonably know of at the point of sale, they are relatively low priced. ATE policies on the other hand are different in terms of the circumstances in which they are bought and sold. An ATE policy is bought **after** a legal dispute arises, so presents a quite different risk to an insurer than a BTE policy. The ATE policy is intended to insure against the risk of a legal claim failing despite having reasonable prospects of success. As such, the policy is usually a significant cost, and its maximum amount is more bespoke to the circumstances in which it is bought.

Insurers rely on the truthfulness of the proposed policyholder so that a fair underwriting assessment can be made about the risk the insurer is being asked to take on. Mrs K's purchase was no different and in the ATE proposal form the first section is headed **IMPORTANT**. What follows sets out the duties applicable in completing the proposal form, and of relevance in this case:

- If the proposer is a consumer all questions must be answered fully, honestly, and to the best of the proposer's knowledge. Reasonable care must be taken to ensure that the information given is correct.
- If the duty is breached then the policy may be cancelled, any claim may be rejected in part or in full, additional policy terms imposed or the premium may be increased.

The proposal form.

The proposal form appears to have been completed by solicitors on behalf of Mrs K and Mrs M. When the policy schedule was issued it covered both Mrs K and Mrs M with a limit of cover of £200,000.

It's appropriate to say a little more about the proposal form. There are several questions asked and information to give including the 'Nature of Dispute', described as follows:

Professional negligence against solicitor defendants in paying proceeds of sale of Claimants property out to/at the direction of the First Defendant who is and was at the time a convicted fraudster and struck off solicitor.

Five pages of detail are then provided as a summary of the case and the assessment of the prospects of success. I don't intend to go through this part in any detail but will pull out some key information.

D. Any weaknesses of Claimant's case and how mitigated?

THE LETTER AUTHORISING [B] TO PAY THE ENTIRE SALE PROCEEDS TO [A] (2nd MAY 2013) APPEARS TO HAVE BEEN SIGNED BY MRS M AND SENT TO [B]. SHE HAS NO STRONG RECOLLECTION. THE FAMILY HAD RECENTLY SUFFERED ANOTHER SIMILAR BEREAVEMENT, THE LOSS OF MRS M'S BROTHER. EXPERT EVIDENCE CONFIRMS THAT THE SIGNATURE IS LIKELY TO BE MRS M'S. IF IT IS HER SIGNATURE AS SEEMS LIKELY, AS SET OUT IN THE RESPONSES TO SECTION C ABOVE, [B] FAILED IN EVERY RESPECT IN RELATION TO THEIR CLIENT CARE DUTIES AND TO ENSURE THAT THEIR CLIENT WAS GIVING INFORMED CONSENT IN THESE EXTRA ORDINARY CIRCUMSTANCES.

Issue for determination.

Was Palladium entitled to refuse payment of Mrs K's claim under the policy? If so, what do I determine is fair and reasonable in all the circumstances of the complaint?

Palladium's entitlement to settle or refuse a claim comes from the policy terms, the relevant parts I've summarised earlier in this decision. The crux of the matter is whether Mrs K and Mrs M, on the balance of probabilities, were fundamentally dishonest, demonstrated unreasonable conduct, failed to disclose or misrepresented facts or made untrue statements in respect of the claim at any time during the claim from inception onwards.

In terms of the timeline, the letter of authority in issue was dated May 2013, the ATE policy was bought in November 2019, the proposal form was

completed shortly before purchase, Mrs K and Mrs M's witness statements were dated March 2021, and the trial took place between 10 and 12 May 2021.

Outcomes at trial are difficult, if not impossible, to predict for several reasons. Witnesses and their proposed evidence can initially present as compelling and decisions to proceed to trial take this into account. However, at trial under cross-examination witness evidence can become less compelling and/or less persuasive and the judge as here (or a jury) makes a decision based on the evidence presented at trial. Important to this decision is the credibility of the witnesses.

The policy is clear, and Palladium's primary reliance is that Mrs K and Mrs M were dishonest and had the true position been set out from the proposal stage, the claim did not have reasonable prospects of success. Secondary to this, there was never a cause of action to litigate, and so Mrs K's Counsel's assessments of prospects could not be reconciled. The true position was that Mrs M had given authority to the defendant solicitors to pay the proceeds of a property sale to a third-party company.

On the issue of the letter of authority, the proposal form clearly outlines this as a weakness in the case *"THE LETTER AUTHORISING [B] TO PAY THE ENTIRE SALE PROCEEDS TO [A] (2nd MAY 2013) APPEARS TO HAVE BEEN SIGNED BY MRS M AND SENT TO [A]. SHE HAS NO STRONG RECOLLECTION."*

One may argue that it's carefully worded but nonetheless it highlights a specific weakness, which in reality came to pass. Indeed, within the proposal form it states expert evidence revealed it is likely the signature was that of Mrs M K.

The policy conditions and exclusions are not, in my opinion, to penalise a well-intended witness who may have been confused or lacked clarity on something provided they act in good faith. However, Palladium, and every other insurer providing this type of cover, expects the policyholder to be honest, reasonable, truthful, and open about their legal case from the point of buying the policy and throughout the remainder of the claim.

Regarding the 'Letter of Authority,' Palladium's Counsel has pointed out references to it being *"...purportedly signed by Mrs M..."* but later in the same proposal form at paragraph 5.3 it says, *"Although it is accepted that Mrs M*

did sign the authority...". It's apparent from the proposal form, in my view, that ultimately and however reluctantly, Mrs M accepted she had signed the Authority. The fact that she couldn't specifically remember signing it is not in and of itself evidence of fraud, misrepresentation, or unreasonable conduct in my view. The fact is the lack of clarity and certainty was plain to any reader of the proposal form including Palladium.

Indeed, in referring to weaknesses in the case, the 'Letter of Authority' is identified as the main one and states if it is Mrs M's signature "*...as seems likely...*" then it's asserted the defendant failed in every respect in relation to client care duties and to ensure Mrs K and Mrs M were giving informed consent (to the sending of money to the fraudulent solicitor and the company he was associated with). So, to summarise, at the point the proposal form was sent to Palladium for it to make an underwriting decision, I am satisfied it is more likely than not:

- Palladium was on notice of the position that Mrs M had signed the Letter of Authority but could not remember doing so.
- The claim related to a proposed action against the solicitor defendants for negligence in paying property sale proceeds in breach "*...a common law duty of care to provide all advice and services to a standard to be expected from a reasonably competent professional.*"
- The proposal form sets out further particulars surrounding the alleged negligence, but the crux of the proposal in the context of this complaint is essentially encompassed in the points above.

At the underwriting stage Mrs K and Mrs M, through their solicitors, had provided relevant information on the main issues to be litigated. Their solicitors were in regular conduct with Palladium and Palladium's underwriting decision clearly factored in the weakness in the case yet nonetheless made an informed decision to underwrite the risk. And this continued throughout the course of litigation as Mrs K's solicitors kept Palladium up to date with developments as required by the policy.

I should also comment on Palladium's observation of Mrs K's Senior Counsel's assessment on the prospects of success. In short, Palladium's point here is that given the lack of a cause of action as pleaded, the prospects of success could not have been as stated by Senior Counsel. While the 'breach of duty' issue was set out from the start, Senior Counsel's further comments (an email of 10

June 2020) on the matter were provided to Palladium (the following day). Prior to that point there was regular correspondence between Mrs K's solicitors (with contributions from Senior Counsel) and Palladium. It's apparent that Palladium's Head of Litigation (email 1 October 2019 refers) had sight of and indeed reviewed the documentation provided. There is no suggestion that Senior Counsel or Mrs K's solicitors acted with anything other than good faith. Opposing legal teams will often disagree on the outcomes of issues to be determined at court, they set out their positions and the court decides. In basic terms there is a winner and loser, and although Senior Counsel's view on prospects may have been wrong, I'm not satisfied that's reason enough for Palladium to use this as a reason to void the policy and deny the claim.

Trial approved judgment

The trial judge made various comments on Mrs K's and Mrs M's evidence and credibility at trial such as:

- *Whilst I might have expected Mrs M and Mrs K to remember some of the details and not others in fact neither of them appeared to have any independent recollection of the communications which must have taken place during this transaction save for the importance of the security of a solicitor's client account. The fact that both of them emphasised how important this was against a background of remembering virtually nothing else makes me doubt whether this was in fact an honest recollection and suspect it is more something which has become reinforced over the years against a background of understandable resentment about being victims of a fraudster. (Para 62)*
- *I do not find that they discussed or thought about the additional benefits of a solicitor's client account at the time as I do not accept they were worried about what would happen to the money. I accept that Mrs K trusted [A] implicitly and Mrs M wanted to do what would make her mother happy. (Para 68)*

I think it's safe to say that the trial judge did not always find Mrs K and Mrs M's evidence credible, but the question is whether they were 'fundamentally dishonest', demonstrated unreasonable conduct, failed to disclose or misrepresented facts or made untrue statements in respect of the claim at any time during the claim from inception onwards.

I think it relevant to set out some context on the 'honesty' issue and that came from Mrs K's trial Barrister who commended them "...as witnesses of fact

submitting that whilst their recollection may not be good they were at least honest.” (para 47) It's an inescapable reality that the judge specifically referred his doubt about a lack of honesty with some evidence at trial about the importance of the security of a solicitor's client account (para 62). And the judge adds further reasoning on this point (para 68) finding that neither of them discussed or thought about the additional benefits of a solicitor's client account. And I accept that the issue of client account didn't appear in the proposal form.

In other parts of the judgment the trial judge stated:

- *I gained the impression overall that [Mrs M] was a defensive witness who had decided to be unhelpful. (Para 18)*
- *Mrs K also appeared to have a selective memory when cross-examined. (Para 24)*
- *Like [Mrs M], [Mrs K's] memory appeared to be selective almost as if they had both decided to say that they could not remember anything useful about the transaction. (Para 26)*

Having considered the evidence from the trial transcripts and the trial judgment, I am satisfied it's more likely than not Mrs K's and Mrs M's evidence wasn't always considered credible, in the eyes of the judge. I think it helpful to juxtapose what the judge said about Mrs K and Mrs M with the other witness, a solicitor, in which the judge said:

- *[She] was certainly credible, but she cannot actually remember anything about the transaction...”*

It's worth repeating part of paragraph 62 in which the judge said about Mrs K and Mrs M:

The fact that both of them emphasised how important [security of a client's account] was against a background of remembering virtually nothing else makes me doubt whether this was in fact an honest recollection and suspect it is more something which has become reinforced over the years against a

background of understandable resentment about being victims of a fraudster

(my emphasis).

I haven't read and concluded that this part of the judgement is evidence of fundamental dishonesty, rather that it raises an issue of honesty but equally could be a belief 'reinforced... against a background of understandable resentment'. It was open to the judge to be far more direct about Mrs K and Mrs M and their evidence, but he was not.

There is a second and important question about the impact this had on the claim. The question the judge had to determine was not whether a duty of care was owed (plainly it was between a solicitor and their client) but rather the extent of the duty of care in the particular circumstances of the case. The relevant paragraphs of the judgment are 86 to 96 but paragraph 91 is key where the judge determined that the solicitor was entitled to accept the Letter of Authority as confirmation the sale proceeds should be paid into a third party's account. Palladium's Counsel's assertion is that had the Mrs K and Mrs M told the truth from the outset, Palladium would never have underwritten the risk. This strongly implies that the most pertinent issue therefore was the lack of honesty about the Letter of Authority.

In the section 'Finding of Facts', the judge made specific findings regarding the Letter of Authority, that Mrs K and Mrs M read it before Mrs M signed and Mrs K must have approved of the contents. And the judge made a specific finding that Mrs M signed the letter. It's apparent to me that the issue of whether Mrs M signed the letter was conceded in the proposal form, not least through the disclosure of expert evidence the signature was Mrs M's.

Taking the circumstances in totality, I am persuaded that the proposal form gave details of the weaknesses in the case, including that Mrs M had signed the Letter of Authority. While much has been said by Palladium that there was never a 'duty of care' action to make, the proposal form outlines sufficient information and was supported by Senior Counsel opining the claim had reasonable prospects of success. I accept the judge didn't always find the Mrs K's and Mrs M's evidence credible, but it was open to the judge to be far more condemnatory and direct about the witnesses and their evidence. I am not persuaded the judge's words should be inferred or interpreted here as a euphemism for being deliberately dishonest.

Provisional Decision

My Provisional Decision is that I intend to uphold this complaint. To put things right, Palladium Insurance Limited should do the following:

- Reinstate the policy.
- Remove any recording of the policy being declared void.
- Reimburse the legal fees Mrs K paid (with simple interest at 8% per annum).
- Pay Mrs K £1,000 compensation for distress and inconvenience.

CIFO's statutory binding limit of £150,000 will be exceeded by the redress above. The amount in excess is a non-binding recommendation, which I would request Palladium pays.

Sean Hamilton
Ombudsman

Date: 2 April 2025