

## **The complaint**

Mr T complains about Great Lakes Insurance SE's decision to decline cover for a claim he made for subsidence on a home insurance policy.

## **What happened**

Mr T insured his home with Great Lakes. In 2018, shortly after buying the property, he noticed cracks and informed Great Lakes. It appointed a surveyor who concluded that the likely cause of the cracks was subsidence due to clay shrinkage, caused by a tree owned by the local authority.

The damage to Mr T's property was relatively minor and the cost of repairing this was assessed as being less than the £1000 policy excess applicable for subsidence claims. Mr T arranged for contractors to carry out the works recommended by Great Lakes' surveyor.

In 2021, Mr T noticed further cracks to the property. By this time, he'd changed insurers, and the property was now insured by a business I'll refer to as F. Mr T contacted F who said it considered the damage was a continuation of the previous issue and so Great Lakes should be liable for the further repairs.

Mr T contacted Great Lakes who said that in its view, F should be liable for the repairs. As neither insurer was prepared to accept cover for Mr T's claim, he referred complaints about both to our service. Investigations have been carried out by a separate surveyor who has concluded that the local authority owned tree is causing clay shrinkage, leading to subsidence of Mr T's property.

Our investigator considered that the damage in 2021 was more likely than not to be a continuation of the 2018 damage, and that a lasting and effective repair hadn't been carried out as part of the original claim with Great Lakes. She said that Great Lakes should consider Mr T's claim for the 2021 damage. She agreed that F could fairly decline Mr T's claim made on his new policy. Great Lakes didn't agree and asked for an ombudsman's decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As an insurer, Great Lakes has a duty to cover a lasting and effective repair to the property. It seems to have accepted that the 2018 claim was covered by the policy in effect at the time, but the costs of carrying out the recommended repairs were less than the £1000 policy excess. As a result, Mr T arranged for contractors to carry out these recommended repairs.

So my starting point of my considerations here is whether the repairs as recommended by Great Lakes' surveyor were lasting and effective – and I'm not persuaded that was the case. I say this for a number of reasons.

I note from the comments made by the surveyor following the investigation of the 2018

damage that it had informed the local authority of the issue and that the tree owned by the local authority was believed to be the cause of the damage. It doesn't appear that any further measures to prevent further damage being caused by the tree were carried out, despite it being acknowledged and noted that further clay shrinkage, and therefore damage to the property, could occur.

Great Lakes position appears to be that the recommended repairs were lasting and effective because there were no further incidents of subsidence, or apparent movement of the property, between 2018 and 2021. I'm not persuaded by this. No monitoring or investigation has occurred in the intervening period, and I'm not satisfied that the lack of visible damage to the property supports that no movement has occurred.

I acknowledge Great Lakes point that as an insurer it isn't liable for carrying out purely preventative works. However, it seems to me that in order for a lasting and effective repair to have been carried out here, works to prevent the subsidence and damage occurring again should have been included. It seems to me that Great Lakes' own surveyor was aware that damage could re-occur, and so in order to effect a lasting repair, it should have covered works specifically designed to prevent that.

Reference has been made in correspondence with our service to the Association of British Insurance (ABI) Domestic Subsidence Claims Agreement. This deals with situations where a policyholder has moved insurers and subsidence is subsequently found at the property. It's Great Lakes position that the spirit of the agreement means that F should be liable for Mr T's 2021 claim. I'd make two points here. Firstly, Great Lakes has confirmed that it isn't a signatory to the agreement, so it's not binding on it. Secondly, the agreement covers situations where the first occurrence of subsidence is after the change of insurers – here the case is different in that subsidence, caused in the same way, occurred several years before the change of insurer.

The ABI agreement acknowledges this in its guidance, which says that where continued damage is due to inadequate repairs undertaken by a previous insurer, the claim should be referred back to the previous insurer. In applying the spirit of the agreement in light of this guidance, I think that the claim would fall back to Great Lakes to consider – which is what I've concluded in any case, irrespective of whether Great Lakes is a signatory of the agreement.

One thing I have considered is whether I should hold Great Lakes responsible for the repair not being lasting and effective as it wasn't any contractor appointed by Great Lakes who did the works. It seems to me though that the contractor Mr T used did the works based on the assessment carried out by Great Lakes' appointed surveyor – and the only reason this was the case was because he'd been informed that the cost would be less than the policy excess. I think it was reasonable for Mr T to rely on the opinion of Great Lakes' surveyor that the proposed repairs were sufficient. Great Lakes was liable for the extent of the works carried out, and as I've outlined I don't think the repairs did amount to a lasting and effective repair.

For these reasons, I'm satisfied that the 2021 damage should be considered a continuation of the previous claim from 2018 and that this falls within the scope of Great Lakes' policy. It needs to assess the claim in accordance with the policy's terms and conditions.

Mr T has incurred a number of costs in relation to the damage, including monitoring and investigation costs, at the request of the local authority. He also paid the costs of the original repairs in 2018. Great Lakes will need to assess what cover is available for these as part of its review of the claim.

**My final decision**

It's my final decision to uphold this complaint. In order to put things right, Great Lakes Insurance SE must consider Mr T's claim as a continuation of the 2018 claim, in accordance with the relevant policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 June 2022.

Ben Williams  
**Ombudsman**