

## The complaint

Mr K complains that Great Lakes Insurance SE has turned down a cancellation claim he made on a travel insurance policy.

## What happened

In March 2019, Mr K booked accommodation in a country I'll call T. He was due to travel between 20 March and 3 April 2020. Mr K took out a single trip travel insurance policy to cover his stay in December 2019. He paid for optional Travel Disruption Extension (TDE) cover.

However, on 11 March 2020, the World Health Organisation declared Covid-19 to be a pandemic. And on 14 March 2020, the Foreign, Commonwealth & Development Office (FCDO) advised against all but essential travel to T. On the same day, lockdown was announced in T.

On this basis, Mr K cancelled his trip. His airline refunded the cost of his flights. But the accommodation provider declined to refund Mr K's booking cost. It said that the accommodation had remained available for Mr K's use and that due to Covid-19 flight cancellations, it couldn't re-let the accommodation. So Mr K made a claim for his share of the cost of his pre-booked accommodation.

Great Lakes turned down the claim. It said that while cancellation due to changes in FCDO advice was covered by the TDE, the policy only covered irrecoverable losses. It considered that the accommodation provider had a legal duty to refund Mr K's booking costs and that therefore, Mr K ought to be able to recover his costs through the provider.

Mr K was unhappy with Great Lakes' position and so he asked us to look into his complaint.

Our investigator thought Mr K's complaint should be upheld. She considered the accommodation provider's booking terms and conditions made it clear that cancellation costs were non-refundable. So she was satisfied that Mr K had been unable to recover his share of the accommodation cost. And she recommended that Great Lakes should settle Mr K's claim and pay interest on the settlement.

Great Lakes disagreed. It said that the accommodation had been booked through a UK provider. It said that Competition and Markets Authority (CMA) guidance had placed a responsibility on accommodation providers to reimburse costs, so it didn't see why Mr K couldn't recover his costs directly from the provider. It said that the booking terms and conditions wouldn't be relevant to bookings of this nature. And as T had been in lockdown for the duration of Mr K's booking, it failed to see how the accommodation had been available.

I issued a provisional decision on 9 May 2022. In my provisional decision, I explained the reasons why I didn't think it'd been fair for Great Lakes to turn down Mr K's claim. I said:

*'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And*

*they mustn't turn down claims unreasonably. So I've considered, amongst other things, the policy terms, relevant law and guidance and the available evidence, to decide whether Great Lakes treated Mr K fairly.*

*I've first considered the policy terms and conditions, as these form the basis of Mr K's contract with Great Lakes. It's common ground that Mr K paid an additional premium for the TDE, which provides extended cancellation cover if the FCDO advises against all but essential travel to a policyholder's destination. The policy states that Great Lakes will pay a policyholder's 'irrecoverable, unused travel and accommodation costs.'*

*There's no dispute that Mr K's trip had to be cancelled because the FCDO advised against travel to T. So Mr K's claim falls within the scope of policy cover. However, Great Lakes states that Mr K's accommodation provider is responsible for refunding his booking cost and that therefore, his loss is recoverable. I've thought about this very carefully.*

*Mr K's booking contract with the accommodation provider states:*

*'Any client wishing to cancel after the deposit or final balance has been paid will forfeit monies already paid.'*

*I've also seen a letter from the accommodation provider dated 25 March 2020. This says:*

*'The clients decided not to travel to the flat due to the FCO advising against travel to (T). These conditions imposed are beyond our control. We will be unable to re book the apartment since flights to T are currently being cancelled. Therefore, we are unable to make any refund.'*

*In my view then, the booking contract terms I've referred to above make it clear that the accommodation provider will not refund the booking costs if a holidaymaker cancels their booking. That's because the terms state that if a client cancels after paying the final balance, they'll forfeit any monies paid. The evidence suggests that Mr K cancelled the trip. As such, it seems that contractually, Mr K wasn't entitled to a refund of his accommodation costs. And I'm satisfied the accommodation provider's letter demonstrates that Mr K wasn't able to recover his booking costs through it.*

*It's clear that Great Lakes strongly considers that following a CMA statement in response to the pandemic, the accommodation provider's booking terms and conditions are no longer relevant. Great Lakes hasn't set out which statement it's referring to, but I think it's likely it's referring to the CMA's statement on Covid-19, which includes the following:*

*'In some circumstances, due to lock down laws, a contract cannot go ahead as agreed or at all, and is therefore 'frustrated'. A contract will be frustrated as a matter of law if, due to no fault of the parties, something happens after the contract was entered into which means it can no longer be performed at all or performance would be radically different to what was agreed. As a result, the contract comes to an end and, where consumers have paid money in advance for services or goods that they have yet to receive, they will generally be entitled to obtain a refund.'*

*Great Lakes seem to now seek to specifically rely on the CMA's Statement to turn down Mr K's claim. On my understanding, Great Lakes' position seems to be that the contract between Mr K and the accommodation provider has been frustrated. And so Great Lakes appears to consider that Mr K may legally be entitled to a refund from the provider, regardless of the booking terms and conditions.*

*However, in my view, the fact that Mr K may potentially entitled to a refund isn't the same as*

actually obtaining one. I've noted that in October 2020, the industry regulator, the Financial Conduct Authority (FCA) issued guidance to insurers in dealing with policyholders who haven't been able to obtain a refund from their travel provider. This guidance is called 'Finalised guidance: Cancellations and refunds: helping consumers with rights and routes to refunds'. The guidance was extended in April 2021 and is effective until revoked or until the exceptional circumstances regarding Covid-19 have ended.

The FCA guidance acknowledges that insurance claims are governed by the policy terms and then goes on to provide an indication of how the FCA expects the terms of travel insurance policies to be interpreted. In particular, there's relevant guidance relating to the interpretation of policy terms which require policyholders to mitigate their loss set out in sections 3.5 and 3.6 of the April 2021 document. These say:

*'3.5 Any potential claim on an insurance policy will depend on the terms of the policy. However, where an insurance provider requires policyholders to demonstrate or take reasonable steps to mitigate a financial loss under the terms of the policy, consumers should not have to go to unreasonable lengths to do this. For example, where a travel provider is resisting a refund, and the consumer is unlikely to have a valid section 75 claim, a consumer should not be expected to take more than reasonable steps to pursue the refund. What is reasonable will depend on the circumstances in each case.'*

*3.6 For example, a consumer might be seeking a refund after a hotel has cancelled their booking. We think it could be reasonable to expect a consumer to have pursued a claim up to a point where it appears from the correspondence (including the absence of replies) that a refund is unlikely to be forthcoming, or there is insufficient indication of when it may be expected so as to give rise to sufficient uncertainty as to whether there may be a refund. This will depend on the facts and circumstances – but where customer can demonstrate that they have made several unsuccessful attempts to obtain refund from the hotel, it might be unreasonable to expect them to do more. We would generally view it as unreasonable to expect that a consumer would need to go to court to recover their money.'*

So it seems to me that the FCA has given a clear indication that insurers shouldn't require policyholders to go to unreasonable lengths to mitigate their losses. And in this case, given the accommodation provider has specifically stated that it will not refund Mr K's costs, I think it would be unreasonable to expect him to take further action to recover his losses.

I've also noted that the policy says:

*'We are entitled to take over the defence, or settlement of any claim, recover expenses or compensation from any other third parties involved at any time, or take legal action in your name or in the name of anyone else claiming under this policy.'*

It seems to me then that if Great Lakes considers there's a good legal chance of recovering a refund from the accommodation provider due to the frustration of the contract, the terms of the policy mean it's open to Great Lakes to attempt legal recovery itself, to recover the monies it will have paid out to Mr K in settlement of this claim.

Overall then, in these circumstances, I currently think that Mr K has shown that he hasn't been able to recover the monies he paid for his accommodation. And I don't think it's fair for Great Lakes to require Mr K to pursue these costs further. So I'm planning to find that Great Lakes didn't treat Mr K fairly when it turned down his claim. I'm also intending to direct Great Lakes to pay Mr K's claim for 50% of the accommodation booking costs, together with interest at an annual rate of 8% interest.'

I asked both parties to send me any further information or evidence they wanted me to consider.

Mr K had nothing to add.

It appears that Great Lakes received my provisional decision but didn't respond with any new information or comments by the deadline I gave.

### **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 neither party has provided any further evidence or information, I see no reason to change my provisional findings.

So my final decision is the same as my provisional decision and for the same reasons.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint.

I direct Great Lakes Insurance SE to settle Mr K's claim for 50% of the total accommodation cost. I also direct Great Lakes to add interest to the settlement at an annual rate of 8% simple from the date of claim until the date of settlement.

If Great Lakes considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 7 July 2022.

Lisa Barham  
**Ombudsman**