

The complaint

Ms B complains that Great Lakes Insurance SE declined part of her claim against her travel insurance policy. Reference to Great Lakes includes its agents.

What happened

Ms B has an annual travel insurance policy with Great Lakes. On 9 March 2020, she went on a trip and intended to return on 21 March 2020. The trip was a package holiday.

On 17 March 2020, Ms B's trip was curtailed because of restrictions imposed in response to covid-19 by the government of her destination country. Ms B's travel provider refused to settle her claim, so she made a claim against her travel policy in relation to unused costs and additional flight costs.

In July 2020, Great Lakes settled Ms B's additional flight costs but didn't agree to pay unused costs. It said that those costs were recoverable from Ms B's travel provider under the Package Travel and Linked Travel Arrangements Regulations 2018 (PTR). Ms B complained about that. In Great Lake's final response to Ms B in October 2020, it said that if the travel provider wasn't in a position to refund Ms B's costs, she should complain to the Association of British Travel Agents (ABTA). It provided a link to ABTA and said that if Ms B's complaint to ABTA wasn't successful, it would review her claim. Ms B wasn't happy about that and complained to this service.

This service considered that complaint. In October 2021, an investigator didn't recommend that Ms B's complaint be upheld. She said that Great Lakes hadn't acted unfairly or unreasonably in declining her claim in part and in relying on the exclusion relating to irrecoverable costs. The investigator said that Ms B should approach ABTA or the Association of Independent Travel Operators (AITO) to try and recover her costs and if that wasn't successful, return to Great Lakes.

In November 2021, Ms B complained to ABTA. ABTA said that she'd contacted it too late. It said that it could only deal with the matter in its arbitration scheme with the travel provider's agreement, which wasn't forthcoming here. So, ABTA couldn't assist Ms B further.

In January 2022, Ms B contacted Great Lakes again, but it declined her claim. It said that in October 2020, it told Ms B to contact ABTA, but she didn't do so until November 2021, which was too late. Great Lakes said that if Ms B had referred the matter to ABTA in time and been unsuccessful in recovering her costs, it would have reconsidered her claim. Great Lakes said that Ms B's delay in contacting ABTA led to her claim.

Ms B wants Great Lakes to deal with her claim. She says that she's now shown that her outstanding costs are irrecoverable from elsewhere. Ms B said that in its final response in October 2020, Great Lakes didn't mention any time limit for referral to ABTA. Ms B says that she was very dissatisfied with Great Lakes' response and delays at that point, so thought that its reference to ABTA was another delaying tactic. She said that Great Lakes also referred her to this service, which she pursued.

One of our investigators looked at what had happened. She recommended that Great Lakes settle Ms B's claim. The investigator was satisfied that what happened here is an insured event and that Ms B had shown that she can't recover her costs. She said that even if Ms B had contacted ABTA earlier, there was no guarantee that she would have obtained a refund. That was because ABTA's approach to curtailment was less certain than its approach to cancellation. The investigator thought that Ms B had taken reasonable steps in bringing her initial complaint to this service and waiting for a response.

Great Lakes didn't agree with the investigator. It said:

- Ms B prejudiced its position by not following its advice to contact ABTA in October 2020 and waited over a year to do so.
- Ms B hasn't proved that the costs were not recoverable from any other source.
- It doesn't accept that Ms B was less likely to recover her costs via ABTA because her claim was for curtailment, rather than cancellation.
- Ms B's costs were recoverable under the PTR and she didn't pursue that within a reasonable time.

Ms B said that by October 2020, she had no confidence in Great Lake's competence or ability to act correctly or treat her fairly. That was because she was unhappy with the result of its investigation and its poor service, which included delays, failure to communicate and an error in calculating the part of her claim which it did settle. Ms B said that she had friends in the same position as her whose claims had been settled by their insurers, which added to her sense that Great Lakes was trying to avoid its responsibilities. That's why she made the initial complaint to this service.

As there was no agreement between the parties, the complaint was passed to me to decide.

My provisional decision

On 1 June 2022, I sent both parties my provisional decision in this case. I indicated that I intended to uphold the complaint for slightly different reasons than had been explained before. I said:

"the relevant policy terms and conditions

The starting point is the terms and conditions of the policy, the relevant parts of which are as follows:

"Abandonment

What is covered

We will pay *you* up to the amount shown in your policy Schedule for *your* share of any irrecoverable unused travel and accommodation (including excursions), and other pre-paid charges which *you* have paid or are contracted to pay. *You* are also covered for any additional travel expenses incurred if *you* are forced to cut short *your trip*. This must be as a direct and necessary result of any cause outside of *your* control, which was unforeseen at the start date of *your* policy or at the time of booking *your trip*, whichever is the later."

“What is not covered [...]

[...]

22. Anything mentioned in the ‘General exclusions’ on pages 53 and 54.”

“General exclusions that apply to the whole policy

[...]

12. Costs recoverable elsewhere.”

“General conditions that apply to the whole policy

[...]

7. **We** are entitled to take over and carry out in **your** name the defence or settlement of any legal action. **We** may also take proceedings at **our** own expense and for **our** own benefit, but in **your** name, to recover any payment **we** have made under this policy to anyone else.”

has the claim been declined unfairly?

The relevant rules and industry guidance say that Great Lakes has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably.

I don't think that Great Lakes treated Ms B fairly and reasonably in declining her claim. I say that because:

- An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The onus is on the consumer to show that the claim falls under one of the agreed areas of cover within the policy. If the event is covered in principle but is declined on the basis of an exclusion set out in the policy, the onus shifts to the insurer to show how that exclusion applies.
- It's common ground that Ms B's claim falls under the abandonment provisions of her policy. Great Lakes seeks to rely on the exclusion which says that the policy doesn't cover costs recoverable elsewhere. The central question for me to decide is whether it's fair and reasonable for Great Lakes to rely on the exclusion I've set out above. I don't think it is and I'll explain why.
- ABTA's e-mail exchanges with Ms B in November 2021 and January 2022 show that it can't assist Ms B as she had referred the matter to them too late and the travel provider didn't agree that it could deal with the matter. So, Ms B has shown that she can't recover her losses via ABTA.
- Great Lakes says that Ms B prejudiced its position by not following its advice to contact ABTA in October 2020. In the particular circumstances of this case, I don't think that produces a fair and reasonable result.
- I've looked carefully at Great Lakes' e-mail to Ms B in October 2020, when it gave its final response to her initial complaint. Great Lakes referred Ms B to ABTA and provided a link to further information about that. But it didn't draw Ms B's attention to any relevant time limits in taking the matter up with ABTA. In that e-mail, it also gave Ms B information about this service, including the relevant time limit, which it's obliged to do. On the basis of the information Ms B had, I don't think she was wrong for pursuing the matter with this service in the first instance.

- *Unfortunately, by the time Ms B referred the matter to ABTA, it was too late for it to deal with it without the travel provider's consent, which wasn't forthcoming. Based on this service's experience of similar complaints, I think it's far from certain that Ms B would have been able to recover her costs via ABTA even if she had referred the matter to them earlier. That's because the application of the PTR to curtailment cases is relatively untested in the civil courts. Based on what I've seen, it's likely that Ms B's only remaining alternative is to take legal action to recover her outstanding costs.*
- *In October 2020, the industry regulator, the Financial Conduct Authority (FCA) issued guidance to insurers 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 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 terms requiring a policyholder to mitigate loss. Essentially, the guidance says that a consumer shouldn't have to go to unreasonable lengths to mitigate loss and that the FCA would generally view it as unreasonable to expect that a consumer would need to go to court to recover their money.*
- *In the particular circumstances here – where Ms B has now shown that her costs aren't recoverable elsewhere – I think it would be unreasonable to expect Ms B to take further action to recover her losses.*
- *If Great Lakes considers that there's a good legal chance of recovering a refund from the travel provider, the terms of Ms B's policy means that it's open to Great Lakes to take legal proceedings in Ms B's name against the travel provider in order to recover monies it will have paid out to Ms B in settling her claim.*
- *Taking into account the overall circumstances of this case, I don't think that declining the claim leaves Ms B in a fair position. There's an insured event and, for the reasons I've explained, I don't think it's fair or reasonable for Great Lakes to rely on the exclusion to which it's referred. It follows, that Great Lakes should settle Ms B's claim."*

Responses to my provisional decision

Ms B accepted my provisional decision. Great Lakes reiterated that Ms B prejudiced its position by not following the advice it gave about recovering her loss. It said:

- There was a year between it issuing its final decision in October 2020 and the closure of Ms B's initial complaint at this service on 22 October 2021.
- It was unaware of a time limit for referral to ABTA, so it couldn't have told Ms B about it and, in any event, Ms B's actions suggest that she wouldn't have followed its advice.
- It doubts that curtailment cases have been less successful with ABTA.

- Ms B hasn't shown that her costs were unrecoverable. She has not been able to recover her costs because she didn't refer the matter to ABTA within a reasonable time and preferred to wait for a decision from this service.
- It's doubtful that it would be cost effective for it to take legal action to recover this loss as costs would likely exceed the claim value with no guarantee of recovery.

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.

I've considered what Great Lakes has said in response to my provisional decision. But I remain of the view that, on balance, it's not fair and reasonable for Great Lakes to rely on the exclusion to which its referred in declining Ms B's claim.

It remains the case that Ms B wasn't aware of any time limit in referring the matter to ABTA. Great Lakes said that it didn't tell Ms B about the time limit, as it wasn't aware of it. It doesn't seem reasonable for Great Lakes to expect Ms B to be aware of something it didn't know itself.

I don't think that further speculation about the likelihood of success of any claim Ms B might have made to ABTA assists us here, as it doesn't alter the outcome of the complaint. Ms B didn't refer the matter to ABTA and, for the reasons I set out in my provisional decision, I don't think she was wrong for pursuing the matter with this service in the first instance.

I'm satisfied that Ms B has shown that her costs are not recoverable elsewhere. She's provided her exchanges with ABTA which show that it won't deal with the matter. So, Ms B can't recover her costs via that route.

I appreciate that it may not be cost effective for Great Lakes to take legal proceedings in Ms B's name against the travel provider in order to recover monies it will have paid out to Ms B in settling her claim. That is, of course, a matter for Great Lakes.

Considering everything, I see no reason to depart from the conclusions I reached in my provisional decision. I find that Great Lakes didn't treat Ms B fairly or reasonably in relying on the exclusion to which its referred in declining her claim.

Putting things right

For the reasons set out above and in my provisional decision, I uphold Ms B's complaint. Great Lakes should settle Ms B's claim under the remaining terms of the policy.

My final decision

My final decision is that I uphold Ms B's complaint. In order to put things right, Great Lakes Insurance SE should take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 5 August 2022.

Louise Povey
Ombudsman