

## **The complaint**

Mr and Mrs S are unhappy that Great Lakes Insurance SE declined a claim they made on their travel insurance policy.

## **What happened**

On 11 March 2020 the World Health Organisation (WHO) declared Covid-19 to be a global pandemic. A few days later on 14 March 2020 Mr and Mrs S went on a package holiday which was booked through their travel provider. They were due to come home on 27 March 2020.

The travel provider is a member of a travel insurance industry arbitration scheme. They had paid approximately £5900 for the holiday. Before travelling they checked with their travel provider that the holiday would still go ahead due to the circumstances and were reassured that it would.

Mr and Mrs S arrived at their destination as planned but on 19 March 2020 their travel provider cut short the holiday due to the change in Foreign and Commonwealth Development Officer (FCDO) advice. The FCDO advised against all but essential travel abroad. So, they were only on holiday for six days out of the fourteen days they'd planned to be away and missed eight days of their holiday.

Mr and Mrs S received a refund from the travel provider for around £1600. They made a claim on their travel insurance policy, as they didn't think the £1600 represented an accurate refund for the portion of their holiday which they'd lost. The claim was rejected on the basis that they had received a refund from their pack d the provider had also repatriated Mr and Mrs S back to the UK.

Mr and Mrs S made a complaint. But Great Lakes maintained their decision to decline the claim. They said that the circumstances of the claim weren't covered under the policy. And, in their final response letter Great Lakes recommended Mr and Mrs S contacted their travel provider and referred them to the Package Travel Regulations 2018 (PTR). Unhappy, Mr and Mrs S complained to our service.

Our investigator looked into what had happened and upheld Mr and Mrs S's complaint on the basis that they weren't covered for claims in a country that the FCDO had advised against travel to, but also not covered if they cancelled. However, following further representations from Great Lakes she thought that the complaint shouldn't be upheld. In summary she said that the travel provider appeared to have provided a refund in line with the PTR 2018 and that if Mr and Mrs S disputed the amount of the refund they'd need to refer the matter to their travel provider.

Mr and Mrs S didn't agree and asked an ombudsman to review the complaint. They said that they were covered for abandonment of their trip and it was a clear breach of the purpose of insurance if they weren't covered. They said that the travel provider said they weren't able to provide a breakdown of the costs of the package and she felt that the insurer

and the travel provider were in cahoots. She pointed out that the holiday cost was around £5900 and although they'd missed over half of it, they'd only had a refund of £1600.

In May 2022 I issued a provisional decision explaining that I was intending to uphold the complaint. I said:

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

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

#### The policy terms and conditions

The Insurance Product Information Document (IPID)

says: 'What is not insured?

Any trips when travelling against the advice of the Foreign and Commonwealth Office'

In the section of the policy entitled, 'Important information for customers' it says:

'If you or any travelling companion(s) have/has to cut short your/their holiday and return home to the UK due to one of the reasons contained in this policy, you/they are entitled to be reimbursed for a proportion of the cost of the holiday you/they have lost. Reimbursement will be calculated either from the time you/they return home to the UK or from the time of admission to hospital (full details of how this will be assessed are shown in Section 2 – Curtailment)'

Section 2 of the policy says:

'We will reimburse you in respect of loss of travel and accommodation expenses or contracted to be paid consequent on your holiday being necessarily and unavoidable (sic) curtailed by:

- a) Abandonment of your holiday by return to home in the UK; or
- b) Admission to hospital as an in-patient for more than 48 hours due to any causes listed below, commencing and occurring during your holiday, provided such expenses are not recoverable from any other source

1. Accidental injury, illness or death of:

- a) You or any person with whom you had arranged to travel;
- b) Your close relative or business associate;
- c) Any person with whom you had arranged temporarily to reside during your holiday.

2. Accidental damage to your home rendering it uninhabitable or the police requesting your home rendering it uninhabitable or the police requesting your presence following theft at your home during your holiday.

Note: curtailment means returning home prior to the scheduled return date or being admitted to hospital as an in-patient for at least 48 hours. A proportionate refund will be made of the pre-paid charges. The refund for accommodation will be based on each complete day of the holiday you have lost. A proportionate refund of travel expenses will be paid only if you cannot use your return ticket, and you are not claiming travel expenses under another section of this policy.

There are general exclusions for:

- Any costs recoverable elsewhere
- Any claim arising in a country to which the Foreign and Commonwealth Office has advised against travelling.

Finally, there is a general condition in the policy which says that:

‘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.’

#### Is the claim covered under the curtailment section of the policy?

Great Lakes say that there is only cover under the policy for cutting a trip short in two circumstances - accidental injury, illness or death or accidental damage to your home. Mr and Mrs S argue that the policy covers them under section 2, clause (a) as they had to abandon their holiday and return to the UK.

Looking at the policy term it says:

‘We will reimburse you in respect of loss of travel and accommodation expenses (including excursions) paid or contracted to be paid consequent on your holiday being necessarily and unavoidable (sic) curtailed by abandonment of your holiday by return to home in the UK’

I think the way the policy is worded isn't very clear. In particular, I don't think it's clear that clause (a) only applies in the event of injury, illness or death or accidental damage to the home. The way the term is structured does indicate it's most likely that Mr and Mrs S would be covered if they had to come home before their planned return date. And there's no clear link made in clause (a) with the two situations set out in bullet points one and two. So, I can see why Mr and Mrs S thought they were covered because they cut short their trip and returned to the UK for reasons which were necessary and unavoidable.

Overall, I think there's ambiguity in the policy wording as it relates to curtailment cover, so the wording should be interpreted in Mr and Mrs S's favour.

In any event, even if I thought the policy didn't cover the situation which Mr and Mrs S found themselves in, I think there are other reasons to uphold Mr and Mrs S's complaint. I'll explain why.

#### What is the impact of the FCDO exclusion?

The policy doesn't cover any claim arising in a country to which the FCDO has advised against travelling. On 17 March 2020 the FCDO advised against all travel abroad. Mr and Mrs S returned home.

Returning home because of a change in FCDO advice isn't an event which is specifically set out in the policy as triggering curtailment cover (although, as I've already mentioned, I think there's an element of ambiguity in the wording of Mr and Mrs S's policy in this regard).

However, taking into account the relevant law and industry guidelines, I don't think applying a strict interpretation of the policy terms and conditions leads to a fair and reasonable outcome in the circumstances of this case for the reasons I'll go on to explain.

The exclusion for claims arising in a country to which the FCDO has advised against travelling means that if Mr and Mrs S had remained abroad they'd have not been covered by the policy terms and conditions at all - because they were in a country which the Foreign and Commonwealth Office had advised against travelling to. But, under a strict application of the terms and conditions of the policy, curtailing a trip due to changes in FCDO guidance also isn't covered by the policy. I don't think that was made sufficiently clear to Mr and Mrs S.

Mr and Mrs S would have needed to read the full policy terms and conditions in order to understand that this set of circumstances wasn't covered. And, I don't think that this information was brought to their attention in a prominent and transparent way. So, I don't think the combined effect of the policy terms was made sufficiently clear to Mr and Mrs S.

I think this has created a significant imbalance in the rights and interests of Mr and Mrs S and Great Lakes. I think it's unlikely that Mr and Mrs S would have purchased the policy if they had realised that there was no cover under the policy if the FCDO guidance changed after they'd bought the policy. I think it's more likely they'd have taken out another policy which would have offered cover in such circumstances. At the time they took out this policy in January 2020 such policies were widely available.

So, this means I think it would be fair and reasonable for Great Lakes to treat Mr and Mrs S's claim as covered under the curtailment section of their policy – subject to the losses they are claiming for not being reasonably recoverable from elsewhere, which I'll now go on to address.

#### Have Mr and Mrs S taken reasonable steps to recover their losses?

As I outlined above Mr and Mrs S approached their travel provider to try and recover their losses from their travel provider. They received a total of £1600 which they say was a gesture of goodwill. They've tried, unsuccessfully, to get a breakdown of the costs and how the travel provider calculated that figure. Great Lakes says that if Mr and Mrs S were unhappy with this it's a matter between them and the travel provider.

However, based on all the information I've seen, I think that Mr and Mrs S have taken reasonable steps to recover their losses from the provider. The provider said in their letter to Mr and Mrs S that they've taken into account the number of days and the cost of the flights, and it hasn't been possible to get an accurate breakdown

of the way in which the travel provider calculated the figure. In my experience of dealing with complaints of this type, it's not particularly unusual for the travel provider to be unable to provide an accurate breakdown of each element of a package holiday. Generally, in the absence of such a breakdown, I'd usually consider it fair and reasonable for a travel insurer to pay a proportionate refund of the unused costs in the event of a successful claim.

I've also considered that Mr and Mrs S had the option to refer their complaint to the relevant travel industry arbitrator. But based on my experience of similar complaints, I think they are unlikely to have been able to recover any further costs as the provider had already offered a partial refund and paid for the repatriation flights. That's because the application of the PTR 2018 to curtailment cases is relatively untested in the civil courts. Based on the evidence I've seen I think it's likely Mr and Mrs S's only further recourse is to take legal action to recover their outstanding costs.

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 travel provider has declined to cover any further remaining

financial loss. I think it would be unreasonable to expect Mr and Mrs S to take further action to recover their losses.

And if Great Lakes considers there's a good legal chance of recovering a refund from the provider 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 and Mrs S in settlement of this claim.

Taking into account the overall circumstances of this case I don't think declining the claim leaves Mr and Mrs S in a fair position. The terms of this policy provide for a pro-rata refund in the event of a trip being cut short.

Mr and Mrs S lost out on nine days of their holiday, including their return flights home. Each day of their trip cost around £421 so they were out of pocket for nine days of their trip (£3789 in total). They've received a refund of £1600 so they remain out of pocket for £2189. I think it's fair and reasonable that Great Lakes cover the difference of £2189. In reaching this conclusion I've taken into account that it's open to Great Lakes to take steps to recover any loss from the provider directly, in line with the policy terms.

#### What do Great Lakes need to do to put things right?

I'm intending to direct Great Lakes to consider the claim as covered under the curtailment section of the policy and pay Mr and Mrs S £2189.

Taking into account the facts of this particular case I think the fairest way to calculate the financial loss is as I've outlined above, bearing in mind the policy terms, the available evidence and the opportunity for Great Lakes to recover any loss from the provider directly.

In reaching this decision I've carefully considered what Great Lakes has said about the breakdown of costs. But I think it's highly unlikely Mr and Mrs S are going to be obtain this and that they've now taken reasonable steps to recover their losses.

Mr and Mrs S accepted my provisional decision. Great Lakes responded with a number of points. In summary, they said:

- There was no evidence that the refund of £1600 was a gesture of goodwill. The calculation from the provider was the most accurate as they have explained how it was calculated, taking into account the actual costs of the holiday.
- My calculation of the holiday costs was very simplistic and convenient – it didn't reflect how holidays were costed
- My calculation of the costs gave Mr and Mrs S a percentage of the used flights and insurance back – this wasn't fair and reasonable. I should take a closer look at the cost of the holiday. They suggested an alternative calculation for the holiday which led to a settlement of around £550.

So, I need to make a 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.

The key point that Great Lakes has disagreed with is how I've calculated the value of Mr and Mrs S's holiday. It hasn't disputed my other findings.

Whilst Great Lakes takes the view my calculations are very simplistic and convenient, I remain persuaded that it's a fair and reasonable way to settle this complaint for the reasons I'll explain.

As I said in my provisional decision it hasn't been possible to get a detailed breakdown of the costs of the trip. Great Lakes referred me to the information from the holiday provider which says:

We have now been able to review your booking and having taken into account the number of days you were on holiday with us and the cost of the flights, I can confirm that we will be issuing you with a refund of £1607.69, as reimbursement for the unused portion of your holiday.

But there's no further detail about why that figure was reached, despite a number of attempts to obtain it. I don't agree with Great Lakes that this constitutes an accurate calculation from the travel provider as it doesn't correspond with the overall cost of the holiday. In reaching that conclusion I've taken into account that there were a number of different aspects to Mr and Mrs S's holiday as it included various flights, transfers, accommodation and excursions. So, I still think that, overall, calculating the total cost and dividing by the number of days of the holiday to reach a daily figure is fair.

I've taken into account what Great Lakes has said about the insurance premiums being part of the holiday cost as it was purchased from the travel provider. I agree it's fair that the premium is deducted because Mr and Mrs S will have the benefit of the cover as their claim is being settled under the curtailment section of the policy.

For the reasons I've outlined above, and in my provisional decision, I'm upholding this complaint.

### **Putting things right**

Great Lakes needs to pay Mr and Mrs S a total of £2189 but it can deduct the cost of the policy premiums and any applicable excess.

### **My final decision**

I'm upholding Mr and Mrs S's complaint against Great Lakes Insurance SE and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 25 July 2022.

Anna Wilshaw  
**Ombudsman**