

The complaint

Mr O has complained that Great Lakes Insurance SE (Great Lakes) declined a claim he made under his mobile phone insurance policy.

What happened

Mr O made a claim to Great Lakes for the loss of his mobile phone.

Great Lakes interviewed Mr O about the circumstances of the loss. Mr O explained that he had been in a bar/nightclub and had stowed the phone in a laptop bag underneath the table of the booth he and his friends were sitting at. He said he was away from the table at various points, but either he or one of his friends were sat at the booth at all times.

Great Lakes declined the claim on the basis that Mr O had left his phone unattended and so had not taken reasonable precautions to prevent the loss or theft of his phone.

One of our investigators considered Mr O's complaint and thought it should be upheld. She said Great Lakes hadn't done enough to show that Mr O hadn't taken reasonable care. So, she didn't think it was fair for Great Lakes to decline Mr O's claim on that basis. She recommended that Great Lakes should settle Mr O's claim, subject to the remaining policy terms.

Great Lakes didn't accept our investigator's opinion. So, as no agreement has been reached, the complaint has been passed to me to decide.

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.

Having done so, I've reached the same conclusions as our investigator, for the following reasons:

Great Lakes has said Mr O failed to take reasonable precautions to safeguard his phone because he left it unattended. It has made reference to the following policy terms when declining Mr O's claim:

"General exclusions

We will not pay for:

4. any claim where you have failed to take reasonable precautions to prevent damage, theft or loss. This will include, but not limited to:

- a. using your gadget in accordance with the manufacturer's instructions;*

- b. if left unattended in a vehicle or premises, you are to ensure that the gadget is out of sight and that all locks and security devices are actioned;*
- c. not handing your gadget to a person who is not known to you or a third party, other than your immediate family.*

....

24. any claim where you knowingly leave your gadget somewhere where you can't see it, but others can and it is at risk of being lost, stolen or damaged. For example - in a restaurant or a pub where you go to the toilet or bar leaving your gadget on a table instead of taking it with you."

Mr O's policy doesn't provide a definition for "*unattended*". Because it doesn't, I consider it reasonable to apply our service's definition in its place. Our service considers an item to be unattended if the policyholder (or a trusted person) isn't in a reasonable position to be able to prevent someone interfering with it.

In addition to the above, when considering whether a policyholder has taken reasonable care, we use the test of recklessness. We'd consider actions to be reckless where a policyholder recognised a risk but took no measures at all to lower the risk or they knew the measures they took were inadequate.

I've listened to recordings of calls between Mr O and Great Lakes. In these calls, Mr O says he placed his phone in his bag because it was falling out of his pocket and that the bag was placed beneath the table of a booth where he and/or one of his friends were always sat. In my view, this means that Mr O recognised his phone was potentially at risk of being damaged, lost or stolen, by falling out of his pocket, and he took measures to lower that risk by putting it in his bag beneath the table. Based on this, I don't think I can reasonably conclude that Mr O acted recklessly.

Great Lakes says that by leaving the bag beneath the table, Mr O's phone had been left where he couldn't see it, but others could (exclusion 24). But I don't agree. I think the phone was stored where nobody could see it, as it was inside the bag. And as Mr O says that he, or one of his friends, were sat at the booth at all times I don't think it would be reasonable to conclude that he left his bag (or the phone within it) unattended either.

I've thought about the fact that the bag, and the phone inside it, were ultimately lost/stolen. But I don't think this, in itself, demonstrates that Mr O or a trusted person weren't in a reasonable position to prevent that. After all, an item in someone's direct possession is still able to be stolen by a pickpocket, despite that person being in a reasonable position to prevent it. In my view, somebody sat at a table in a booth is in a reasonable position to prevent a bag beneath the table from being interfered with. So, in this case, by placing the phone out of sight (in a bag) beneath a table where somebody was sat, I think Mr O took reasonable precautions to prevent it being damaged, lost or stolen.

Great Lakes says that none of Mr O's friends meet the policy definition of "*immediate family*". So, it says by leaving his phone with his friends, Mr O's loss still wouldn't be covered under exclusion 4c. But I don't think this exclusion applies either, as the phone wasn't handed to a third-party. It was stored in a bag somewhere Mr O or a trusted person were in a reasonable position to prevent it being interfered with.

Great Lakes says Mr O can't say, with certainty, that someone was always sat at the booth because it's possible his friends may have left the table while he was personally away from it. I accept this is a possibility. But it's also possible that someone managed to extract the bag whilst Mr O and/or his friends were at the booth, without them realising it.

Ultimately, where an insurer seeks to rely on a policy exclusion to decline a claim, it's for the insurer to show that the exclusion applies. But Great Lakes hasn't provided any additional evidence to support that the booth was left empty. So, in the circumstances of this complaint, I don't think Great Lakes has done enough to demonstrate that Mr O left his phone unattended, or that he failed to take reasonable precautions to prevent its loss/theft.

It follows that I don't think Great Lakes' decision to decline Mr O's claim, based on any of the exclusions it has highlighted, is fair or reasonable.

My final decision

For the reasons I've explained above, I uphold Mr O's complaint.

Great Lakes Insurance SE must reconsider Mr O's claim, in line with the remaining terms and conditions of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 8 September 2022.

Adam Golding
Ombudsman