

The complaint

A company, which I'll refer to as M, complains that Great Lakes Insurance SE (Great Lakes) unfairly declined a vehicle theft claim. M also complains that Great Lakes is not taking liability for the storage costs incurred.

What happened

The background to this complaint is known to both parties and so I won't repeat it at length here.

Briefly, M took out a Motor Fleet insurance policy. In August 2021, M's vehicle was stolen, so it made a claim on the policy.

M gave permission for one of its subcontractors, which I'll refer to as C, to use its vehicle. The vehicle in question was taken to C's home address and parked on the road. The following morning, C came out to the vehicle to find that someone had got into the vehicle and caused damage to the ignition barrel and there were also signs of an attempt to pick the locks of the vehicle.

Due to the damage to the ignition barrel, C said the steering lock on the vehicle couldn't be removed and the vehicle was not in a drivable condition. C informed M of the incident and M arranged for a vehicle locksmith to attend and repair the damage. M said the earliest call out available was for 8:00 pm that day. M says C returned home between 4:30 pm to 5:00 pm and the vehicle was still parked up. At 8:00 pm, C and one of M's directors went to meet the locksmith and found that the vehicle had been stolen.

Great Lakes said despite knowing the vehicle had been targeted for an attempted theft and the locks and ignition barrel being damaged, there was no attempt to move the vehicle to a safe location. Great Lakes concluded that M did not take reasonable precautions to safeguard the vehicle and keep it in a good state of repair which is a breach of its policy condition. Great Lakes therefore declined M's claim.

M said the vehicle, which was heavily loaded, was locked and parked tightly in between two other vehicles. M was unable to drive the vehicle or move it due to the damage to the ignition barrel, so M didn't think anyone else could either. M said it did everything possible and feels that it has been treated unfairly by Great Lakes.

M also complains about the storage charges incurred following the recovery of the vehicle. It says it wasn't informed by Great Lakes till around three weeks after the vehicle was recovered and had been in storage. It also says that even after it was informed, it couldn't collect the vehicle because the V5 registration document and vehicle keys had been sent to Great Lakes as per their request and M was told by the police and the storage company that M was no longer the registered keeper of the vehicle and therefore couldn't collect it.

Our investigator recommended that M's complaint should be upheld. She explained that in order for Great Lakes to rely on the reasonable care term, to reject M's claim, they need to show that M had failed to take reasonable precautions to safeguard its vehicle. Our

investigator didn't think that Great Lakes had shown this, and she didn't think M had failed to take reasonable precautions. She recommended that Great Lakes settles M's claim in line with the remaining policy terms. She also considered the storage charges and said that these would resolve as part of the claim.

Great Lakes disagreed with our investigator, so the case was passed to me to consider.

I sent an email to both parties outlining my initial thoughts. In summary, I said that I didn't think Great Lakes had shown that M failed to take reasonable precautions to safeguard its vehicle. I referred to the test from the case of *Sofi v Prudential Assurance Company Limited* [1993] 2 Lloyd's Law Rep. 559, which says that for an insurer to establish that a customer failed to take reasonable care, it must show that the customer recognised the risk to their belongings and courted that risk by taking precautions which they knew were inadequate (or no precautions at all) to mitigate the risk. In applying this test, I thought M took reasonable precautions in the circumstances by locking the vehicle after it discovered the initial theft attempt and calling a locksmith to repair the damage so it could move the vehicle. So, while I think M did recognise a risk, it took actions which it thought were reasonable in the circumstances to safeguard the vehicle.

I also considered the storage costs and said that having been contacted by the police, I didn't think Great Lakes did enough to recover the vehicle.

Great Lakes responded to my correspondence and said that they didn't agree that by locking the vehicle and calling a locksmith M had taken reasonable precautions to safeguard the vehicle. But provided no additional reasoning on this point. And regarding the storage costs, they felt they had appropriately informed M of the recovery of the vehicle by the police and need for collection and therefore they were not liable for the storage costs.

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 read and carefully considered everything M and Great Lakes have said. However, my findings focus on what I consider to be the central issues, and not all the points raised.

The crux of this complaint centres on Great Lakes' decision to decline M's claim. The relevant rules and industry guidance say that Great Lakes have a responsibility to handle the claims promptly and fairly and they shouldn't reject a claim unreasonably. I have to decide if I think Great Lakes have applied the terms of the policy in a fair and reasonable manner when declining M's claim. Having reviewed everything available to me, I don't think they did, I'll explain why.

There is no dispute the theft of the vehicle took place.

The condition which Great Lakes have relied on in M's policy says:

“(4) “You” shall take all due and reasonable precautions to safeguard the “Insured Vehicle” and to keep it in a good state of repair...”

Great Lakes argues that M didn't take reasonable precautions to safeguard its vehicle following the discovery of an attempted theft, and therefore declined its claim.

In order to apply an exclusion for reasonable care, an insurer has to, in effect, prove a policyholder has been reckless. The test for recklessness was laid down by the Court of

Appeal in the case of Sofi v Prudential, as explained above.

M said that following the attempted theft it ensured the vehicle was locked and a locksmith was booked to repair the damage to the ignition barrel because it couldn't move the vehicle in its current condition. It also explained that the driver checked on the vehicle when he returned home from work and at that time the vehicle was still there.

It's difficult to know now exactly what happened and while I've requested the driver's witness statements from Great Lakes to get a better picture of the circumstances, I've not received them.

In situations like this, where the evidence is incomplete or contradictory, I'll make my decision on the balance of probabilities. That is, what do I think is more likely than not, given the evidence which is available and the wider circumstances.

It is not known whether the vehicle was locked or not when the driver discovered the attempted theft. On a balance of probability, given that someone broke in and there was evidence of an attempted theft, I think it's more likely than not that the vehicle was left unlocked following the attempted theft. In the circumstances, I think it was reasonable for M to think the precautions it took were reasonable because by locking the vehicle entry couldn't be gained anymore, and also for the reasons explained above, the vehicle couldn't be moved.

I don't think Great Lakes have shown recklessness and because of this, I don't think they were fair to apply the 'reasonable care' condition to M's claim.

To put things right, I think Great Lakes should reconsider M's claim under the remaining policy terms and pay M £200 for the inconvenience caused.

Storage costs

Great Lakes was notified by the police that the vehicle had been recovered and was in storage incurring daily storage costs. The police's letter, dated 11 November 2021, explained that the vehicle had to be collected within 14 days from the date it was seized otherwise it would be disposed of. Due to the post being sent to Great Lakes' previous office address, they said the letter wasn't received until 1 December 2021 but then notified M immediately so it could arrange to collect the vehicle.

I have seen communication between Great Lakes and M which suggests that when Great Lakes notified M on 2 December 2021 that the vehicle had been recovered and to collect it, Great Lakes were still in possession of the V5 vehicle registration document and the vehicle keys. Great Lakes ought to have been aware that M wouldn't have been able to collect the vehicle without these items.

M asked for the registration document and vehicle keys to be returned. Great Lakes provided a postal tracking reference to show that the items were returned to M on 11 December 2021. M says it didn't receive the post, but in any event, it was informed that it was no longer the registered keeper and so couldn't collect the vehicle. As the vehicle wasn't collected, it was disposed of in line with the police's letter.

Given the short timeframe to collect the vehicle, coupled with the delays in M becoming aware of the recovery and also the fact that Great Lakes were still in possession of the V5 registration document and vehicle keys, I don't think Great Lakes did enough to recover M's vehicle from storage. They should have been more proactive in resolving matters. I remain satisfied that they should take responsibility for the storage costs for that lack of proactivity.

My final decision

My final decision is that Great Lakes Insurance SE, should reconsider M's theft claim under the remaining policy terms and pay M £200 for the inconvenience caused. They should also pay any storage costs in relation to this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 9 January 2024.

Ankita Patel
Ombudsman