

The complaint

Mr W is unhappy that Great Lakes Insurance SE declined a claim he made under his travel insurance policy.

What happened

Mr W took out travel insurance, with Great Lakes, to cover a trip he was taking abroad, between 5 June 2021 and 20 June 2021. The policy provided cover for various risks during this time.

Mr W went on holiday as planned. But he's explained that during the final part of his trip, his luggage was stolen. At the time, Mr W was travelling from one part of the country, to another. He was going by ferry – with the ferry stopping at a few other destinations on the way – before arriving at his point of departure.

Mr W has explained that he had large luggage (a suitcase), and so was told by the ferry staff to use the back entrance of the vessel. At this entry point the ferry staff were taking everyone's luggage from them and storing it in a designated luggage area. Rather than the large luggage going with the passengers to their seats. The luggage was stored in this area, seemingly according to where the passengers would be disembarking. And then was covered with a tarpaulin for the journey. During the journey all passengers were given a designated seat and had to stay there until arriving at their destination.

When getting off the ferry, Mr W went to collect his luggage. But it wasn't there. Mr W raised this with the ferry staff but had no success in retrieving his luggage. So, he went to the ferry companies' office, after getting off the boat. Who said the ferry staff would check the boat. This wasn't successful in locating the luggage either. And continued contact with the ferry company, with and without the support of their hotel staff, did not locate the suitcase. So, Mr W said he was without his items on his final few days of holiday.

As the suitcase wasn't located, Mr W made a claim for his loss under his travel insurance policy. Great Lakes considered the claim – and declined it.

Great Lakes said money Mr W had in his suitcase wasn't covered under the policy – which Mr W agreed with. But Great Lakes also said that Mr W's policy didn't provide cover for lost luggage at all, where it was left unattended in a public place, or location that the public has access to at any time. It said when Mr W left his suitcase in the luggage area, it was unattended. And so, the claim would not be settled, for any of his luggage.

Great Lakes also said Mr W had prejudiced its position in terms of recovering its loss if it were to settle Mr W's claim. It said Mr W had released the ferry company from any liability, when discussing the loss with it. So, it wouldn't be able to recovery anything from the ferry company.

Mr W considered this to be unfair. He noted there was nothing he could have done differently in the situation. He had to hand his luggage over when entering the ferry. And, amongst other points, he noted that he didn't consider the luggage area to be public, or

somewhere the public had access to at any time – given it was only possible to obtain luggage from there on embarking and disembarking the vessel.

Great Lakes maintained its position on the matter, so Mr W referred his complaint to this service for an independent review. He explained he was dissatisfied with the outcome of his claim, and how the matter had been handled by Great Lakes.

Our investigator considered this complaint and didn't think it should be upheld. Our investigator agreed that the luggage was left unattended, as per the definitions contained within the policy. And they agreed that the policy didn't provide cover when the luggage was unattended. The investigator also agreed that Mr W had released the ferry company from any liability in communication with it – meaning the insurer's position to recover the loss from the ferry company was prejudiced. So, they didn't think Great Lakes had acted unfairly in noting this either.

Lastly, our investigator thought Great Lakes had acted fairly in how it handled the claim. They felt they had handled it promptly and fairly. So, they didn't recommend anything in respect of this element of the complaint either.

Mr W disagreed, for the same reasons he had disagreed with Great Lakes' claims decision. He reiterated the point he had raised previously and noted that he hadn't spoken to the ferry company himself and released it from any liabilities. Mr W said his partner had done that – but only in relation to her luggage, which was also stolen, and whose subsequent claim was settled by her own travel insurer.

Because Mr W disagreed, this complaint has been referred to me to decide.

I issued a provisional decision to both parties. In this I said:

"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'm intending on upholding this complaint. I've explained why below. When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly. So, I've thought about whether Great Lakes acted in line with these requirements, when it declined to settle Mr W's claim.

I've reviewed Mr W's policy documentation, to see what cover this provided to him. On doing so, I can see that his policy does provide cover for personal baggage, if it is damage, stolen, destroyed or lost (and not recovered) during the course of a trip). Which is what happened to Mr W's luggage.

*As is common with insurance policies of this nature, this policy does provide some limitations to cover. The policy does explain that personal baggage "must not be left unsecured, **unattended** or beyond **your** reach at any time in a place to which the public have access."*

The word unattended is defined in the policy as:

*"When **you** cannot see and/or are not close enough to **your** property, or vehicle, to prevent unauthorised interference with, or **theft** of, **your** property of vehicle."*

Based on this definition, it's clear that Mr W's luggage was left unattended. He couldn't see the item and wasn't close enough to prevent unauthorised interference with it. And I do think it's reasonable to consider the luggage storage area as a place where the public had access.

Because when embarking and disembarking the passengers on the boat, and the crew, had access to the cases.

Given the above, I appreciate that if applying the policy terms strictly, Mr W's claim isn't covered by the policy.

But my role is also to consider what is fair and reasonable in the circumstances of a complaint. And, in this instance, I don't think it's fair to apply the terms and conditions of the policy strictly. I say this because I don't think Mr W left his luggage unattended in a way that would mean it's fair and reasonable to apply the term.

Mr W had no choice but to leave his item at the designated luggage area. When getting on the ferry, he had to hand over his luggage to the crew – and take the seat he was assigned. It is often the case that when travelling, that luggage must be placed in a designated area. Making it unavoidable to do this if you wish to travel as planned. So, I don't think Mr W did anything out of the ordinary here – or that he wasn't complying with the spirit of the term around unattended items. He was taking steps to place the item in safety – as instructed by those in charge of the vessel, and in charge of the health and safety of the environment. So, to apply the term strictly, in this instance, seems unfair – and an overly strict interpretation.

Given the above, I don't consider Great Lakes to have acted fairly in applying the term strictly. And, require it to deal with Mr W's claim, in line with the remaining terms and conditions of the policy.

Great Lakes has also said that Mr W has prejudiced its position to make any recovery from the ferry company. So, I've thought about this. And I don't consider Great Lakes has acted fairly here either. It was Mr W's partner, not Mr W, who said they wouldn't pursue the ferry company any further. And looking at the email correspondence, they were left in an impossible position. They needed evidence to claim under their insurance policies from the ferry company. And could only get this by confirming with the ferry company they would be pursuing it directly no longer. In any event, Great Lakes still can take over a claim and seek to recover, should it wish to do so.

Mr W has said the claims process took too long, and the service he received was poor. So, I've looked into this too. Overall, it took just over six weeks, for Mr W to be given an outcome to his claim – with this initially being given on 2 August 2021. Great Lakes was entitled to take steps to validate Mr W's claim before giving an outcome – such as conducting an interview with Mr W – which it did during this time. So, I don't think there was an unreasonable delay here. And, following Mr W raising concerns with the outcome of the claim, Great Lakes investigated this further – and provided a full response on 19 August 2021. Which I don't think is unreasonable either.

Mr W has noted he had to chase Great Lakes for responses to emails, when he contacted them. But looking at the time period between emails – which on occasions included weekends – I don't think Great Lakes took an unreasonable period of time to respond. There was an occasion when Great Lakes appears to have responded outside of its service level agreement of three to five days. But I don't think this alone means Great Lakes needs to do anything further in relation to this complaint. Overall, I'm satisfied with the progression of the claim.

I appreciate Great Lakes did ultimately come to an outcome on the claim, that I don't consider fair. But I'm intending on requiring Great Lakes to deal with the claim, in line with the remaining policy term, to resolve this. And I'm satisfied that's fair in this situation.”

Mr W responded and agreed with my provisional decision, on the issues discussed within the provisional decision. Great Lakes didn't respond.

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 decided to uphold this complaint.

There hasn't been any further comments or evidence from either party, to alter my findings on this complaint, or the reasoning for it. And so, my decision remains the same as that in my provisional decision, and for the same reasons.

My final decision

Given the above, I require Great Lakes Insurance SE to deal with Mr W's claim, under the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 January 2023.

Rachel Woods
Ombudsman