

The complaint

A company that I'll refer to as N complains that Great Lakes Insurance SE turned down a claim on its commercial vehicle fleet insurance policy.

Miss W, a director of N, has complained on N's behalf.

What happened

N took out a motor fleet policy with Great Lakes. During the policy year, one of N's trucks hit a tree. The damage from the accident was to a crane which was fitted to the truck. Because of this, N claimed on the policy with Great Lakes for the damage to the crane.

Great Lakes reviewed the claim and turned it down. It said that as N hadn't told it the truck had a crane on it, the policy didn't cover it. N didn't think this was fair and complained. Great Lakes reviewed the complaint and said if it had been told a crane was fitted to the truck it would have affected the risk it agreed to cover as well as the additional value of the crane. And if it had known about this at the time of the quote there would have been an additional premium to pay.

N didn't agree with Great Lakes's response to the complaint and so referred it here. It said the proposal form for the policy did not ask about whether there was a crane or other adaptations to the trucks. It also said it had not needed to declare the cranes on previous policies it had for similar vehicles.

Our investigator looked into the complaint and recommended it be upheld. He found that while Great Lakes may have charged an additional premium, it hadn't said what the premium would be. Because of this, our investigator recommended Great Lakes pay the claim.

Great Lakes disagreed. It said N had deliberately or recklessly not told it about the crane being fitted to the truck. And because of this, it thought it had acted fairly by just declining the claim rather than avoiding the policy, as it thought it was entitled to under the Insurance Act 2015.

I issued a provisional decision on this complaint on 16 January 2023 where I said:

"When N bought its policy, it had a responsibility – under the Insurance Act 2015 (the Act) – to make a fair presentation of the risk. And for Great Lakes to take any action at all it needs to show N didn't do this and that it made what's known as a qualifying breach. Under the Act a qualifying breach is a breach for which the insurer has a remedy against the customer because it would either not have sold them the policy, or would have done so on different terms.

Great Lakes said N bought its policy through a broker who provided a completed proposal form. The information provided via the broker included the nature of N's business, along with the registration and type of vehicles needing cover, along with the level of cover required for each vehicle and claims history.

Great Lakes has said none of the information provided made it aware the truck had a crane fitted to it. Great Lakes also said as the value of the crane is significantly more than the truck it was attached to, it should have been told about it, along with the higher value for the truck.

N said it told Great Lakes its business was haulage which mainly involves timber and that this should have put it on notice to ask more questions if it wanted to know anything else. And if it had done, it would have known about the crane. From reviewing the proposal information I'm satisfied N didn't disclose the truck involved in the accident had a crane attached to it. And while Great Lakes could have asked additional questions, I'm not persuaded N disclosed enough information to make it aware it may need to. Also, as the crane attached to the truck increases the value of the truck significantly, I'm satisfied this is material information N should have disclosed. It follows that I'm therefore satisfied N didn't give a fair presentation of the risk when insuring this truck.

For Great Lakes to take any action at all though it needs to show it would have either not insured N, or done so, but on different terms. Great Lakes has said it would have covered N's truck with a crane on it but would have charged an additional premium. N disputes this and said when it let Great Lakes know about the trucks with cranes on, no additional premium was charged. Great Lakes also hasn't provided anything to show what difference in premium it would have charged. It's said it due to the type of policy there isn't a defined underwriting criteria it can provide and that it's not possible to know what premium it would have charged previously. Instead, it's said N's failure to give a fair presentation of risk was deliberate or reckless and therefore said it could have avoided the policy but instead just decided to decline the claim.

The remedies available to Great Lakes depend on whether a qualifying breach is either deliberate or reckless, or, neither deliberate nor reckless. However as Great Lakes hasn't shown N's breach is a qualifying one, it's not able to rely on any of the remedies within the Act. So, while Great Lakes is right when saying what it can do if a qualifying breach is deliberate or reckless, it hasn't shown N's breach is a qualifying one. Therefore, under the Act Great Lakes isn't able to take any action at all.

For that reason, I'm satisfied Great Lakes hasn't dealt with N's claim in a fair and reasonable way. Therefore, to put things right Great Lakes needs to pay N's claim in line with the remaining terms and conditions of the policy."

N didn't respond to my provisional decision. Great Lakes responded and didn't accept it. In summary it said my decision was mistaken that an additional premium would be charged. It also said that as this is a commercial vehicle fleet policy, it's not possible to provide an underwriting criteria as there isn't one. Great Lakes also said it wasn't possible to unwind what it would have done when adding the truck to the policy as there are several factors to be considered, including market conditions at the time, and that on this policy there had been multiple midterm adjustments and that the other vehicles had been undervalued too. Great Lakes also said it wasn't fair to expect full indemnity to be given with deduction of the amount which has been underpaid. Great Lakes then said that a proportionate settlement would mean that as 0% of the premium had been paid for the crane, then 0% of the claim would be paid, as the claim only related to the crane which was fitted to the vehicle. It also said the policy excluded the claim for the crane and so it wouldn't be covered under the policy anyway.

I asked our investigator to respond to Great Lakes and acknowledge that I understood that due to the nature of these policies it's difficult to show exactly what it would have done differently. However, it hadn't sufficiently evidenced that it would have acted differently, and as this was a requirement within the Act, I therefore was inclined to maintain the position in my provisional decision. I also asked our investigator to explain that Great Lakes hadn't

been clear about where in the policy it said this claim wouldn't be covered and that, from the information on file, the crane appeared to be part of the truck.

Great Lakes responded and explained that the crane was not part of the truck and would have been fitted after the truck was built. Great Lakes also explained it didn't think N purchased the truck from new and, when it was added to the policy, N hadn't told Great Lakes about the crane. For this reason, Great Lakes thought N had failed to disclose the full details of the truck and not made a fair presentation of the risk in line with the policy terms and conditions.

I asked our investigator to let both parties know Great Lakes hadn't been clear about which term in the policy meant the claim wouldn't be paid. And as Great Lakes hadn't shown what it would have done differently if the crane had been declared, I was still inclined to uphold this complaint as Great Lakes hadn't shown it was fair and reasonable to decline it due to N not giving a fair presentation of the risk. However, I altered the outcome and said it would be for Great Lakes to consider the claim in line with the remaining terms and conditions of the policy.

Great Lakes responded and disagreed that it hadn't been clear but didn't say which term applied. It reiterated that there is a duty of disclosure and fair presentation upon N in the policy and that duty had been breached.

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 Great Lakes's comments in response to my provisional decision. But I'm not satisfied it's shown it's acted fairly and reasonably in turning down this claim. I would like to assure Great Lakes that while I'm not responding to every point raised, I have considered them. However, in my view, none of the comments Great Lakes has provided sufficiently show it would have acted differently, had N declared the vehicle had a crane fitted to it.

I feel it may help to explain that the reason for asking Great Lakes to show what it would have done differently is to satisfy the requirement under the Act to show that N's failure to give a fair presentation of the risk was a qualify breach. And while there may be terms in the policy which also refer to a fair presentation, the relevant consideration here is the Act. Depending on what Great Lakes would have done, but for the failure to give a fair presentation of the risk, is key to understanding what action Great Lakes is entitled to take under the Act.

So, while I acknowledge Great Lakes's response and understand it's not easy to show what it would have done differently. It's not shown it would have done anything differently, and therefore it's not able to rely on the remedies under the Act, as it hasn't shown N's breach was a qualifying one. For these reasons I'm satisfied Great Lakes hasn't dealt with N's claim fairly and reasonably by declining it for a failure to provide a fair presentation of risk under the Act. Therefore, Great Lakes needs to consider N's claim in line with the remaining terms and conditions under the policy and not decline the claim for failure to give a fair presentation. For completeness, this also means that it cannot rely on the term within the policy which says the insured needs to make a fair presentation of the risk.

My final decision

For the reasons explained above and in my provisional decision. My final decision is that I uphold this complaint and require Great Lakes Insurance SE to consider N's claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 4 July 2023.

Alex Newman
Ombudsman