

The complaint

Mr G complains that Great Lakes Insurance SE avoided his motor insurance policy and refused to pay his claim. He also complains that it disposed of his car without his consent.

What happened

In November 2021 Mr G had a car accident, for which he accepted fault. He claimed on his motor insurance policy with Great Lakes. Great Lakes inspected Mr G's car and decided it was a total loss (what's commonly known as a "write-off").

But it subsequently told Mr G it was declining his claim and avoiding his policy. This means it had decided to treat the policy as if it had never existed. It explained that this was because Mr G had changed the air filter, and it considered that the change amounted to a "modification" to his car. It said Mr G hadn't told it about the modification, and if he had, it wouldn't have been willing to insure his car.

Great Lakes disposed of Mr G's car in early January 2022. Mr G only discovered that this had happened some time later, by which time Great Lakes couldn't recover the car. It sent Mr G a cheque for the sales proceeds less recovery and storage costs.

Mr G (who has been represented by his father in this complaint) thinks Great Lakes' decision is unfair. He's explained that a replacement filter from the main dealer would have been very expensive, costing hundreds of pounds. He says he bought the replacement filter on the advice of his garage, and it cost around £20. He doesn't accept that it was a performance-enhancing part. And he's queried whether, for example, replacing the brake pads would be considered as a modification.

Mr G's told us that he lives in a rural location with very limited public transport. Following the accident, he didn't have a car until 17 August 2022, when his father bought him a second-hand car. This was because he was starting a new job and he needed to be able to drive to work. He says the whole situation had a negative impact on his mental health.

One of our investigators considered Mr G's complaint and thought it should be upheld. In summary, he didn't think Mr G had made any misrepresentation to Great Lakes. And he didn't think Mr G should reasonably have considered that changing the air filter amounted to a modification for the purposes of the policy. So he said Great Lakes should deal with Mr G's claim, and if the claim is successful, it should add interest to the settlement. He also said that Great Lakes should remove the voidance from Mr G's records and pay him £10 per day for the loss of use of his car from the date of the accident to the date it disposed of it. And he said Great Lakes should pay Mr G £250 compensation for the trouble and upset he'd experienced.

Great Lakes disagreed with the investigator's view, so the complaint was passed to me.

My provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Mr G

and to Great Lakes on 1 February 2023. I said:

“The first issue I need to decide is whether Great Lakes acted fairly and reasonably and in line with the relevant law when it avoided Mr G’s policy. If it didn’t, then I also need to consider how it should put things right.

Great Lakes claims that Mr G made a misrepresentation when he took out the policy. It says that he confirmed that he hadn’t modified the car in any way. But it considers that the air filter that Mr G fitted amounted to a modification, and that as a result, it was entitled to avoid his policy.

Mr G had a responsibility under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) to take reasonable care not to make a misrepresentation when taking out the policy. The standard of care is that of a reasonable consumer. If a consumer fails to take reasonable care not to make a misrepresentation and the insurer can show that if it had known the true position, it wouldn’t have offered the policy (or would have offered it on different terms), the insurer may be entitled to void the policy. That’s what Great Lakes claims to have been entitled to do here. But I’m not convinced that there was a misrepresentation in this case.

Mr G’s told us he no longer has the receipt for the air filter. It would have been useful to see that. But I can understand how, not expecting it to cause difficulties with a future insurance claim, he might not have felt the need to keep it.

Where the evidence is incomplete or inconclusive, I need to decide what I think’s most likely to have happened, based on the information I have.

Mr G’s told us that he remembers changing the air filter the day before he drove a long distance to visit a relative. He says a warning light was showing on his dashboard and he was nervous about making the journey without rectifying the issue. Mr G’s told us that he made the journey in October 2021 – just over four months after he took out the policy. I acknowledge that Great Lakes has queried whether an issue with the air filter would have caused a warning light to come on. But I find what Mr G says about the timing of the replacement of the air filter persuasive, on balance.

As a result, I’m not convinced that the replacement air filter had been fitted when Mr G took out the policy. So the question of whether he made a misrepresentation about whether the car was modified doesn’t arise. And this means that I’m not satisfied that it was open to Great Lakes to rely on CIDRA to avoid Mr G’s policy.

I should add, however, that even if I’d concluded that I thought it likely that Mr G had already changed the filter when he took the policy out, I don’t think the questions he was asked during his application were clear and specific enough that it would be fair to find that it ought to have been obvious to Mr G that he needed to tell Great Lakes that he’d changed the air filter.

But since I’m satisfied, on balance, that Mr G changed the air filter after he took out the policy, I don’t need to consider this point further.

Great Lakes has also pointed to the policy provision concerning modifications:

“10. Car modifications

This policy doesn’t cover any non-standard parts (modifications). If you make a claim for loss or damage to your car, we will only pay the cost of replacing parts needed to

meet the manufacturer's standard specification, including optional extras fitted by the manufacturer at the time of first registration. If you don't tell us about a modification, we may cancel your policy from its start date, apply additional premium or add new terms to your policy. If you make a claim we may reject the claim or only provide partial payment for it." Car modifications include, but are not limited to:

- *Changes to the bodywork*
- *Changes to suspension or brakes*
- *Cosmetic changes such as alloy wheels*
- *Anything affecting performance such as changes to the engine management system or exhaust system*
- *Changes to the audio/entertainment system."*

Mr G bought the filter from a well-known chain store that specialises in motor parts. It was a generic, compatible filter, not made by the manufacturer of Mr G's car.

Great Lakes has argued that because the replacement air filter which Mr G fitted wasn't made by the manufacturer of the car, it constituted a modification which Mr G should have told it about. But if that were the case, most cars wouldn't be insured, given the routine changes numerous car parts go through during a car's lifetime of MOTs, services and repairs, as well as tyre changes.

I acknowledge that Great Lakes considers that the new air filter that Mr G fitted was performance-enhancing. It says this type of air filter is commonly used to increase air into the engine and enhance the power, performance and induction noise of a car. And it considers that this amounts to a significant modification. It's provided the engineer's report it got after Mr G had the accident. But all that says is "Vehicle has performance modifications fitted – Performance enhancing air filter". No technical information or detail has been provided about why Great Lakes considers the air filter that Mr G fitted to have been performance-enhancing.

Great Lakes has also provided a link to the website for the dealer Mr G says he bought the filter from. It's true that it's listed as a "Performance Air Filter", and some customer reviews state that they feel that it's made their car more responsive, or that it's given them a bit of extra power. But I'm not satisfied that the listing on the website indicates that the filter was likely to result in any – or at least any significant – improvement to the performance of the car. And I don't think it ought reasonably to have occurred to Mr G that replacing the air filter amounted to a "modification" that he needed to tell Great Lakes about.

In the course of considering the complaint, I asked Great Lakes to provide a copy of its risk criteria. Those refer specifically, with photos, to what looks like the type of air filter that Mr G fitted. And based on the risk criteria, I'm satisfied that Great Lakes would have cancelled the policy from the time it became aware that the new filter had been fitted. Great Lakes says that this would have led to the same outcome for Mr G, since it wouldn't have accepted his claim "due to the non-disclosed and unacceptable modification".

But Great Lakes' engineer only examined Mr G's car after (and as a result of) the accident. So even if Great Lakes would have cancelled Mr G's policy when it became aware of the replacement air filter, the policy would still have been live at the time of the accident, and Mr G would still have been covered.

Great Lakes told Mr G that it was voiding his policy on 23 December 2021. That was more than a month after the accident. By that stage it had got an engineer's report on the car, carried out various checks and calculated the market value of the car. I've seen nothing to make me think that but for the issue with the air filter, Great Lakes wouldn't have settled the claim.

As it was, the money Great Lakes sent Mr G after it disposed of his car was considerably less than he'd have needed to buy a replacement car. And Mr G was left without a car until 17 August 2022, when his father's told us that he bought Mr G a second-hand car so that he could travel to a new job.

I can understand how not having a car for such an extended period would have had a serious impact on Mr G - and the more so as he lives in a rural area, which he's told us has very limited public transport. I'm satisfied that Great Lakes should compensate him for this and I consider compensation of £10 per day for the period from 23 December 2021, by which I think Great Lakes could reasonably have been expected to settle Mr G's claim, and 17 August 2022, when he got his new car, is appropriate in the circumstances."

So I said that my provisional decision was that I intended to uphold the complaint, and to require Great Lakes to put things right by doing as I've set out under the heading "Putting things right" below.

Further submissions

Mr G's father, on Mr G's behalf, confirmed that he'd received my provisional decision, and that his only comment was that Great Lakes had deducted amounts for vehicle recovery and storage from the settlement it made to Mr G. He said the car was recovered from the accident site and stored at a recovery yard, which he believes the insurance assessor visited to inspect the car. And he says Great Lakes shouldn't have charged Mr G for recovery or storage.

Great Lakes didn't accept my provisional decision. It said, in summary, that it believes that the replacement filter that Mr G fitted constituted a modification to his car. It says the type of filter that was originally fitted to Mr G's car is designed to be easily replaceable, and a new one can typically be fitted in minutes. What's more, it says Mr G could have bought a direct replacement for the original air filter very cheaply from the same place as he bought the filter that he fitted.

It has reiterated that the air filter that Mr G fitted was sold as a "Performance filter". It says it's specifically designed to increase airflow into the engine, which in turn increases the amount of fuel to the engine, and so increases its power. And it doesn't believe that the significance of the power increase should be relevant to my decision. It points out that the policy doesn't differentiate between acceptable and unacceptable levels of performance improvement. Rather, it simply states that Great Lakes doesn't cover modified vehicles.

Great Lakes has pointed to the fact that the original airbox housing and trunking had to be removed in order to accommodate the replacement filter and the original air feed was removed and the cable tied out of the way. It says that it doesn't require replacement parts to be made by the vehicle's manufacturer, but they should conform to the general specification of the original part, and shouldn't require adaptation of the vehicle in order to be fitted. Great Lakes doesn't accept that the filter was generic, as it was marketed specifically as a performance filter. And it doesn't consider it to have been compatible either, given that a number of other engine parts had to be removed so that it could be installed.

Great Lakes has commented that "*With vehicle modifications, it is often not the quantum of*

the actual change in performance that is the issue but more that the vehicle has been deliberately modified away from standard specification in pursuit of that performance increase". It says that this is a well-established indicator of risk which it isn't willing to accept. And it says that any UK motor insurer would categorise the fitting of the type of filter that Mr G fitted as a declarable modification.

Great Lakes believes, on the balance of probability, that Mr G fitted the replacement filter "*in full knowledge of the enhancements it offered*". It accepts that if it's true that he changed the filter after he took the policy out, this would have impacted its decision to void the policy for misrepresentation. But it says it would still have rejected Mr G's claim. And it remains of the belief that the policy wording entitles it to cancel a policy or refuse to pay a claim if an undeclared modification is discovered on inspection of a vehicle after a claim is made.

Finally, Great Lakes says the settlement to Mr G was in line with the (then) current value of the car, less recovery and storage costs. It says it has no control over cost of any replacement vehicle. And since the policy doesn't provide for "gap" cover, it disputes the relevance of the time between settlement of the claim and the purchase of a new car.

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.

It's clear that Great Lakes feels strongly that the complaint shouldn't be upheld. But having reviewed the complaint again and thought carefully about everything that's been said, I'm not convinced that there's any good reason to depart from the findings I set out in my provisional decision.

It's true that the policy included a term requiring Mr G to tell Great Lakes about any modifications to his car. But I don't consider the replacement air filter that he fitted to have been fundamental to the risk that Great Lakes had agreed to insure. This means that I don't think that it was reasonable of Great Lakes not to consider Mr G's claim due to the replacement of the air filter. And that would be my view regardless of whether he told Great Lakes about the change.

I say this because the contract of insurance that Mr G had with Great Lakes was an annual one. Mr G was required to provide accurate information when he took out the policy, and again if he renewed it. Great Lakes should have been aware that it was possible that relatively minor changes could take place between the start of the policy and renewal, or between renewals. I consider that this was effectively part of the risk that it agreed to insure.

If Mr G had made more fundamental changes to his car, I might have taken a different view. But it remains my view that the replacement air filter had a negligible impact on the performance of the car – and on the likelihood of it being stolen or damaged. In the circumstances, I find that Great Lakes acted unfairly in not dealing with Mr G's claim.

Great Lakes has commented about the lack of "gap" cover in the policy. But my finding on loss of use wasn't based on the policy having included that type of cover. If Great Lakes had settled Mr G's claim within typical timescales, as I find it should, it's reasonable to assume that Mr G would have received significantly more in settlement than he did, and in all probability, he wouldn't have had to wait for so long to get a new car. Mr G's father eventually bought him a car in August 2022. So Mr G had the use of a car from then onwards. But I remain of the view that it's fair and reasonable to require Great Lakes to compensate Mr G for the loss of use of his car from 23 December 2021, by which time it should have settled Mr G's claim, until 17 August 2022, when he once again had a car.

Putting things right

Great Lakes Insurance SE should:

- Reinstatement the policy and settle Mr G's claim subject to the remaining policy terms;
- Pay simple interest at 8% per year on the difference between the total settlement and the amount that Great Lakes has already paid Mr G in settlement of his claim, calculated from 23 December 2021 until the date payment is made;
- Remove any references to the policy having been voided from internal and external databases;
- Pay Mr G £10 per day to compensate him for the loss of use of his car, calculated from 23 December 2021 to 17 August 2022; and
- Pay Mr G £250 to compensate him for the trouble and upset this matter has caused him.

For the avoidance of doubt, as the investigator mentioned in his view, once Great Lakes reinstates the policy, the balance of the full premium for the policy year in which the claim was made will be payable and Great Lakes may deduct that from the settlement to Mr G. And Great Lakes should include in the settlement of the claim reimbursement to Mr G of all recovery and storage charges that it would have covered itself if it had settled his claim, as I find it should have.

My final decision

My decision is that I uphold this complaint. I require Great Lakes Insurance SE to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 2 May 2023.

Juliet Collins
Ombudsman