

## **The complaint**

Mr O complains about how Great Lakes Insurance SE (Great Lakes) handled a claim under his pet insurance policy for treatment of his dog.

References to Great Lakes include their agents who administer the policy.

In making his complaint, Mr O was supported by a representative. References to Mr O include his representative.

## **What happened**

Mr O had a pet insurance policy covering his dog, taken out in September 2021. In July 2022 the dog received treatment for an abscess. Mr O contacted Great Lakes to tell them about the treatment and make a claim. He subsequently sent copies of vet receipts to support the costs of treatment.

Great Lakes considered the claim, but Mr O was concerned at the time taken before they declined the claim later the following month. They did so because they considered the treatment was in respect of a pre-existing condition (pre-existing conditions were excluded from cover under the policy).

Mr O was unhappy at the decline of his claim and provided a letter from the vet which stated the treatment of the abscess wasn't for a pre-existing condition. Great Lakes considered the letter but maintained their decline of the claim on the grounds of a pre-existing condition.

Mr O complained to Great Lakes, as he didn't think the previous clinical history indicated a pre-existing condition (as the vet stated). He was also unhappy at the time taken to assess his claim and the service, including contact from call handlers and claims assessors.

Great Lakes didn't uphold the complaint. In their final response they confirmed the decline of the claim, as the dog received advice (from the vet) for the clinical signs of the abscess within 24 months prior to the start of the policy. Great Lakes referred to the policy definition of a pre-existing condition as anything a pet received treatment, medication, or advice within the 24 months prior to the policy start date. They also considered the term 'advice' to include anything a vet observed and recorded in a pet's clinical history.

Great Lakes referred to the dog's clinical history prior to the start of the policy, including a visit to the vet in August 2021 for a recurring lump on the left-hand side temporomandibular region over the preceding three months. Fine needle aspiration (FNA) was carried out. The vet subsequently advised 'possible sialoceles/sialadenitis/abscess'. Further visits in February and April 2022 noted a recurrence of the lump. Great Lakes said the mass was first treated prior to the policy start and when the dog was seen after policy start, the mass had grown (in the same location). So it was a recurrence of the lump previously identified. Meaning clinical signs of the abscess were present, and advice given before the policy started, so a pre-existing condition (and excluded from cover).

On the issue of the service Mr O received, Great Lakes didn't (from review of calls) feel their service had fallen below standard, other than one occasion where a call back didn't happen. So, Great Lakes upheld this element of the complaint, apologising to Mr O.

Mr O then complained to this service. His complaint contained several elements. First, the overall time taken to assess his claim (despite telling Great Lakes he'd paid the vet bills in full). Second, he found it difficult to contact them and to speak to the assessor dealing with the claim. Third, he disagreed with the decline of the claim as at no time during previous visits to the vet had his dog been diagnosed with an abscess or received treatment for such a condition. The tests carried out didn't diagnose the masses as abscesses and before further tests could be carried out, the treatment had removed the abscesses. His vet also said it wasn't a pre-existing condition. Mr O said he'd found the whole process difficult, time consuming and upsetting. He'd also suffered significantly financially.

He wanted Great Lakes to review the claim and settle it in full (subject to the policy excess) and for Great Lakes to review claim processes to make them more streamlined for policyholders. He also wanted them to improve their claims and complaint response timelines and make it easier for policyholders to speak to the assessor dealing with a claim.

Our investigator upheld Mr O's complaint, concluding Great Lakes hadn't acted fairly. He didn't consider Mr O made a misrepresentation (about whether the dog had a pre-existing condition) under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) as Great Lakes hadn't asked a clear question about whether Mr O's dog had a pre-existing condition. The investigator also didn't think the dog had a pre-existing condition. The vet said the earlier incident of a lump was likely caused by a foreign body, with no evidence to link it to the subsequent treatment for an abscess. As the onus was on Great Lakes to show it was reasonable to apply an exclusion to decline the claim, as they hadn't shown this, they should reassess the claim. The investigator also thought Great Lakes should pay Mr O £50 for delays assessing the claim and the time Mr O had spent chasing about the claim.

Great Lakes disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they said they weren't saying Mr O made any kind of misrepresentation when he took out his policy nor that Mr O's policy was invalid (a remedy under CIDRA if an insurer thought a consumer made a misrepresentation). They'd declined the claim because they thought there was a pre-existing condition and not because of how Mr O answered questions at the time he took out the policy. Great Lakes referred to their response to Mr O's providing his vet's opinion (and their final response) setting out their grounds for concluding there was a pre-existing condition. They also emphasised the lump recurred in the same location as evidence of pre-existing condition, which the vet was seeking to identify the underlying cause - with the diagnosis of an abscess/foreign body coming later. They also highlighted clinical notes references to the lump and its recurring nature.

In my findings, I considered the information and evidence, including the respective views of Mr O, Great Lakes and the vet. Looking at what the vet had said, the difference seemed to be the nature of the mass or lump. The first, being linked to the salivary gland or associated condition (with clear fluid aspirated) and the second being an abscess (with purulent material aspirated) possibly caused by a foreign body (not the salivary gland). I thought the question was therefore whether the mass (lump) had different causes (as the vet's opinion indicated) and therefore a different condition. Or, as Great Lakes said, the mass (lump) having been present in the same part of the dog means there were clinical signs of the condition that subsequently occurred in July 2022 (the abscess). So, the issue came down to which of the two views is consistent (or could reasonably be held to be consistent) with the terms of the policy, and what it defines as a pre-existing condition. On balance I was more persuaded by the view of Great Lakes.

I also considered the clinical history of the dog in the context of the policy definition of a pre-existing condition. I concluded the history could reasonably be considered consistent with the policy definition. Taking all these points into account, I concluded Great Lakes had shown enough to apply the exclusion for a pre-existing condition in the circumstances of the case. So, I concluded Great Lakes acted fairly to apply the exclusion to decline Mr O's claim.

But I agreed Mr O had suffered some distress and inconvenience, and I thought £50 compensation would be fair and reasonable.

On the point that Mr O was also unhappy at Great Lakes' processes for assessing claims (and handling complaints) and asked that they are streamlined, I thought these were operational matters for Great Lakes. So, they weren't ones that fell within the remit of this service. Complaint handling was also something that fell outside the remit of this service, so I didn't ask Great Lakes to do anything further in these regards.

Because I reached different conclusions to those of our investigator, I issued a provisional conclusion to give both parties the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

*I've considered the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*My role here is to decide whether Great Lakes have acted fairly towards Mr O.*

*The two key issues in Mr O's complaint are, firstly, whether Great Lakes acted fairly in declining his claim for treatment of his dog. Great Lakes' view is that they fairly declined the claim, on the grounds there were clinical signs and vet advice (within 24 months of the policy start) of the abscess that was subsequently treated. Mr O, with support from his vet, says the abscess wasn't a pre-existing condition. The second, broader issue is the way Great Lakes handled the claim. This issue has further elements, including the time to assess the claim, the way Great Lakes communicated with Mr O and the processes for assessing claims and handling complaints.*

*On the first issue, the decline of the claim because of a pre-existing condition, I've considered both views carefully, including the relevant terms and conditions of the policy (particularly those referred to by Great Lakes in their final response) together with the supporting information and evidence, including the clinical notes and subsequent letter and the clinical history of Mr O's dog.*

*In their final response, Great Lakes refer to the Policy definition of a pre-existing condition which states in Section 1.3 Definitions we use that pre-existing condition means:*

*"...anything your pet has had treatment, medication or advice for in the 24 months before your policy starts. We consider advice to include anything a vet observed and recorded in your pet's clinical history."*

*In turn the policy terms and conditions go on to say in Section 5. Your cover that:*

*"pre-existing conditions*

*x We will not pay for any costs relating to pre-existing conditions."*

*I've then considered the question of whether the dog did have a pre-existing condition. Great Lakes, in their final response, refer to the dog's clinical history prior to the policy start, including a visit to the vet in August 2021, after which the vet subsequently advised 'possible sialoceles<sup>1</sup>/sialadenitis<sup>2</sup>/abscess'. Further vet visits in February and April 2022 noted a recurrence of the lump. So, Great Lakes say the mass was first treated prior to the policy start and when the dog was seen after policy start, the mass had grown (in the same location). So the mass was a recurrence of the lump previously identified. Meaning clinical signs of the abscess were present, and advice given before the policy started, so it was a pre-existing condition (and therefore excluded from cover).*

*I've also considered the view of Mr O's vet, provided to Great Lakes during the assessment process. The key parts of the vet's view are as follows:*

*"We would not consider the abscess claimed for to be a 'pre-existing' one, the reason being that although [the dog] had swelling on left hind side previously (July 2021 to August 2021) an FNA was performed which aspirated out clear fluid with bloody areas, not typical purulent material that is normally associated with an abscess. This can be indicative of sialoceles...*

*[The dog] then presented to us in July 2022 with swelling on left hind side and pyrexia. We performed another FNA which aspirated purulent material, not consistent with saliva. [The dog] was diagnosed with a submandibular abscess.*

*The history was sent to a soft tissue specialist in July 2022 to review the case and they were concerned the problem may not be its salivary gland, but rather a small foreign body."*

*Looking at what the vet has said, the difference would seem to be the nature of the mass or lump. The first, being linked to the salivary gland or associated condition (with clear fluid aspirated) and the second being an abscess (with purulent material aspirated) possibly caused by a foreign body (not the salivary gland).*

*The question is therefore whether the mass (lump) had different causes (as the vet's opinion indicates) and therefore a different condition. Or, as Great Lakes say, the mass (lump) having been present in the same part of the dog means there were clinical signs of the condition that subsequently occurred in July 2022 (the abscess). So, the issue comes down to which of the two views is consistent (or could reasonably be held to be consistent) with the terms of the policy, and what it defines as a pre-existing condition.*

*I've thought about this carefully, but on balance I'm more persuaded by the view of Great Lakes. In reaching this conclusion I've looked through the clinical history, which record the notes made at the time of the dog's visits and treatments, between July and August 2021 through to July 2022. The notes record a history of issues with the left hind side mandible at various times, including the following references [date]:*

*"...reports lump on jaw LHS mandible flared up again, largest has ever been and suddenly gotten to so much bigger in size than prev...*

*Diagnoses Salivary mucocele (sialoceles)" [July 2022]*

*"Diagnoses Salivary mucocele (sialoceles)" [April 2022]*

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<sup>1</sup> Sialoceles is a collection of saliva that has leaked from a damaged salivary gland or salivary duct

<sup>2</sup> Sialadenitis is an inflammation of the salivary gland

*“...recurrence of lump LHS mandibular region. Solid round lump...salivary gland?*

*Diagnoses Sialoadenitis...” [February 2022]*

*“...Advised possible sialocele/sialadenitis/abscess...not typical purulent material, wondering if sialocele possibly?” [September 2021]*

*“Recurring lump LHS temporomandibular region for last few months...mobile lump LHS...,salivary gland? Aspirated out clear fluid with bloody areas.*

*Diagnoses Salivary gland disorder (unspecified) [August 2021]*

*Taken together, this supports the view that the dog had a history of issues affecting the same area, from August 2021 through to July/August 2022. The former date would be within 24 months of the policy start date (and within an overall period of 24 months) so would fall within the timeframe for a pre-existing condition included within the policy definition.*

*I’ve also considered the clinical history, including the above extracts, in the context of the policy definition of a pre-existing condition:*

*“anything your pet has had treatment, medication or advice for in the 24 months before your policy starts. We consider advice to include anything a vet observed and recorded in your pet’s clinical history.”*

*Looking at this, the dog had treatment and medication for a recurring issue affecting the left hind side temporomandibular area over the period July 2021 to July 2022. The notes also indicate advice from the vet above further tests and other procedures to determine more exactly what the issue was. So, while the vet has subsequently said the two conditions are different (given the differing nature of the material aspirated out through FNA) I think the history could reasonably be considered consistent with the policy definition.*

*I’ve also considered the general principle, where an insurer relies on an exclusion, that the onus is on them to show it’s reasonable to apply it. Given my conclusion the clinical history can reasonably be seen to be consistent with the policy definition of a pre-existing condition. Taking all these points into account, I’m persuaded Great Lakes have shown enough to apply the exclusion for a pre-existing condition in the circumstances of this case. So, I’ve concluded Great Lakes acted fairly to apply the exclusion to decline Mr O’s claim.*

*While separate to the issue of whether the dog had a pre-existing condition (which was the basis for Great Lakes declining the claim) I’ve considered the point about whether Mr O failed to declare a condition at the point he took out the policy. Which would have constituted his making a misrepresentation under CIDRA.*

*Our investigator concluded Mr O didn’t make a misrepresentation (because he wasn’t asked a clear and specific question about whether his dog had a pre-existing condition). In their response to our investigator’s view, Great Lakes say they aren’t saying they think Mr O made a misrepresentation when he took out the policy. Rather, their decline of the claim is based on the policy exclusion for a pre-existing condition. Thinking about this aspect, Great Lakes didn’t make any reference to Mr O making a misrepresentation in their decline of his claim, nor in their final response. I’ve also noted they haven’t sought to apply any of the remedies available to an insurer where they consider a consumer has made a misrepresentation – such as avoiding the policy from its start, or seeking to place a retrospective exclusion for specified conditions from its start or other date. Which supports the conclusion they haven’t treated this case as one involving misrepresentation.*

*That being the case, I've not considered this aspect any further.*

*The second area of the complaint is the time taken by Great Lakes to assess the claim and their responsiveness to Mr O during the process. I've looked through the timeline of events provided by Mr O alongside the case notes provided by Great Lakes. Great Lakes say (in their final response) they feel their service hadn't fallen below standard, other than one occasion where a call back didn't happen. So, Great Lakes upheld this element of the complaint, apologising to Mr O. I've also considered the length of time taken to assess the claim (and decline it) and while it involved additional information and consideration of Mr O's vet's opinion, I think the process did take longer than it should have done (which Great Lakes have acknowledged to this service. Taking all these factors into account, I think Mr O has suffered from some distress and inconvenience. Taking the circumstances of the case into account, I think £50 compensation would be fair and reasonable.*

*Mr O is also unhappy at Great Lakes' processes for assessing claims (and handling complaints) and asks that they are streamlined. However, these are operational matters for Great Lakes and aren't ones that fall within the remit of this service. Complaint handling is also something that falls outside the remit of this service, so I'm not asking Great Lakes to do anything further in these regards.*

*My provisional decision*

*For the reasons set out above, my provisional decision is that I uphold Mr O's complaint in part. I intend to require Great Lakes Insurance SE to:*

- *Pay Mr O £50 in compensation for distress and inconvenience.*

*Great Lakes Insurance SE must pay the compensation within 28 days of the date on which we tell it Mr O accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.*

Mr O replied to disagree with my provisional decision, making several points. First, that Great Lakes had relied on the previous visits to the vet in relation to a lump on the left hand side of the mandible and the entry in the clinical notes to '*possible sialoceles / sialadenitis / abscess*'. The fact the abscess was in the same location as the previous lumps wasn't (he felt) sufficient evidence that the cause was the same. That view was supported by the letter from the vet.

Second, use of the word 'possible' didn't mean something had happened or existed (or would happen or be likely to happen). There was no evidence that any of the issues prior to July 2022 were linked to an abscess (again, supported by the letter from the vet). So, there wasn't any definitive evidence to support the view of Great Lakes there was a pre-existing condition. So, their decision was based on an assumption, not the information available and the view of the vet.

Mr O also didn't accept my conclusion about which view (Mr O's or Great Lakes) was consistent with the terms of the policy and what it defined as a pre-existing condition. And why my conclusion differed from the opinion of the vet.

Great Lakes replied to say they had nothing further to add and accepted the provisional decision to pay Mr O £50 in compensation for distress and inconvenience.

## **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.

My role here is to decide whether Great Lakes have acted fairly towards Mr O.

I've considered carefully the points made by Mr O in response to my provisional decision, and I'll set out my views on each of them in turn.

On the first and second points, I accept the clinical history doesn't provide a definitive view that the previous visits indicated the same condition as that subsequently in July 2022. Specific diagnoses won't always be possible at a point in time, which is why they can be qualified by use of terms like 'possible' (or 'suspect'). Where that's the case (as here) I have to form a view (from the available evidence and information) about what – on the balance of probabilities – is more likely to be the case.

In the circumstances of this case, the question is whether the history – given treatment and medication for a recurring issue affecting the left hind side temporomandibular area and advice from the vet about further tests and other procedures – is consistent with the policy definition set out in my provisional decision. In my view, it is. So, on the balance of probabilities, I concluded there was enough evidence to support the conclusion there was a pre-existing condition. And while I noted the view of the vet (setting it out in detail in my provisional decision) this didn't change my conclusion about the clinical history over the period indicating a pre-existing condition (as defined in the policy).

On the third point, my role is to decide, in the circumstances of a case, whether a business has acted fairly and reasonably. This will involve deciding whether a business has acted in line with (or applied) the specific terms and conditions of a policy. Which is why we consider the evidence and information available (including the views and opinions of a vet in pet insurance cases) alongside what a policy sets out in the terms and conditions, including the definition of specific terms (such as 'pre-existing condition'). This can mean, as here, that our conclusions can differ to the views of a vet (or other expert) when considered alongside the other information and evidence.

Taking these points together, I'm not persuaded they change the conclusions set out in my provisional decision, so my final decision is the same as my provisional decision.

## **My final decision**

For the reasons set out above, my final decision is that I uphold Mr O's complaint in part. I require Great Lakes Insurance SE to:

- Pay Mr O £50 in compensation for distress and inconvenience.

Great Lakes Insurance SE must pay the compensation within 28 days of the date on which we tell it Mr O accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 August 2023.

Paul King

**Ombudsman**