

The complaint

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

What happened

Mr R was on holiday in October 2022 when he had an accident in a bar he was visiting. He fell from a raised platform and broke his leg. Mr R's claim was declined because of an exclusion in the policy which limited cover for injury when alcohol had been consumed. Mr R appealed this decision in November 2022 but didn't receive a final response letter from Great Lakes until February 2023.

In the meantime, whilst waiting for a response from Great Lakes, Mr R complained to the Financial Ombudsman Service about the decision to decline the claim and the service he received.

Our investigator looked into what had happened and partly upheld the complaint. He didn't think it was unreasonable for Great Lakes to decline the claim. But he didn't think the claim had been handled appropriately. So, he awarded £300 compensation for the distress and inconvenience caused.

Great Lakes accepted the investigator's findings. Mr R asked an ombudsman to review his complaint. In summary, he didn't think it was reasonable to conclude that his accident was reasonably foreseeable. He said it could have happened to anyone, regardless of alcohol consumption. He strongly disagrees that the accident occurred due to alcohol consumption and highlighted that the policy didn't clearly define what excessive alcohol consumption was. Mr R also referred to a case study available on the Financial Ombudsman Service's website.

So, the case has been passed to me to make a decision.

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.

The relevant rules and industry guidelines say that Great Lakes has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The decision to decline the claim

Great Lakes relies on the exclusion in support of their decision to decline the claim. So, it's for Great Lakes to demonstrate, on the balance of probabilities, it applies.

The relevant policy terms and conditions say the policy doesn't cover:

Self-Injury

- c. Any form of alcohol abuse including alcohol withdrawal or You drinking too much alcohol where it is reasonably foreseeable that such consumption could result in a serious impairment of your faculties and/or judgement resulting in a claim. (We do not expect you to avoid alcohol on your trip but we will not cover any claim arising because you have drunk so much alcohol that your judgement is seriously affected).

Mr R had blood tests shortly after the accident. This recorded his blood alcohol as 139 milligrams of alcohol per 100 millilitres of blood. For context, the legal drink alcohol limit for drivers in England is 80 milligrams of alcohol per 100 millilitres of blood. Based on the medical evidence and the evidence provided by the witnesses Mr R was initially greeted at the emergency department at 0313, approximately 45 minutes after the accident happened.

Mr R stepped backwards off a raised platform in a bar. He says the accident was a result of the height difference to the platform and the unexpected absence of the floor. He's explained that the bar was busy and not well lit. He's provided some photographs which support what he's said about how busy the bar was and the lighting. I've also taken into account the medical evidence, Mr R's testimony and that of his friends who were with him that night.

Bearing in mind Mr R's blood alcohol level I don't think it was unreasonable for Great Lakes to rely on the exclusion. Even if Mr R wasn't presenting as heavily intoxicated, I still think it's reasonable to conclude this level of alcohol would have seriously impacted his judgement and faculties. Great Lakes has provided evidence that this level of alcohol in the blood would have caused difficulty with gait and balance. Based on the evidence that's available to me it's most likely Mr R had stepped up onto a small raised platform which was accessible via steps or which could have been stepped onto directly. Mr R described it as a 'platform rise in the dance floor' which had a drop of approximately one foot. When Mr R had the accident, he was on this raised platform area, was in a busy bar and stepped backwards. I think it's reasonable to conclude this level of alcohol in the blood would have seriously affected Mr R's judgement including his ability to assess the risks of the environment he was in, his gait and his balance.

My role is to decide what's most likely to have happened, based on the available evidence and the facts. And I don't think it was unreasonable for Great Lakes to conclude that Mr R's accident fell within the exclusion bearing in mind the nature of his environment and the blood alcohol reading.

I've taken into account Mr R's comments about the policy wording, but they haven't changed my thoughts about the overall outcome of this complaint. I can see that the alcohol exclusion is identified on the 'Insurance Product Information Document' which sets out the key features of the policy. Most insurance policies contain exclusions relating to alcohol consumption. And I don't think this term is particularly unusual. Some insurers do specify an alcohol limit, but I don't think that means the term is ambiguous or has been unfairly applied in Mr R's case.

Customer Service

Mr R didn't receive the level of customer service I'd expect in the circumstances of this case. For example, he ought to have been given a clear and comprehensive explanation for the decision to decline his claim at a much earlier stage. I think this caused him a lot of stress and worry at an already difficult time. And, Great Lakes also didn't identify the correct venue during the early part of their investigation. This caused confusion because Great Lakes thought Mr R had fallen from a greater height from a 'stage'. It's now accepted this wasn't correct and I think this ought to have been clarified at a much earlier point in the claim journey. Mr R was also asked for information in support of his claim when he had been told that it had been declined. I think all of this added to Mr R's worry and frustration during a time when he was recovering from his accident and recent surgery.

However, ultimately, I don't think the customer service issues meant that Great Lakes were incorrect to decline the claim and they didn't impact on Mr R's access to the treatment he needed. I think £300 compensation fairly reflects the impact of poor service on Mr R including the distress and inconvenience caused by not receiving a full explanation about why his claim was being declined and the rationale for the decision.

I don't think Great Lakes was responsible for Mr R initially getting in touch with the wrong assistance company. It seems most likely that this was as a result of an error when Mr R's friend first made contact with the assistance line as the calls were routed by the date the policy was purchased. So, I don't think Great Lakes needs to pay further compensation for this issue.

Putting things right

Great Lakes Insurance SE needs to put things right by paying Mr R a total of £300 compensation.

My final decision

I'm partly upholding Mr R's complaint and directing Great Lakes Insurance SE to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 September 2023.

Anna Wilshaw
Ombudsman