

The complaint

Ms D and Mr W complain about Great Lakes Insurance SE's decision to avoid their buildings insurance policy after they made a claim for damage caused by an escape of water.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

In short, Ms D and Mr W took out a home insurance policy underwritten by Great Lakes to cover the buildings (not contents) of their property.

The policy was bought on 2 December 2022 with an inception date of 8 December 2022.

Ms D and Mr W made a claim on 15 December 2022 after an escape of water caused by frozen pipes damaged their property. The claim is for around £30,000.

When they reviewed the claim, Great Lakes decided that the policy should be avoided on the basis that Ms D and Mr W had made a misrepresentation when they bought the policy.

They said Ms D and Mr W had been asked whether the property was their main residence and they'd said that it was.

Great Lakes said that, in fact, the property was in the process of being sold when the policy was bought. At the time, Mr W was living and working abroad. It had been vacated and emptied before the escape of water occurred. And so, they say, it was not Ms D and Mr W's main residence at the time of purchase or inception of the policy.

Great Lakes have confirmed that they do not regard the alleged misrepresentation as deliberate or reckless. So, they avoided the policy and returned the premiums, in line with the provisions of the Consumer Insurance (Disclosure and Representations) Act (CIDRA).

Ms D and Mr W weren't happy with this and made complaint to Great Lakes. And when Great Lakes maintained their stance, Ms D and Mr W brought their complaint to us.

Our investigator looked into it and thought Great Lakes had acted unfairly in avoiding the policy. They said it was true to say, on 2 December 2022 when the policy was bought, that the property was Ms D and Mr W's main residence. So, there was no misrepresentation when – on that specific date - they said that it was.

Great Lakes didn't agree and asked for a final decision from an ombudsman.

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 should be clear at the outset that my decision is only about whether Great Lakes acted

unfairly or unreasonably in concluding that Ms D and Mr W made a misrepresentation (as per CIDRA), which led to them avoiding the policy.

I can't comment at this point on whether Great Lakes should or should not settle the claim and pay for the repairs to the property. Great Lakes haven't looked at that yet – understandably since they avoided the policy before they got to that question.

I'm going to uphold this complaint - I'll explain why below. But, as I say, that does not necessarily mean I think Great Lakes should pay out on the claim. The policy has a number of conditions and exclusions which Great Lakes are entitled to consider before they determine how to respond to the claim.

I'm upholding the complaint because I think it was – very literally – true that Ms D and Mr W's main residence on 2 December 2022 *was* the property in question.

I'm aware Mr W was working away at the relevant time. To be blunt, I don't think that matters. Policyholders will at times work away and/or take extended holidays. That doesn't mean the insured property isn't their main residence – at least not by any reasonable definition of that term.

I'm also aware that Ms D and Mr W were fully intending to sell the property – and to do so relatively soon – at the time they bought the policy. Contracts were exchanged, as I understand it, on 14 December 2022.

And I'm willing to conclude that on balance, they knew when they bought the policy that they were moving out in the very near future. Removals were carried out five days *after* the policy was bought.

That means Ms D and Mr W bought a policy they knew was very likely to have a limited usefulness for them. But they were entitled to buy a policy and not leave their property uninsured for a period of time.

And neither the fact they were intending to sell – nor the fact they had removals arranged – means they misrepresented the facts on 2 December 2022, when they said the property was their main residence, *before* they completed the sale and/or had their belongings removed.

This is a very finely balanced decision for me because I can see Great Lakes' argument that Ms D and Mr W knowingly bought a policy and said the property was their main residence knowing full well that it wouldn't be their main residence less than a week or two later – and very possibly before the policy actually came into effect.

I'm also aware that if they had sought a policy from Great Lakes or another insurer and been entirely upfront about the situation, they might not have been provided with a policy or might have been given a different or more expensive policy.

I'm also very aware that it could be argued that Ms D and Mr W would and/or reasonably should have known, when they were asked the specific question when they bought the policy, that Great Lakes weren't asking out of mild curiosity as to whether it was their main residence at that specific moment in time.

It wouldn't be entirely unreasonable to suggest that Ms D and Mr W might have thought, at the time, that Great Lakes were likely more interested in what the situation would be during the time that the policy was actually in force.

However, on balance, I come back to this fundamental point – Ms D and Mr W were asked a fairly clear question about their main residence. There weren't any qualifications, caveats or further instructions about that question.

I can't see either that there was anything to suggest to Ms D and Mr W that if their current circumstances were temporary, or they were unsure how to answer the question, they should contact Great lakes to discuss things.

Ms D and Mr W's answer to the straightforward question they were asked was literally *correct* at the time.

On that basis, I'm upholding this complaint. On balance, there was no misrepresentation (as defined in CIDRA) in this case.

Putting things right

Great Lakes told Ms D and Mr W they were returning their premiums. They also confirmed for us later that they regarded the alleged misrepresentation as careless rather than deliberate or reckless.

Because I've decided that there was in fact no misrepresentation, I'm going to require Great Lakes to reinstate the policy – at least for the relevant period. That period would be up until the date the house was finally sold, when the policy became in effect redundant.

Great Lakes should re-claim from Ms D and Mr W the premiums to cover that period. They should then consider the escape of water claim under the terms and conditions of the policy.

Great Lakes will also need to remove from their own databases – and from any external databases to which they've contributed – any record which suggests the policy was avoided.

In effect, the records should show that Ms D and Mr W cancelled the policy themselves – as from the date the house was sold. That's what would have happened if Great Lakes hadn't – erroneously in my view - avoided the policy.

My final decision

For the reasons set out above, I uphold Ms D and Mr W's complaint.

Great Lakes Insurance SE must:

- reinstate the policy – with effect from the date it was avoided to the date Ms D and Mr W's house was sold;
- consider Ms D and Mr W's claim relating to the escape of water in line with the terms and conditions of the policy; and
- remove any record – internal or external – that suggests the policy was avoided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D and Mr W to accept or reject my decision before 25 October 2023.

Neil Marshall
Ombudsman