

## **The complaint**

Mr F complains that Great Lakes Insurance SE rejected a claim on his landlord's insurance policy for damage caused by his tenants.

Where I refer to Great Lakes Insurance SE, this includes its agents and claims handlers acting on its behalf.

## **What happened**

Mr F owns a property which he inherited from his mother and let to tenants. In February 2022 he became aware of some issues with the condition of the property. After inspecting the property and speaking to the managing agent, he wrote to the tenants on 9 March giving them notice to vacate. The notice asked them to leave by 14 May.

On 21 March 2022, when his previous insurance policy expired, Mr F took out this insurance underwritten by Great Lakes.

In early June 2022 a neighbour told Mr F the tenants appeared to have left. He went to the house the following day and found it empty. There was significant damage.

Mr F made a claim on his policy for costs relating to the damage but the claim was rejected. Great Lakes said although the policy covered malicious damage, there was an exclusion for any damage caused by the tenants where he had failed to notify his insurance broker before taking out the policy that the tenants were in rent arrears or subject to possession proceedings, and it said this exclusion applied here.

As a result, Mr F amended his claim to remove any claim relating to malicious damage. But he said he there was some accidental damage and he should be covered for that. He also lodged a complaint.

Great Lakes sent a final response to the complaint saying

- any claim for malicious damage was excluded as he had not notified his broker of the tenant being in arrears and of the pending eviction action when he bought the policy; and
- even if that exclusion didn't apply, there would still be no cover as he hadn't shown the damage was accidental rather than wear and tear or poor maintenance, and it wasn't satisfied the damage was not present before the policy started.

Mr F referred his complaint to this Service. Our investigator agreed that a claim for malicious damage would not be covered. She said accidental damage was covered, though much of the damage was neither accidental nor malicious but wear and tear or general use, and so not covered in any event.

After considering further comments from Mr F the investigator agreed some additional damage should be covered.

The investigator asked Great Lakes to settle the claim for accidental damage to:

- a cracked window;
- damaged kitchen flooring; and
- wallpaper in the area above the fireplace in the living room.

The investigator also said Great Lakes should pay compensation of £150 to Mr F for the distress caused to him by the way the claim had been handled.

Mr F accepted the investigator's recommendations but Great Lakes didn't reply. So the complaint was passed to me to make a decision.

I issued a provisional decision saying I intended to uphold the complaint but with a different remedy. I set out my findings as follows:

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy includes cover for damage caused by malicious acts and for accidental damage. So the starting point is that Mr F is covered for these. But there are some exclusions that apply -

- any loss or damage caused by "*any person lawfully allowed In your buildings when you have failed to notify your broker before the period of Insurance that your tenants are in rent arrears or are subject to eviction proceedings under the 1988 Housing Act*";
- damage that is already present when the policy starts; and
- damage due to normal wear and tear.

If Great Lakes can show that any of these apply to Mr F's claim then it may reject the claim (or the relevant part of it). The onus is on Great Lakes to show the exclusion applies.

Accidental damage is defined as "Damage caused suddenly and as a result of an external, visible and unexpected cause".

The policy does not have a definition for malicious acts. Where there is no definition the usual approach is to give the words their ordinary, everyday meaning. I consider malicious to be where something is done intentionally to cause harm.

The list of items Mr F originally claimed for was quite wide and included blocked air vents as well as damage to light fittings and a carpet. As our investigator has explained, much of this was neither malicious or accidental damage but more the consequence of poor maintenance by the tenants or the normal wear and tear that happens. I know it was difficult for Mr F having to deal with the damage but he's only entitled to cover as set out in the policy terms.

There are, however, some things that he is entitled to claim for as accidental damage:

- A window pane was cracked and the most likely cause of this was from it being struck by something accidentally. None of the other windows have any damage.
- The kitchen floor was damaged and from the nature and location of the damage, the most likely cause of this is that it happened accidentally when the tenants removed their washing machine.
- Wallpaper was damaged when a TV bracket was removed from the living room wall. Although some of it was cut away neatly, there was also some wallpaper ripped from the wall. It's unlikely this was done maliciously – the most likely explanation is that it was torn at the same time as the bracket was removed.

In addition, it doesn't seem to be in doubt that graffiti written on the garage wall was done as a malicious act – it wasn't done accidentally, nor could it be said to be wear and tear or a result of normal use.

So these items should all be covered, unless one of the exclusions applies.

Great Lakes relied on the exclusion for damage caused by a resident if Mr F failed to notify the broker before the insurance started that the tenants were in rent arrears or subject to eviction proceedings. Having considered the wording of this exclusion I don't see how it applies here.

Mr F has explained that the tenants were not in rent arrears at the point when he bought the policy – they only fell into arrears later. And at that point, they were not subject to eviction proceedings. Mr F had served notice on them, but that's not the same as issuing court proceedings. And the exclusion specifically refers to the tenants being "subject to eviction proceedings under the 1988 Housing Act".

He had not issued any proceedings. Indeed the earliest he could have started proceedings was after 14 May 2022. Great Lakes itself acknowledged this in its final response, which noted that Mr F intended to initiate proceedings but the tenants moved out so it wasn't necessary.

As the tenants were not subject to proceedings this exclusion would not apply.

Great Lakes has also suggested that, by not mentioning this, Mr F was in breach of his duty to make a fair presentation of the risk. This arises under the Insurance Act 2015 and strictly speaking, that duty would apply as this was a commercial contract. But Mr F isn't a professional landlord. I don't think it would be fair to apply the law strictly in circumstances where Mr F is an individual merely letting out a house that he inherited. The fair way to approach this is to consider whether Mr F was asked a specific question about this and failed to answer it honestly. Great Lakes hasn't said that happened. It said there was a breach because Mr F "failed to disclose initiating eviction proceedings" but as I've explained, he hadn't started proceedings. There can't be a failure to disclose something that has not happened.

For all these reasons I don't consider it was fair to apply the exclusion or that there was a misrepresentation by Mr F.

Finally, the way the claim was handled was distressing for Mr F. Elements of the claim that should have been covered were not. This made an already difficult situation worse and he's explained the impact this had on him. It took a great deal of persistence from him to pursue the claim. I agree it would be reasonable to compensate him for the distress and inconvenience caused.

On this basis, my provisional decision was that Great Lakes should settle those parts of the claim that Mr F is entitled to claim for in respect of accidental damage and damage due to a malicious act, and pay compensation of £150.

### **Replies to the provisional decision**

Mr F has replied accepting the provisional decision.

Great Lakes has also accepted the provisional decision and has nothing further to add..

## **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.

Both Mr F and Great Lakes have accepted the provisional decision.

It remains my view that the complaint should be upheld and Great Lakes should settle those parts of the claim that Mr F is entitled to claim for, and pay compensation for the distress and inconvenience caused to him.

## **Putting things right**

To put things right, Great Lakes should do the following:

1. Settle the claim for accidental damage in respect of the –
  - double-glazed bay window;
  - kitchen flooring; and
  - wallpaper in the area above the fireplace in the downstairs living room.
2. Settle the claim for damage due to a malicious act in respect of the graffiti in the garage.
3. Pay compensation of £150 to Mr F for the distress and inconvenience caused to him.

## **My final decision**

My final decision is that I uphold the complaint and direct Great Lakes Insurance SE to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 February 2024.

Peter Whiteley  
**Ombudsman**