

The complaint

Mr W complains that Great Lakes Insurance SE has declined a claim he made on his travel insurance policy.

What happened

Mr W was travelling abroad when he sustained very serious injuries. He was found in the street, having previously attended hospital. He had also contacted his family and the emergency services expressing concern for his own safety. He received emergency medical treatment in the country he was visiting and was found to have traces of illegal substances when toxicology tests were completed.

His family travelled to support him and arranged for his repatriation back to the UK. He incurred expenses of around \$1.5 million for the medical care he received and his repatriation.

Great Lakes declined to cover the claim and relied on exclusions in the policy for self-injury and climbing or jumping. Mr W appealed this decision, but Great Lakes maintained they had fairly declined the claim. Mr W complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. She thought that Great Lakes had fairly relied on the available evidence when concluding the claim was not covered under the policy terms and conditions.

Mr W didn't agree and asked an ombudsman to make a decision about his complaint. In summary, he said the claim wasn't handled promptly or fairly. He said that there was no evidence that he was climbing or jumping. He said that he had not wilfully or deliberately taken drugs and suggested that he may have been 'spiked'. Mr W also referred to a case considered by the Supreme Court in support of his position that Great Lakes had acted unfairly. So, I need 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 policy terms and conditions

The relevant policy terms and conditions say there is no cover for

4. Climbing and jumping You climbing on top of, or jumping from a vehicle, or jumping from a building or balcony; or climbing or moving from any external part of any building to another (apart from on an external fire-escape or stairs) regardless of the height, unless Your life is in danger or You are attempting to save human life

25. Self-Injury

- a. Your wilfully, self-inflicted injury or illness, suicide or attempted suicide; or
- b. Your self-exposure to needless peril, except in an attempt to save human life; or
- 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); or
- d. Your use of any drugs, including solvents and so-called legal highs, other than drugs taken in accordance with treatment prescribed and directed by a Medical Practitioner but not for the treatment of drug or alcohol addiction.

The medical evidence and police investigation

Mr W attended two hospitals – I'll refer to them as Hospital A and B. Mr W was taken to Hospital A by the emergency services during the evening of 11 September 2022. The notes from the admission to Hospital A give a history of Mr W's illness. It says:

... male with no significant past medical history brought in by EMS after using acid. Patient was behaving very paranoid and walked into a police station reporting that he was being followed and having bizarre behaviour. Please call for an ambulance. In route to the hospital patient was given Versed 2mg.... Patient hearing weird noises and having paranoid thoughts.

The diagnosis given is 'LSD intoxication' and the notes record that alcohol and acid had been consumed. The medical decision-making section of the medical report also says:

'Patient is clearly paranoid and displaying bizarre behaviour but is otherwise cooperative and redirectable. Patient given Ativan for significant anxiety. Plan to observe patient in the emergency department until he is no longer paranoid and has clear thought process...

Mr W was in contact with his family after his release from hospital in the early hours of the following morning and they alerted the police to concerns about his safety and wellbeing. The police located Mr W who was found seriously injured in the street during the early hours of the morning of 12 September 2022.

There is documentation which relates to a police investigation into what happened to Mr W. It includes a statement provided by a police officer who summarises the CCTV he viewed. It says:

I checked CDW and saw that Officer [redacted] obtained a video clip from [redacted] and authored a supplemental report. The video clip captured the victim landing on the sidewalk in front of [redacted].

I reviewed the video files and compared the video to the crime scene photos. I confirmed that the intruder in the video is in fact the victim in this case. I watched the video and observed the following in summary:

Victim entered through the front door on 9/12/2022 at approximately 0433:55 hrs. The victim was alone. The victim walked through the lobby and then walked up the staircase to the next level. The victim walked through out of the building until he eventually walked to the roof access door at 0436:52 hours. The victim pushed open the roof access door and is captured on the roof camera until he walked out of camera range.

I did not observe anyone else walk onto the roof with the victim.

After examining all of the video evidence, it appeared the victim landed on the sidewalk in front of [redacted] approximately three minutes after he exited onto the roof of [redacted].

Based on all available evidence, it appears that the case is not criminally related, and that the victim injured himself by some unknown cause.

I've also read the statement provided by another officer, referred to in the above report. It says:

Upon reviewing the surveillance video for 9/12/2022 at approximately 0440, I observed a male fall from the sky onto the sidewalk. From the initial reports and photos I identified the male as Mr W.

Mr W was admitted to Hospital B for emergency treatment as he was in a critical condition. He tested positive for amphetamine (including cocaine), benzodiazepines and fentanyl. Mr W had been given benzodiazepines during his admission at Hospital B.

There is an additional report from Hospital B which says they found no evidence that Mr W was intoxicated with LSD ('acid') and that he'd tested negative for LSD, acid and other common hallucinogens. They also highlighted that he was negative for alcohol.

Did Great Lakes unreasonably reject the claim?

I don't think it was unreasonable for Great Lakes to decline cover on the basis of the exclusions they've highlighted.

I'm not persuaded, on balance, that the evidence suggests that a third party was involved by following or chasing Mr W. I don't think that's supported by the available evidence. The police report stated that Mr W walked on to the roof alone. He was seen to be falling through the sky a few minutes later. And the police concluded there was no criminal involvement. There's no suggestion, for example, that Mr W was chased into and through the hotel. And there's no explanation as to why he accessed the roof area.

I've also considered whether there's evidence that Mr W took drugs involuntarily or was spiked. I accept that is possible that there was a third party involved but there's no evidence to confirm this. Based on the available evidence I don't think that is most likely to have happened. For example, there's no reference to Mr W having been seen with other people or being followed. The medical notes from the first hospital admission suggest that it's most likely that he'd taken drugs voluntarily as it's noted that Mr W had taken acid.

There's no actual footage of how Mr W came to be on the street. However, as I've outlined above the footage the officers reviewed showed him going onto the roof and falling through the sky onto the pavement a few moments later. There's no explanation as to why Mr W went onto the roof and I don't think it's unreasonable to conclude that's an unusual action to take if he was seeking safety or support, particularly as he'd passed through the lobby area

and into the main building. I don't think it is unreasonable, in the circumstances of this case, to conclude that the self-injury exclusion applies as the evidence is that whilst under the influence of drugs Mr W went on to a rooftop and within a few minutes was seen on the CCTV falling onto the pavement below. And, as I've outlined above, I've not seen persuasive or credible evidence that Mr W was in fear of his life or trying to save his own life.

I've taken into account that Mr W had been prescribed benzodiazepines during his admission to Hospital A but that doesn't change my thoughts about the overall outcome of this complaint. That's because, even if the benzodiazepines were prescribed, there's still evidence that Mr W had other substances in his system. Whilst he didn't test positive for LSD or alcohol at Hospital B other substances were present.

Mr W has referred me to a recent court case in support of his position and I've taken this into account when reaching my decision. However, I also need to take into account what is fair and reasonable. The facts relating to that case are markedly different to Mr W's case and the policy term is very different too. I'm not persuaded that the findings made in that case mean that Mr W's complaint should be upheld.

In response to our investigator's findings Mr W indicated that he didn't think that his claim had been handled promptly. I have reviewed the available evidence and I haven't identified any unreasonable delays in the progression of the claim. The verbal decision to decline the claim was given approximately six weeks after the accident. However, I can see that the decision was given once Great Lakes had received and reviewed the relevant evidence, including medical reports and the police report. And, in any event, Mr W was being treated at the hospital and receiving the care he needed. So, I'm not persuaded that any delay in declining the claim had any significant impact on Mr W, such as preventing him from accessing treatment.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 May 2024.

Anna Wilshaw
Ombudsman