

The complaint

Ms E and Mr S complain about the way that Great Lakes Insurance SE has settled a claim they made on a travel insurance policy.

As Mr S brought the complaint to us, for ease, I've referred mainly to him.

What happened

Mr S was due to fly abroad in April 2023. However, the airline cancelled Mr S' flight. The airline refunded the cost of Mr S' flights. Ultimately, Mr S was able to arrange alternative transport to his holiday destination by road and ferry and travelled a day later than planned. However, due to the nature of the road and ferry crossing, he was unable to use three nights of hotel accommodation and other pre-paid costs, such as car hire and car parking. He also incurred additional travel costs in reaching his destination.

Great Lakes accepted Mr S' claim under the delayed departure section of the policy and paid delayed departure benefit of £100 per person, representing 24 hours of delay.

Mr S was unhappy with Great Lakes' settlement and he asked us to look into his complaint. He considered that he'd had to abandon his original trip and that therefore, his claim should be paid in line with the abandonment provisions of the policy.

Our investigator thought Mr S' complaint should be upheld. While he acknowledged that strictly, Mr S hadn't abandoned his trip, he considered that Mr S had been entitled to do so and make a claim on the policy for his irrecoverable cancellation costs. Instead, the investigator felt that by making new travel arrangements to allow the trip to go ahead, Mr S had mitigated Great Lakes' potential losses. And therefore, he thought it would be fair and reasonable for Great Lakes to pay Mr S' additional travel expenses, together with interest of 8% simple.

I issued a provisional decision on 13 February 2024, which explained why I didn't think Great Lakes had settled Mr S' claim fairly. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr S' policy and the circumstances of this claim, to decide whether I think Great Lakes treated Mr S fairly.'

'I've first considered the policy terms and conditions, as these form the basis of Mr S' contract with Great Lakes. Strictly, Mr S' departure abroad was delayed by around 24 hours. The trip wasn't cancelled. Therefore, I don't think it was unreasonable or inappropriate for Great Lakes not to consider Mr S' claim under the cancellation section of the policy, but instead, to consider it under the travel delay and abandonment section of the contract. This says:

'This section of the Policy sets out the cover We provide to each Insured Person in total per Insured Journey, up to the sums insured shown in the "Table of Benefits", in the event of

Your unavoidable delay in departure of at least 12 hours from Your original scheduled departure time from Your first departure point on Your outward journey or Your last departure point on Your return journey as a result of:

...

- Cancellation by the transport provider of Your scheduled pre-booked international flight, ferry, train or coach...*

What is covered

1. Travel delay benefit:

a. for each complete 12 hours of delay; or

b. in the event of 4. (cancellation by the transport provider), corresponding to the delay in departure that You would have experienced had You waited for the earliest replacement travel arrangements offered by Your original transport provider, in the event that You choose to make earlier alternative travel arrangements.

2. In the event that You decide to abandon Your outward trip, the cost of:

a. Your unused non-refundable pre-booked travel and accommodation expenses which You have paid or are contracted to pay; and

b. Your unused non-refundable pre-booked airport parking, car hire, airport lounge pass and excursions which You have paid or are contracted to pay; and c. Your unused non-refundable visa, ESTA (Electronic System for Travel Authorisation for travellers to the USA) or other relevant travel permission which You have paid.'

There's no dispute that Mr S' departure was delayed by more than 12 hours due to the cancellation of his pre-booked flight by the airline. And it's common ground that Mr S was able to arrange alternative transport to allow him to take his planned trip, even if he travelled later than planned. So by paying departure benefit for the actual period of Mr S' delay, I think Great Lakes has settled the claim in line with a strict interpretation of the contract terms.

However, I can depart from a strict interpretation of the policy terms if I feel their application produces an unfair result. And that's the case here, as I'll explain.

After Mr S' departure had been delayed by more than 12 hours, he was entitled to abandon his trip and make an abandonment claim on the policy. If he had done so, Great Lakes would have been liable to pay Mr S' full, irrecoverable cancellation costs, up to the policy limit of £3000 per person.

Instead, Mr S chose not to cancel his trip entirely. Instead, he mitigated Great Lakes' potential losses by making new travel arrangements and continuing with his trip as planned, albeit a few days later. In my view then, it would be fair and reasonable for Great Lakes to settle Mr S' additional travel costs up to the amount it would have been liable to pay under the abandonment limit of the policy. However, I don't think it would be fair or reasonable for me to direct Great Lakes to pay the full cost of Mr S' ferry tickets. That's because Mr S' original flights cost £1196.66. So he'd always have had to pay this amount to travel abroad. It appears that Mr S paid £1587 for the ferry tickets – which exceeds the cost of the flights. So I'm satisfied that Great Lakes should pay the difference between the cost of the ferry and the cost of Mr S' flights, as this represents his actual financial loss.

Additionally, it's clear that Mr S had to pay for a hotel room close to the ferry port the night before his departure. So I think that Great Lakes ought to pay the cost of the hotel. And I find too that Great Lakes should pay Mr S reasonable petrol costs for the journey from his home to his destination and the cost of petrol for the return journey. It will be for Great Lakes to calculate the distance Mr S travelled in driving to and from his destination and it should use the average price of petrol in the UK at the time of Mr S' journey to calculate a reasonable proxy for the cost of Mr S' fuel.

Great Lakes must also add interest to the settlement amounts I've outlined above at an annual rate of 8% simple from the date of claim until the date of settlement.

I've considered whether it would be fair and reasonable for Great Lakes to deduct the delayed departure benefit it's already paid Mr S from any settlement it might pay. On the specific facts of this case, I don't think it would. I say that because, firstly, the policy doesn't state that a policyholder can only claim for either delayed departure or abandonment cover. And I've borne in mind too that delayed departure benefit is intended to cover the incidental expenses of being delayed, such as food costs and other associated expenses during a period of delay. Given Mr S' departure did eventually take place and given I think it's likely that he did incur incidental costs during the period of delay, I currently don't find it would be reasonable for Great Lakes to make any deduction from the settlement.

Overall then, I currently don't find that Great Lakes has handled Mr S' claim fairly. And I intend to direct it to settle things in the way I've outlined above.'

I asked both parties to send me any additional comments or evidence they wanted me to consider.

Great Lakes accepted my provisional findings.

Mr S and Ms E provided calculations of the petrol costs and road toll costs they'd incurred in driving to and from their destination. They also set out the average cost of diesel in April 2023, which they said had been published by a reputable source. They added too that they felt that I should direct Great Lakes to pay for three nights of accommodation which they hadn't been able to use.

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.

Having done so, I still think the fair outcome for this complaint is for Great Lakes to pay the *additional* costs Mr S incurred in reaching his destination. As I set out above, on a strict interpretation of the policy terms, his trip wasn't abandoned and Great Lakes settled the claim in line with the policy terms. But given I think Mr S took steps to mitigate his potential losses, I'm still satisfied that it's fair and reasonable for Great Lakes to settle the additional travel and accommodation costs he incurred in reaching his destination outside of the policy terms. However, I don't think that it would be fair for me to also direct Great Lakes to pay his unused expenses too –in these particular circumstances and when those unused costs aren't covered by the policy terms either. So it follows that I'm not directing Great Lakes to pay for Mr S' lost nights at his destination hotel.

I'm grateful to Mr S for sending me a breakdown of his mileage; costs and a calculation of the settlement he believes to be due. As I set out in my provisional decision, it will be for Great Lakes to calculate the distance Mr S travelled and it should use the average price of fuel in the UK at the time of Mr S' journey. That's because I'm not a claims handler and it's

for Great Lakes to consider what evidence it might need from Mr S in order to calculate the distance he travelled and the costs he incurred. I referred to the average cost of petrol in my proposed award above but it appears, from Mr S' submissions, that he may have filled his car with diesel. Therefore, subject to evidence that Mr S did fuel his car with diesel, Great Lakes should use the average UK price of diesel at the time of the claim to calculate the settlement due.

Mr S has referred to road toll charges he incurred during the journey. However, I note, from a letter he sent Great Lakes in April 2023, that he said:

'I also had significant road toll charges to pay in both S and P in order to reach our final destination - I have however not included these amounts in the total amount being claimed under the insurance policy in order to simplify the claims procedure.'

These amounts weren't included on the list of costs Mr S claimed for within that letter. So I don't think it would be reasonable for me to direct Great Lakes to pay those toll costs now when it doesn't appear it was originally asked to do so. It also isn't clear whether any of those charges would have applied had Mr S' trip gone as planned and he'd been able to make use of his car rental. It's open to Mr S to ask Great Lakes to now consider the road toll costs, subject to evidence of those charges.

Mr S can, of course, provide his calculations and breakdown to Great Lakes for it to consider when it calculates settlement. If he's unhappy with Great Lakes' calculations and the amount it goes on to pay him, he may be able to make a new complaint about that issue alone.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint.

I direct Great Lakes Insurance SE to:

- Pay Mr S and Ms B the difference between the cost of the original flights and the cost of the ferry tickets;
- Pay Mr S and Ms B's hotel cost for the night before the ferry crossing;
- Pay Mr S and Ms B's fuel costs by calculating the distance Mr S drove to and from their destination and by using the average UK price of fuel at the time of Mr S and Ms B's journey as a reasonable proxy; and
- Add interest to the settlement at an annual rate of 8% simple from the date of claim until the date of settlement*

*If Great Lakes considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell how Mr S and Ms E much it's taken off. It should also give Mr S and Ms E a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E and Mr S to accept or reject my decision before 15 April 2024.

Lisa Barham
Ombudsman