

The complaint

Ms F and Mrs R complain that Great Lakes Insurance SE has unfairly refused to pay a claim in full under their residential property owner insurance policy.

Where I refer to Great Lakes, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

Ms F and Mrs R say they became aware of a problem with the roof of their rental property in June 2022, which they believe had been damaged in a storm. But as their tenant had failed to report the issue, the roof had been leaking for some time causing extensive mould throughout the property. The tenants wouldn't co-operate with ventilating the property which has made the damage worse.

Ms F and Mrs R started eviction proceedings in June 2022. They repaired the roof in August 2022 and subsequently made a claim to Great Lakes for storm damage and malicious damage.

In September 2022, Great Lakes' loss adjustor attended the property. They reported a significant amount of mould on the walls and ceilings of the bathroom, living area, and both bedrooms. Water damage to an internal wall had caused a hole in the plasterboard. And there was external damage to the front porch's panelling and the roof cladding.

Based on this report, in October 2022, Great Lakes concluded that the damage was wear and tear which had gradually occurred over time – which is excluded under the policy. It said it can't say whether the storm peril had occurred because Ms F and Mrs R didn't know when the roof was damaged, and they'd repaired it before Great Lakes could inspect it. And it didn't think the internal damage amounted to malicious.

Great Lakes did agree to cover some of the internal damage under the accidental damage section of the policy where the damage was consistent with water ingress from the roof.

In November 2022, the tenants were evicted, and Ms F and Mrs R gained vacant possession of the property. They found the property had deteriorated since June 2022, and the mould had spread to the kitchen. But Great Lakes said the kitchen damage wasn't connected to the water ingress from the roof, but rather it was likely this was due to everyday wear and tear over a period of time which the policy doesn't cover.

In March 2023, Great Lakes put forward a final offer to settle the claim for £6,500, in respect to the internal damage caused by water ingress. It said the remaining damage wasn't covered and it didn't agree that a whole new replacement kitchen and bathroom was necessary. But Ms F and Mrs R didn't think this was fair. They want it to pay the claim in full which they say amounts to £16,800.

In April 2023, Ms F and Mrs R raised a complaint about the outcome of their claim and the poor service they'd received from the loss adjustor. They said they felt personally insulted by

an email they'd received in March 2023. Great Lakes maintained its decision on the claim, but it offered £100 compensation as an apology for the email.

As Ms F and Mrs R remained unhappy, they brought their complaint to our service. And our Investigator upheld it. He said Great Lakes should set up additional claims for the damp damage and increase the compensation offered to £300 to recognise delays in the claims handling between October 2022 and March 2023.

Ms F and Mrs R had concerns about separating out the claims as they'd be liable for additional excess payments. And they consider this to be one claim. They were unhappy that our Investigator hadn't commented on the fairness of the decision to decline the storm damage and malicious damage claims.

Great Lakes didn't respond.

As our Investigator was unable to resolve things, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

I'd like to reassure Ms F and Mrs R that whilst I may have condensed what they've told us in far less detail and in my own words, I've read and considered all their submissions. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail they'd like, in order to reach my decision. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

Storm damage

Ms F and Mrs R's policy covers damage caused by a storm. It defines a storm as:

"Strong winds of 41 knots/47mph or more, usually accompanied by rain, hail or snow. Beaufort scale number 9."

When a policyholder makes a claim, the onus is on them to show that an insured event has taken place. So it's for Ms F and Mrs R to show that the damage to their roof was as a result of a storm.

I appreciate that Ms F and Mrs R haven't been able to identify exactly when the damage occurred which they say is due to their tenants failing to report the water ingress. But without that information, Great Lakes can't check the weather reports for the time of the damage to determine if a storm, as defined by the policy, took place. So it can't satisfy itself that an insured event occurred.

Ms F and Mrs R say there were reported storms in the local area between November 2021 and January 2022. But whilst that may be the case, I can't say with any certainty that this was when the damage to the property occurred or that it occurred because of the storm; to do so would be entirely a guess. They haven't been able to give any indication of how long, approximately, the damage had been present and I would've expected them – or the estate agents on their behalf – to have monitored the property and noticed the damage sooner.

As Ms F and Mrs R chose to repair the damage prior to making their claim, Great Lakes hasn't had an opportunity to inspect the roof damage to see if there's any indication of how and when it occurred either.

Overall, I'm not persuaded that Ms F and Mrs R has demonstrated that the damage to the property was because of a storm. So it follows that I don't think Great Lakes acted unfairly when it declined the storm damage claim.

Malicious damage

Ms F and Mrs R's policy covers them for property damage caused by malicious acts or vandalism.

The policy doesn't define what it considers to be malicious acts, so generally speaking I'd consider damage to be malicious if the person who did it intended to cause harm. If the property was damaged accidentally, through neglect or poor maintenance, I wouldn't usually consider this to be malicious.

Ms F and Mrs R say the tenants had failed to report the roof leak in a coherent way and were non-cooperative regarding ventilating the property. There are also some comments made in the loss adjustor's report to say the tenants had attached a shower head to the bathroom mixer tap which had caused an increased presence of condensation.

The loss adjustor has provided the following comments:

"In respect of the allegation of malicious damage by the tenant, we do not consider that any of the arguments put forward by the Insured amount to anything approaching 'malicious' actions by the tenants. The allegation appears to be that the tenants have used a shower attached to the bath taps, which in the absence of a separate shower seems to be reasonable action, and also that the tenants have not ventilated the bathroom properly and that windows should have been opened. Essentially, the Insured, who are the landlord, ought to have made the bathrooms properly ventilated by installation of adequate extractions fans and the failure of the tenants to open windows would surely not amount to anything malicious."

Ultimately, whilst I appreciate Ms F and Mrs R believe the tenants' actions and inactions have caused the damage to worsen, I haven't seen anything to persuade me that this was done intentionally. It's clear the tenants wanted to remain living in the property. I say this because they refused to vacate, and eviction proceedings were necessary. So I don't think the tenants would've intentionally wanted to make their living conditions worse by causing damage maliciously.

From the information provided, I think it's more likely this damage was caused due to everyday wear and tear combined with a lack of general maintenance. So it follows that I don't think Great Lakes acted unfairly when it declined the malicious damage claim.

Accidental damage

Ms F and Mrs R have accidental damage cover under the buildings section of their policy. The policy defines accidental damage as:

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

Great Lakes says it accepts that some of the internal damage was due to water ingress through the roof. This is based on the loss adjustor's findings which say:

"In respect of the internal damage in the bathroom, we are satisfied that the damage to the walls and tiles is significant and is a result of water penetration through the roof"

and not simply poor ventilation of the bathroom. In this respect we do accept that water was coming in through the roof during periods of rainfall.”

Great Lakes has said its prepared to accept this part of the claim under the accidental damage section of the policy.

I've queried why it didn't consider the damage in the remaining areas to be accidental, including the kitchen damage which was discovered several months after the claim was made.

Great Lakes has confirmed that the mould throughout the property appears to be due to a lack of ventilation and general maintenance, rather than a direct result of the water ingress from the roof. This is based on the loss adjustor's comments which say:

“The kitchen appears to require renewal on the basis that the unit under the sink has suffered water damage, this damage would appear to be a result of normal use of the sink with spillages accumulating over a sustained period; the damage to the unit cannot be connected to water ingress through the roof on the upper floor. The bathroom suite should not be affected by water and should be capable of being refitted.”

Great Lakes relies on the following policy exclusions:

“Wear and tear...any loss or damage caused by wear and tear or any gradually operating cause.”

“Micro-organism exclusion clause:

Loss, damage, claim, cost, expenses or other sum directly or indirectly arising out of or relating to mould, mildew, fungus, spores or other micro-organism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use; occupancy; or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, clean-up, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in this policy that provides insurance, in whole or in part, for these matters.”

Based on the loss adjustor's advice and photos of the damage, I don't think it was unreasonable for Great Lakes to conclude that much of the internal damage is caught by the policy exclusions for mould and wear and tear. And I'm satisfied it's fairly offered to cover the areas which were damaged accidentally through water ingress.

Customer service

Ms F and Mrs R have also raised concerns about the conduct of the loss adjustors and, in particular, an email of 14 March 2023 which they say had factual inaccuracies and personal insults.

Having read the email, I don't agree there were personal insults. But I'm mindful that the interpretation of written communication can be subjective, so I don't wish to take anything away from the fact Ms F and Mrs R felt upset by the content of the email.

Great Lakes initially offered £100 compensation, which Ms F and Mrs R didn't accept.

Our Investigator recommended compensation be increased to £300 due to delays between October 2022 and March 2023.

Great Lakes has told me that between October 2022 and January 2023, there were negotiations between Ms F and Mrs R and the loss adjusters. But it accepts that an email from Ms F and Mrs R dated 13 January 2023 went unanswered until 10 March 2023. So it accepts our Investigator's recommendation to increase the compensation to £300.

From the information provided, I agree that £300 is a fair resolution for the customer service aspect of this complaint and I'm not inclined to award anything more.

Responses to my provisional decision

Ms F and Mrs R acknowledged receipt of the decision but made no further submissions.

Great Lakes confirmed it had 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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

Great Lakes Insurance SE has already made an offer to pay £6,500 to settle this claim and I think this offer is fair in all the circumstances based on the information I've seen. It has also accepted our recommendation of £300 compensation for failings in its service.

So my decision is that Great Lakes Insurance SE should pay £6,500 for the claim settlement and £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F and Mrs R to accept or reject my decision before 4 July 2024.

Sheryl Sibley
Ombudsman