

The complaint

D, a limited company, represented by its director, Mr D, has complained about its commercial property insurer, Great Lakes Insurance UK Limited. Mr D said it wouldn't settle D's claim, took too long and caused financial loss.

What happened

D purchased a property and Mr D arranged cover with Great Lakes. He said the property was occupied. The policy began on 1 March 2023, with the first tenant due to move in on 21 March 2023. On 18 March 2023, Mr D discovered a leak from the loft. He made a claim to Great Lakes.

Great Lakes was concerned about the policy recently beginning. It noted Mr D had said the property would be occupied from the outset. When asked by it, Mr D said he had interpreted the question and agreed with it because the tenant would move in in due course. He accepted he had "technically" got the answer wrong. Great Lakes said if it had been told the correct detail, amongst other things, it would have added a term to the policy which required the property's heating system to be on or drained. It felt this hadn't happened, so said that the claim would never have succeeded.

Mr D wasn't happy. Upon review Great Lakes accepted that there had been delays, across two final response letters Mr D was offered a total of £500 compensation. Regarding the claim decline, Great Lakes said that even if it accepted the cause of the leak was not related to frost damage (significant due to the policy condition it believed was not complied with), the claim would still have failed. It said Mr D had said the pipe, which had failed, had failed due to inherent defect – for which there is an exclusion on the policy. Mr D had already asked the Financial Ombudsman Service to review his complaint, as he remained unhappy he reverted to us.

When our Investigator reviewed matters, he wasn't persuaded to uphold Mr D's complaint. Mr D asked for an Ombudsman's decision and the complaint came to me for review.

I was minded to uphold it, as I felt Great Lakes should be considering the claim. However, I was also satisfied that any settlement that might result would reasonably be subject to an excess of £1000 and proportionality. So I issued a provisional decision to explain my views to both parties. My provisional findings were:

"Information given when the policy was arranged"

Mr D was asked to agree that the property was occupied. Mr D agreed that it was. But it was not occupied – rather occupancy was due to commence shortly. As Mr D has acknowledged, he "technically" gave Great Lakes incorrect information. Incorrect information which Great Lakes used when deciding what policy to offer D, and what price to charge.

There is legislation to consider here. In this case the relevant legislation is the Insurance Act 2015. This required Mr D to give a fair presentation to Great Lakes of all information he knew

or ought to have known. Given Mr D accepts he gave incorrect information to Great Lakes, I think Great Lakes' view that a fair presentation was not given is reasonable.

The Act says that if the failure to give a fair presentation was a 'qualifying breach', then the insurer can do certain things. The breach is seen as qualifying where the insurer would otherwise have done something differently. Great Lakes has shown here that the premium charged would have been different, that a higher excess would have been applied and that the condition referenced above would have come into force from the outset of the policy.

I'm satisfied by the evidence submitted in this respect. I know Mr D has 'tested' the policy application system recently and didn't note any difference in cover. But how the system is now, isn't necessarily reflective of how it was in 2023. So as Great Lakes would have done something differently if it had been given the correct information by Mr D, it is allowed to progress the claim and policy on that basis.

I'd add that there are instances, under the Act, where the insurer can avoid policies (treat them as though they've never existed). But Great Lakes has not done that here. Great Lakes has only ever mentioned the policy condition to Mr D – but in doing so it has been considering the claim under what would have been the 'live' policy. If Great Lakes had wanted to avoid this cover altogether it would have needed to do that at the time – the question now is whether, under the policy that should have been in place, Great Lakes has to settle the claim.

Declining the claim

The available evidence shows that a joint on a pipe in the loft failed. Great Lakes seems to have initially assumed that the pipe failed due to frost damage. On this basis it referred to a policy condition requiring Mr D to either keep the heating on or drain the system. It said he had not done either, so the claim was declined. However, Great Lakes later checked weather data and found temperatures had been well above freezing in the week before the loss. I think this was an unfair response by it initially. I'm satisfied it delayed matters by not checking weather records earlier.

Subsequently Mr D challenged Great Lakes, stating he believed the claim should be covered. Mr D told Great Lakes he felt it was possible the pipe had failed due to an inherent defect. Great Lakes declined liability for the loss again. This time on the basis of a policy exclusion for damage caused by inherent defect. That is a valid exclusion under the policy – but it would be up to Great Lakes to show it can reasonably rely on such to defeat its liability. Mr D's view cannot be considered an expert opinion on this, and I've seen nothing from Great Lakes, from a qualified expert, to show the pipe was likely faulty since installation (possibly some forty years ago), yet only recently caused water to leak from it. I find the idea of a 'latent defect', in this instance, to be unlikely.

So Great Lakes has moved from declining the claim based on a breach of the policy condition to declining it based on an exclusion. Great Lakes can't reasonably, in my view, decline the claim on the base of the policy condition because the available evidence doesn't show that a breach was material to the loss – if the pipe had failed due to freezing, the requirement for Mr D to have kept the heating on or have the system drained would likely have been relevant but the weather data alone satisfies me the pipe did not freeze. And, as I've noted above, regarding the exclusion, Great Lakes hasn't shown that the pipe likely failed due to an inherent defect. So Great Lakes has had its chance to show that its most likely that, under the policy, it fairly and reasonably has no liability for the loss, but it hasn't done so. In my view it must now move to settling the claim in line with the remaining terms and conditions of the policy.

Settlement

I note that Great Lakes has not been fully up front with Mr D about everything it would have done differently had he given it correct information. But it has satisfied me, as I said above, that, as well as applying the policy condition from the outset of cover, it would have increased both the premium and the applicable excess.

Great Lakes has shown the applicable policy excess would have been £1,000. So it will be fair for it to apply this sum when settling the claim.

The premium difference will have another impact on the claim. Great Lakes has shown it would have charged significantly more for cover – such that the premium Mr D did pay only covered 34.2% of what it would have charged. For D that means Great Lakes can settle the claim proportionately based on the level of premium paid. I appreciate that will have a significant impact for D in terms of what it can expect in settlement. However, that is what the legislation allows for where incorrect information is given.

As this claim has been handled poorly by Great Lakes, such that all settlements D might have been entitled to have been drastically delayed, I think it's fair to require Great Lakes to add interest to any claim settlement it makes. As D has been denied sums reasonably due to it under the policy, I'm going to require Great Lakes to apply interest to any settlement it makes to D under the policy, from the date of loss until payment is made.

Delay and lost rent

I think Great Lakes did cause delay here. As I've noted above though, it also got the claim outcome wrong, twice – in both cases unfairly and unreasonably declining it. I think if it had handled this properly it could have got to the correct answer – in short, that there had been a failure to make a fair presentation which would mean the claim would be settled proportionately – within a month. I think reinstating the property would reasonably have taken a month, with the tenancy likely able to commence around that time.

The claim was made in March 2023. So tracking my logic above, it should have been resolved with the tenancy beginning in May 2023. Likely around 21 May 2023 – two months after it should have started. As it was, it was unfairly declined with Great Lakes issuing its final responses in November 2023 and January 2024.

I think that if Great Lakes had handled this better, the most it would have paid D for lost rent under the policy would have been two months. That settlement, for two months, would likely have been made on a proportional basis – which I've said is fair. But due to Great Lakes' failures the tenancy wasn't able to commence after two months in May 2023. I think it's only fair and reasonable, if D lost rent after 21 May 2023, Great Lakes should reimburse his loss in full. That is because this is not being settled under the policy which is subject to proportionality. Rather it is being settled for due to Great Lakes' failure to handle the claim fairly and reasonably.

Mr D will have to evidence to Great Lakes the rent lost after 21 May 2023. To any rental sum not received by Mr D, Great Lakes will have to add interest from the date it should have been received until settlement is made.*

Compensation

D is the complainant here. I think D has suffered some inconvenience due to Great Lakes handling this poorly. But D, as a limited company can't experience distress. Great Lakes has offered a total of £500 compensation already, and I understand D may have received some

of that sum. I'm not minded to require Great Lakes to pay compensation in addition to that total offered. I will require it to pay any part of that sum which remains outstanding."

Great Lakes did not reply to my findings.

Mr D did reply and said he was largely pleased. But he asked that three points were taken into account. Mr D said:

- He believes Great Lakes applied its standard underwriting criteria here, rather than looking at its on-line process. He had 'tested' the on-line process, by entering correct and incorrect details, and that hadn't generated any difference to cover. So he'd like the on-line process, as of February 2023 (when he'd arranged cover), to be reviewed in comparison to underwriting detail, to be sure things would have been different.
- His swift action had mitigated further damage occurring. It was also his actions which had allowed the property to be repaired and re-let swiftly. So it doesn't feel fair that, given its inaction, Great Lakes then gets to reduce the claim settlement. He feels this should be reflected in some way in the settlement.
- He asked that as D has only one director, who had endured a lot of distress on account of Great Lakes' claim handling, that compensation is increased accordingly.

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 understand that Mr D believes his tests, undertaken in November 2023, bely the truth of what Great Lakes said would have happened, had the correct detail been given, when the policy was arranged in February 2023. But I'm not persuaded by those tests – I don't think they're a reliable indicator of what would most likely have happened months earlier. I'm satisfied by the evidence which Great Lakes has provided. This has come from its head of underwriting and I consider that evidence to be the most reliable, offering detail as to what would most likely have happened in February 2023 had Mr D made a fair presentation.

I appreciate that Great Lakes' inaction and mis-steps (as I set out provisionally) in handling and deciding this claim were frustrating for Mr D. I'm pleased he was able to take action to mitigate D's loss. But that action doesn't reasonably off-set what Great Lakes is entitled to do on account of Mr D's failure to give a fair presentation – settle proportionally. Rather, D will see the benefit of Mr D's actions now when it comes to the proportional claim settlement because D's shortfall will not be so great as it would have been if the costs for work had increased rather than having been mitigated. Whilst Mr D took this action because of Great Lakes' failures, the result of that action having been taken is that he protected D's own position, limiting D's losses.

That said, I did note provisionally that Mr D likely had some loss of rent caused by Great Lakes' inaction/delay and unfair claim decisions. I reflected that in what I said about rent lost after May 2021 – that Great Lakes will have to settle for any lost rent after this date in full, rather than proportionally, because it caused any loss at that time.

I appreciate that this has been difficult for Mr D. But D is the policyholder, as well as the complainant to this Service. And where Mr D has acted to mitigate losses and deal with Great Lakes, he has done so as D's director. So any inconvenience caused is taken into account because time spent by Mr D on this means he isn't doing other things for D – D is inconvenienced. But where distress has been caused to Mr D, that is not 'suffered' by D. I remain of the view that total compensation of £500 for the inconvenience Great Lakes caused D is fair and reasonable compensation.

Putting things right

I require Great Lakes to:

- Settle D's claims under the policy, in line with the remaining terms and conditions. In doing so it will be able to charge an excess of £1,000 and apply proportionality, as explained above.
- To any claim settlement sum, apply interest* from the date of loss until payment is made.
- Reimburse D's lost rental income, for rent which should have been received from 21 May 2023 onwards, without applying proportionality, plus interest* applied on each sum which should have been received but wasn't, from the date it should have been received until settlement is made.
- Pay D any part of the £500 compensation which it hasn't paid already.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require Great Lakes to take off tax from this interest. If asked, it must give D a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Great Lakes Insurance UK Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 19 November 2024.

Fiona Robinson
Ombudsman