

## **The complaint**

Mr B's complaint is about the rejection of a claim made under his mobile phone insurance policy with Great Lakes Insurance UK Limited.

## **What happened**

In December 2023, Mr B made a claim under the policy after he lost his phone. Mr B had travelled abroad on 3 December 2023. He said that on his journey back to the UK, he lost the phone somewhere in the airport. Mr B reported the loss to his network and it blocked the phone.

Great Lakes considered the claim but rejected it for two reasons: firstly it said the circumstances did not meet the policy definition of "loss", and secondly, it said that Mr B had not been able to provide proof of his usage of the phone to show it had been in his possession immediately before the loss, as the original SIM card was not in the phone.

Mr B was unhappy with this and complained. He explained that he had used a local SIM card in the phone while he was away to avoid excessive charges for using the original SIM, and he could not get proof of usage of the non-UK SIM card. However, Great Lakes maintained that the policy terms require the claimant to provide proof of usage of the phone and the SIM card registered to his address be in the phone at the time of the loss. Great Lakes said the policy had only been taken out on 24 November 2023 for a high value item and this was only nine days prior to the last usage.

Mr B therefore referred the matter to us. He has also said the delays and rejection of his claim has had a significant impact on his work and finances. He has been forced to use his personal phone for work, resulting in connectivity issues; and he has still been paying for the insurance.

One of our Investigators looked into the matter. She recommended the complaint be upheld, as she did not think Great Lakes had applied the policy terms fairly. The Investigator said it was understandable that Mr B would use a different SIM card to avoid expensive charges while abroad and he was unable to obtain usage proof from the overseas network. In the circumstances, the Investigator considered it would not be fair or reasonable to apply the policy requirements strictly. She therefore recommended the claim be reassessed, subject to the remaining terms of the policy.

Great Lakes does not accept the Investigator's assessment. It says the last evidence of use of the phone was on 3 December 2023, which it says was 17 days before his trip abroad. Great Lakes has also said that the item is of high value device open to fraud and Mr B had only taken the policy out 25 days before the claim. It is entitled to proof that the phone was in his possession while he was on cover and there is no proof the phone was in use while he was abroad.

As the Investigator was unable to resolve the complaint, it was passed to me.

In the meantime, Mr B said that when he arrived abroad, a relative obtained a SIM card for him to use and he put the UK SIM card under the phone cover. Network providers cannot provide proof of usage in the country he was in and such information is not available to the general public. He says he has provided everything he can to support his claim and the policy does not require him to provide any other documentation.

I issued a provisional decision on the matter in October 2024, the main parts of which are copied below:

“Mr B’s policy includes cover for accidental loss and theft of the phone. In order to successfully claim under an insurance policy, it is for a claimant to establish their claim. This means in the context of this case that Mr B has to prove that he owned and possessed the phone for which he is claiming, and that he lost the phone in the way he has stated.

Mr B says his phone was in his bag when he was in a room in the airport but when he reached another part of the airport he realised it was missing. Mr B could not say how the phone came to be missing. Great Lakes says he has not therefore been able to evidence that it was lost in accordance with the policy definition, which says:

“Loss

*Means that the gadget has been accidentally left by you in a location and you are permanently deprived of its use.”*

The fact Mr B does not recall exactly leaving the phone somewhere by mistake does not mean it is any less likely it was accidentally lost, in my opinion. Such items tend to be lost because the owner is distracted and not paying full attention at the time. In any case, given Mr B doesn’t know what happened, it seems to me just as likely the phone was stolen from Mr B’s bag. The very nature of pick-pocketing is that the theft occurs without the victim knowing at the time. And the policy covers theft as well as accidental loss.

Having considered everything carefully, I do not consider it unusual that Mr B ...[was] not entirely sure at the time he reported the claim what had happened and exactly how or where his phone went missing. I do not therefore consider Great Lakes can fairly turn down the claim based on this policy definition.

Great Lakes also relied on the following term in the policy to reject Mr B’s claim:

*“Where your gadget is a mobile phone. we will only provide cover if the device has a functioning SIM registered at your address. In the event of a claim the Administrator will request your call records to prove that the gadget has been in use since policy inception and up to the event giving rise to the claim.”*

Although the requirement for proof of usage up to the date of loss is worded as an exclusion in the policy terms, it seems to me that it is in fact a policy condition. Insurers are not allowed to reject otherwise valid claims for breach of a policy condition, unless that breach has caused the insurer prejudice (for example, has increased the value of the claim).

Great Lakes says there is a risk of fraud if proof of usage is not provided. Great Lakes has not provided any evidence, or indeed made any allegation of fraud, in this case. While the request for the original SIM to be in the phone and proof of use is not unreasonable in itself, I have to consider whether this can reasonably be applied in the circumstances of this case. It seems to me that Great Lakes would have to show that the breach of that condition would cause it material prejudice in order to rely on it to refuse a claim.

Great Lakes says the last evidence of usage was 17 days before the trip abroad. I don't think this is correct. The network has provided evidence that the last usage date with the original UK SIM was at 13.49 on 3 December 2023. The copy of the flight tickets provided by Mr B show that the departure of his flight was a few minutes after that on 3 December 2023. This is consistent with Mr B's account that he used the original SIM card in the phone in the UK but did not use it while abroad. And I consider Mr B's explanation of why he cannot provide proof of usage while abroad credible. Great Lakes has not provided any evidence that would counter that.

So, Mr B has provided evidence he was using the phone after he bought the policy to the date he left the UK. Mr B has provided proof of purchase of the phone and also provided proof he reported the loss to the relevant airport and the network, which has blocked the phone. Given all this other evidence, I don't consider the absence of proof of usage while abroad indicates in itself any reason to doubt the validity of the claim.

On a fair and reasonable interpretation of the policy terms and conditions as a whole, I therefore consider that Great Lakes was not acting fairly or reasonably when it rejected Mr B's claim. I agree with the Investigator that the claim should be reassessed, disregarding any requirements for proof of usage.

Mr B says he has still been paying for the insurance, while not having the insured phone. I note this is a monthly rolling contract and there doesn't appear to be a minimum term in the policy documents I've seen. Therefore, Mr B would have been entitled to cancel it even if his claim was successful. If Mr B's claim had been met, as I think it should have been in December 2023, it seems unlikely he would have chosen to cancel the policy, as the policy would apparently cover any replacement. As I think the claim should have been met, I don't therefore consider Great Lakes needs to refund the premiums, although Mr B can cancel the policy if he wishes.

Mr B has also said that he has suffered losses as a result of Great Lakes's delay in settling the claim, as he used it for work. I have not seen any evidence to support any claim for financial loss. However, I do consider that Great Lakes should pay the sum of £100 compensation for the inconvenience caused by its handling of the claim."

## **Responses to my provisional decision**

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

Mr B has confirmed that he accepts my provisional decision.

Great Lakes does not accept my provisional decision. It says that the requirement to provide proof of usage is a specific policy exclusion, so it is not correct for me to state it is a policy condition and it does not have to establish that it has been prejudiced by the lack of proof of usage.

### **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 have considered everything again, including Great Lakes's comments in response to my provisional decision. Having done so, I remain of the opinion that it is not fair or reasonable to apply this exclusion, or the term cited in my provisional decision, to refuse this claim. I will explain why.

As well as the policy term cited in my provisional decision above, the policy states:

*"General exclusions*

*We will not pay for ...*

*6. any claim where proof of usage cannot be provided or evidenced ..."*

Great Lakes says this is a clear exclusion of cover and therefore prejudice is not relevant.

The above exclusion only requires proof of usage and Mr B has provided proof the phone was used since he bought it to the date he left the UK.

The term cited in my provisional decision says that Great Lakes will ask for *"call records to prove the gadget has been in use since policy inception and up to the event giving rise to the claim"*.

It does not state that all claims will be excluded if proof of usage up to the date of the loss of the phone will be excluded but, even if it did, I remain of the opinion that this is in effect a policy condition. However, in any event, Great Lakes cannot unfairly reject a claim. Given that there is no reason to doubt the loss happened as Mr B reported and he has provided evidence that he owned and had used the phone up to the date of his travel abroad, I do not consider it fair or reasonable to refuse the claim on the basis Mr B cannot provide proof of usage while abroad.

I therefore remain of the opinion that Great Lakes should reconsider the claim. I also remain of the opinion that it should pay the sum of £100 compensation is appropriate for the trouble caused by its handling of the claim.

### **My final decision**

I uphold this complaint against Great Lakes Insurance UK Limited and require it to do the following:

1. reconsider Mr B's claim, subject to any remaining terms of the policy (but not any regarding proof of usage); and
2. pay Mr B the sum of £100 compensation for the distress and inconvenience caused by its unreasonable rejection of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 2 December 2024.

Harriet McCarthy  
**Ombudsman**