DRN-5568952

The complaint

W, a limited company, complains Great Lakes Insurance SE turned down a claim it made on its business protection insurance policy.

What happened

In May 2022 a member of the public fell down a step while at an event at W's premises. In January 2023 W received a letter of claim from solicitors which said the injured party was wheelchair bound following the accident. W sought assistance from its policy.

Great Lakes said it was a condition precedent of the policy that an occurrence which might give rise to a claim should be notified to it as soon as reasonably practicable and in any case within 14 days of discovery. Having reviewed matters (including CCTV footage of the incident) it didn't think that had happened here. It said it wouldn't be providing cover for the claim. However, it accepted there had been delays in that decision being reached and offered to pay W £150 in recognition of the inconvenience it had been caused.

Our investigator thought that, given the circumstances of the accident, W would reasonably have been aware this could give rise to a claim. So the incident should have been notified to Great Lakes soon after it took place. It said its position had been prejudiced as that wasn't done because witnesses were less likely to be able to recall what happened and alterations had been made to the accident site. Taking into account this was a condition precedent to cover being provided our investigator thought Great Lakes acted fairly in turning down the claim. She also said the £150 it offered for delay was appropriate.

W (through its representatives) didn't agree. In summary it said:

- It couldn't be the intent of the policy that all accidents should be reported to an insurer because that would be both burdensome to a policyholder and mean insurers were inundated with notifications. It drew attention to relevant case law (Kidsons v Lloyds Underwriters) which it said supported its position that notification of the incident was only required where there was a real possibility of a claim being made which it didn't think was the case here.

- The letter of claim in relation to the incident had only been received eight months after it took place which in itself indicated it wasn't serious enough to warrant reporting to Great Lakes. An incident with a remote possibility of a claim being made wasn't one that needed to be reported to an insurer.

- It questioned whether Great Lakes would in fact have carried out any investigations if it had been notified of the incident when it happened. It said any changes W had made since then didn't change the fundamental characteristics of the incident site and it had simply added additional signage.

So I need to reach a final 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 Great Lakes has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've reviewed the terms and conditions of W's policy. I don't think it's in dispute that a condition applies to the section of cover it was claiming under which says "*You shall notify Us as soon as reasonably practicable, but in any event within 14 days of discovery of an occurrence that may give rise to a claim under this Policy".* And the policy says that's a condition precedent to liability and "*if You do not comply with these conditions We shall be entitled to refuse indemnity under this Policy".*

There's been some discussion over how the reference to "*may give rise to a claim*" should be interpreted. I agree with W there is relevant case law on this but I think the key authority here is 'Euro Pools Plc (in administration) v Royal & Sun Alliance Insurance Plc' [2019]. In that the judge identified that reference to a circumstance which may give rise to a claim was a "*deliberately undemanding test*" and cited previous case law which said it meant "*there need only be a possibility of claims in future".*

I've also taken into account other relevant case law (including 'Kidsons v Lloyds Underwriters' which W's representatives have cited). Having done so, when considering whether an occurrence might give rise to a claim on the policy, I think there should nevertheless be a real rather than a fanciful risk of that taking place. And a reasonable insured would have understood there was such a risk of a claim being made taking into account their knowledge of what happened. Given that I agree with W that not every incident which might take place at its premises is something that would need to be reported to Great Lakes. The question is whether the accident in this case should have been.

I've reviewed the available evidence as to what happened (and what W would have been aware of at the time). I understand the incident took place when the attendee fell down a step. She then remained on the floor for a period of time while others tried to assist her. It appears the emergency services were called (though may not have attended) and the injured party was taken to the Accident & Emergency department of the local hospital.

W was clearly aware of that incident and completed a '*Reporting of Injuries, Diseases and Dangerous Occurrences Report*' to the Health and Safety Executive five days later. I've reviewed HSE guidance which says that isn't required where someone is taken to hospital purely as a precaution when no injury is apparent. As the incident was reported and hospital attendance was needed that suggests the accident was of sufficient seriousness to require emergency examination (and potentially treatment). So I think this was a reasonably significant incident which W was clearly aware of.

W was also aware the accident occurred as a result of the attendee falling down a step at its premises. I understand there had been a previous incident (in 2014) where a different individual fell down the same step and a claim was received in relation to that. That claim doesn't appear to have progressed any further. But I think it would reasonably have made W aware of the risk the subsequent incident was also something that could give rise to a claim.

W might have thought that unlikely. However, that isn't the correct test as the policy references an "*occurrence that may give rise to a claim".* In my view it should reasonably have thought the circumstances here, which it was aware of, did make that a possibility. And the risk of that was more than simply fanciful. I think the incident should have been notified to Great Lakes at the time it happened or soon afterwards. As a result W is in breach of the notification requirement its policy contains which is a condition precedent to cover being provided.

So the legal position is Great Lakes doesn't need to show how non-compliance with the condition has adversely affected (prejudiced) its position to turn down the claim. But that isn't the only issue I need to consider. I understand the legal position as it applies to a condition precedent. However, our remit is wider than that and requires me to also take into account what's fair and reasonable in all the circumstances. I think the question of whether Great Lakes has been caused prejudice by late notification is relevant when considering what's fair and reasonable.

Great Lakes says its position has been prejudiced by the late notification. That's primarily because it wasn't able to inspect the accident site soon after the incident occurred and because memories of the incident would likely have faded by the time it was told about it. W says no significant changes, beyond the addition of signage, were made to the site prior to Great Lakes being told about the incident. So it would still have been able to inspect this.

I appreciate Great Lakes would have been able to carry out an inspection but it doesn't appear to be in dispute the position at that time would have been different to that which existed at the point the incident took place. Those changes may or may not be significant but the late notification does mean Great Lakes lost out on the opportunity to view the site as it was at the time the incident occurred. I think it's also fair to say that memories of the incident may well have been impaired by the passage of time. And while I'm aware there is some CCTV of the incident it doesn't appear to clearly show how the incident took place or the condition of the accident site.

Nevertheless, I accept the prejudice to Great Lakes does appear limited. But I do think it's shown that exists. And taking into account that the notification clause is a condition precedent I think Great Lakes acted correctly and fairly in turning down the claim W made. I agree there was delay in that decision being reached but I think the £150 Great Lakes has already offered is a reasonable way of recognising the inconvenience W was caused by what it got wrong.

My final decision

Great Lakes Insurance SE has already made an offer to pay £150 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that Great Lakes Insurance SE should pay W £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 25 July 2025.

James Park
Ombudsman