

## The complaint

Mr P has complained because Great Lakes Insurance UK Limited declined his subsidence damage claim under his buildings insurance policy for a rental property he owns.

## What happened

Mr P's policy started on 7 November 2023. As part of the application process he was asked questions that Great Lakes wanted answers to so that it could assess the risk posed. Mr P was asked the following questions, which Great Lakes felt were relevant to this complaint, and he gave the following answers:

Question asked	Answer given
Are the Premises in a good state of repair and will be so maintained?	Yes
Are there any current signs of subsidence, ground heave or landslip, or any cracking or bulging of the walls at the Premises?	No
Is there any history of subsidence, ground heave or landslip at the Premises within the last 15 years?	No

Mr P's tenant made him aware of cracks in the property. He appointed a structural engineer to inspect the damage. The engineer reported that various cracks were noted internally and externally and there appeared to be ongoing movement (of the property).

Great Lakes appointed a loss adjuster to inspect the damage. He said the main damage was to the front of the property, but it was longstanding and pre-dated the start of the policy.

Great Lakes declined Mr P's claim because it felt he misrepresented the situation when he applied for the policy. It said if it had known about the pre-existing cracks it would have provided the policy but would have specifically excluded cover for damage caused by subsidence.

Our investigator didn't think the complaint should be upheld. In summary, she felt there were cracks in the property when Mr P bought the policy and he didn't declare them to Great Lakes. Mr P disagreed and asked for an ombudsman to review things.

## 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 questions asked*

Although Great Lakes quoted three questions I think only one of them is relevant to the complaint. This is because:

- Great Lakes said if it had known the property wasn't in a good state of repair it wouldn't have offered any cover at all. But when applying the remedy available to it under the relevant legislation (which I discuss further below) it didn't void Mr P's policy – which was

the remedy available if it felt Mr P answered this question incorrectly. As it didn't void the policy, I think it's fair to work on the basis that Great Lakes ultimately didn't consider that Mr P answered the question incorrectly.

- In its final response to Mr P's complaint Great Lakes noted that Mr P had said historic subsidence was rectified before he bought the property in 1990 and that there hadn't been any evidence of subsidence damage in the last 15 years. Great Lakes didn't pursue this further, instead saying that if it removed the question relating to historical subsidence in the last 15 years it still had to consider whether there were signs of cracking of the walls when the policy was purchased. Accordingly, I think it's fair to work on the basis that Great Lakes ultimately didn't consider that Mr P answered the question incorrectly.

I therefore think the only question relevant to this complaint is the one relating to whether there were signs of subsidence or any cracking.

### *The relevant legislation*

Although the property is a private dwelling, Mr P's insurance policy is classed as a commercial policy because he gains economically by renting the property out. This means the relevant legislation is the Insurance Act 2015. In summary, this requires the insured to make a fair presentation of the risk to the insurer, which means:

- (a) disclosure of every material circumstance which Mr P knows or ought to know, or
- (b) failing that, disclosure which gives Great Lakes sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

Unlike non-commercial insurance it's not a requirement for the insurer to ask specific questions about matters they think are important (although, as in this case, they often will); rather the onus is on the insured to volunteer information to the insurer.

### *Did Mr P make a fair presentation of the risk to Great Lakes?*

I've looked at the photos taken by Mr P's engineer and by Great Lakes's loss adjuster, and I've compared them with a photo taken by Google Street View in September 2022 (ie before the policy started). In all the photos I can see:

- a crack in the ground floor lintel
- a diagonal crack going upwards from the lintel to the left
- cracks in the ground and first floor window sills.

I've also noted that the loss adjuster's report said the tenant had noticed some fresh cracks as well as some *pre-existing cracks* getting larger. And, to a lesser extent, he said the cracking appeared discoloured and weathered which indicated it was long-standing. Mr P also agreed there were some cracks at the property prior to the start of the policy (although he felt it was unfair to decline the claim on this basis as they weren't related to the current damage).

I'm not deciding here whether any cracks present at the start of the policy are related to the current damage. I'm looking at whether Mr P made a fair presentation of the risk to Great Lakes when he answered 'no' to the question about there being any current signs of cracking of the walls.

It's largely a question of fact whether Mr P answered the question correctly – he either did or he didn't. Given the cracking shown in the photo in 2022 to the wall and lintel, that cracking being the same as in the photos taken in 2024, the tenant's reference to pre-existing cracks and Mr P's admittance to there being cracks in the property I think it's more likely than not that in November 2023 when Mr P applied for the policy there were signs of cracking of the walls. Accordingly, I conclude that Mr P answered the question incorrectly and, in doing so, failed to make a fair presentation of the risk to Great Lakes.

In response to our investigator's opinion Mr P said he answered 'no' to the question about cracking as there wasn't an issue at the time. I disagree. As I've outlined above, I think it's most likely that there were cracks in the walls in November 2023.

*Did the 'unfair' presentation of the risk affect the policy?*

Great Lakes has shown me that if Mr P had answered 'yes' to the question about there being signs of cracking of the walls it would have applied an endorsement to the policy which said "We will not pay for Damage caused by Subsidence, ground Heave or Landslip".

I'm therefore satisfied the risk Mr P presented to Great Lakes affected the policy because it affected the cover Great Lakes was prepared to provide.

*What is the remedy available to Great Lakes?*

I've concluded above that Mr P didn't make a fair presentation of the risk, which in turn affected the policy. The Insurance Act says that if the insured breached the requirement to make a fair presentation of the risk, and this affected the policy, the way the insurer can respond depends on whether the breach was careless or deliberate or reckless.

Great Lakes hasn't considered or argued that Mr P acted deliberately or recklessly – which means the breach falls into the 'careless' category. In that scenario, the Insurance Act says Great Lakes can apply any term to the policy that it would have applied had a fair presentation been made. And it should consider any claim under those revised terms. For the avoidance of any doubt, it doesn't matter if the careless misrepresentation of the risk relates to the subsequent claim.

As Great Lakes would have added an endorsement to the policy which excluded cover for subsidence damage, it's entitled to retrospectively apply that endorsement to the policy. And as it appears the damage Mr P claimed for was caused by subsidence, his claim would be caught by the endorsement.

*Summary*

For the reasons outlined above I conclude that Great Lakes treated Mr P fairly – and in line with the legislation – when it declined his claim. This is because:

- Mr P didn't provide Great Lakes with a fair presentation of the risk when he applied for the policy
- the unfair presentation of the risk affected the policy
- his subsidence claim would fall within the ambit of the endorsement Great Lakes would have applied to the policy.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 February 2026.

Paul Daniel  
**Ombudsman**