

## **The complaint**

Mrs M and the estate of Mr M are unhappy that Great Lakes Insurance UK Limited hasn't paid (in full) a claim made under a travel insurance policy ('the policy'). They're also unhappy with the way the claim was handled and the assistance received whilst abroad.

All reference to Great Lakes includes its medical assistance team and other agents.

## **What happened**

Mr and Mrs M were on holiday abroad. Mr M became very unwell and required emergency medical care. Great Lakes was contacted for assistance.

The treating doctor provided a certificate on 16 December 2023 reflecting that Mr M was fit to fly by air ambulance only, escorted by a medical team with ventilator support ('the fit to fly certificate').

Mr M was repatriated to the UK by air ambulance on 25 December 2023. Mrs M and the estate of Mr M are unhappy with the way in which the repatriation was handled and the delays incurred.

Whilst Mr M was being treated abroad in hospital, and before he was repatriated back to the UK, Great Lakes obtained his medical history from his GP. After review, it concluded that, when applying for the policy, several of Mr M's medical conditions weren't disclosed.

Great Lakes concluded that had those conditions been disclosed, the policy would've cost considerably more. It ultimately decided to settle the claim in proportion to how much Mr and Mrs M paid for the policy compared to how much they would've been charged if some of the medical conditions had been disclosed.

Mrs M raised a complaint with Great Lakes which it didn't uphold. She then brought a complaint to the Financial Ombudsman Service.

Our investigator looked into what happened. He concluded that, in principle, Great Lakes had acted fairly and reasonably by proportionately settling the claim.

However, he did think Great Lakes had unfairly delayed repatriating Mr M and that on the balance of probabilities, if those delays hadn't taken place, it's likely Mr M would've been repatriated earlier than he was. So, our investigator recommended Great Lakes be responsible (in full) for medical costs incurred after 20 December 2023 (so between 21 and 25 December 2023).

He also recommended Great Lakes pay £500 compensation for distress and inconvenience.

Great Lakes accepted our investigator's recommendations. Mrs M and the estate of Mr M disagreed. They raised further points which didn't change our investigator's opinion. So, this complaint has been passed to me to consider everything afresh and decide.

## **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.

That includes Great Lakes' regulatory obligations (including its obligation to handle insurance claims promptly and fairly) and good industry practice.

At the outset I want to pass on my condolences to Mrs M. I also appreciate what happened abroad would've been very upsetting and worrying for her and her family. And I have a lot of empathy for her situation.

I've considered all the points Mrs M and the estate of Mr M have made (along with all the other evidence). However, I won't respond to each of these. I hope they understand that no discourtesy is intended by this.

Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to fulfil my statutory remit.

## **Great Lakes' decision to proportionately settle the claim**

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

I've been provided a screenshot of the online journey which Great Lakes says would've been followed by Mr and Mrs M when applying for the policy. In the absence of anything to the contrary, I accept this is what would've been seen at the time.

Relevant to this complaint, Mr and Mrs M were asked whether any travellers have or have had any pre-existing medical conditions.

I'm satisfied, on the balance of probabilities, Mr and Mrs M answered "yes" to this question, as a medical condition was declared for Mr M and this appears on the medical declaration certificate.

The online journey reflects that they would've then been asked:

Have you or anyone in your party been prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past two years?

I'll refer to this as the 'two-year question'. And I think it's reasonably clear.

Great Lakes says a number of medical conditions weren't disclosed for Mr M.

It has discounted some of these when undertaking a retro screening of Mr M's medical conditions to consider the impact this had on the price of the policy. However, it has relied on the following conditions not being disclosed:

- Asthma
- Raised cholesterol levels
- Hypertension
- Ankle oedema

Looking at Mrs M's medical records, I'm satisfied that in the two years before applying for the policy, Mr M had:

- visited his GP surgery for an asthma review and had been prescribed medication for this condition.
- been prescribed medication to manage his cholesterol levels.
- been prescribed medication for high blood pressure.
- seen his GP surgery about bilateral pitting oedema to his mid-calf and was taking medication.

So, overall, I'm persuaded that Great Lakes has fairly and reasonably concluded that Mr and Mrs M didn't take reasonable care when answering the two-year question. And that this amounted to a misrepresentation.

When making this finding, I've taken into account that Mrs M initially said that she had disclosed these conditions when applying for the policy for her and Mr M. Although that's Mrs M's recollection, on the balance of probabilities, I don't think she did. If they'd been disclosed, I think it's likely that they would've been added to the medical declaration certificate.

Mrs M also says that based on the medical declaration made on behalf of Mr M, Great Lakes should've been reasonably alerted to the existence of pre-existing medical conditions. And Great Lakes should've made further enquiries. However, I don't agree with that. I think it was fair for Great Lakes to rely on the answers given when applying for the policy as being accurate and the policy terms were offered on the basis that there were no other medical conditions which needed to be disclosed in response to the two-year question.

I've gone on to consider whether this amounted to a qualifying misrepresentation (i.e. that the misrepresentation mattered to Great Lakes and it would've done something different had it known about the other conditions). And I'm satisfied that it did.

Great Lakes has carried out a retrospective screening of the medical conditions set out above. Based on the GP records, I'm satisfied that it has answered the follow up questions Mr and Mrs M would've been asked about those conditions at the time fairly and accurately. And that this resulted in an increased risk rating score and an increase to the premium (of around £254). I'm persuaded that this evidence supports Great Lakes' position that the policy would've been offered on different terms.

I know Mrs M and the estate of Mr M would like to see this evidence, but I'm satisfied that it's commercially sensitive. However, I hope it assures them to know that it has been independently reviewed.

I've also seen evidence that if other medical conditions had been included in the retro screening carried out by Great Lakes (as they reasonably could've been), the medical risk factor (and thereby the premium Mr and Mrs M would've paid) would've increased further.

So, I think Great Lakes has acted fairly – and to the advantage of Mrs M and the estate of Mr M – by excluding some of his other pre-existing medical conditions from the retro screening it's ultimately relied on to proportionately settle the claim.

I'm satisfied Great Lakes has fairly concluded that Mr and Mrs M acted carelessly when answering the two-year question (rather than deliberately giving the wrong answer or acting recklessly when answering it).

I've looked at the actions Great Lakes can take in line with CIDRA. It's entitled to do what it would've done had the careless qualifying misrepresentation not taken place.

Great Lakes has agreed to settle the claim made under policy in proportion to the premium Mr and Mrs M paid for the policy compared with the premium it should've paid for the policy (around 33%).

Subject to my further findings below, I think that's fair and reasonable in principle.

When making this finding, I've taken into account what Mrs M says about the pre-existing conditions not being relevant to the reason why Mr M became critically ill whilst abroad. Even if I accepted that was the case, I don't think that's central to the outcome of this complaint. If Mr and Mrs M had disclosed the other medical conditions for Mr M when applying for the policy, it would've cost more.

### **Medical assistance whilst abroad, repatriation and handling the claim**

For the reasons set out below, I'm satisfied that Great Lakes should've provided better assistance whilst Mr and Mrs M were abroad and that it did cause some unreasonable and unnecessary delays.

- I'm satisfied Great Lakes acted fairly by not taking any proactive steps to repatriate Mr M before the fit to fly certificate was issued (on 16 December 2023). That's usual industry practice. The medical reports from the treating hospital from earlier than this date do reflect that Mr M wasn't fit to fly by "normal plane" but "in case of repatriation, patient highly recommended to fly by air ambulance" (with medical escort). However, those earlier medical reports don't say that repatriation by air ambulance was medically necessary or time critical. I also note that the fit to fly certificate reflects that the earliest date Mr M was fit to fly was 16 December 2023 (the date of the certificate) by air ambulance.
- I'm also satisfied that upon formal receipt of the fit to fly certificate, Great Lakes promptly started looking into the availability of air ambulances and gathering quotes.
- Around the same time as receiving the fit to fly certificate, Great Lakes also received Mr M's medical history from his GP. I'm satisfied that it promptly reviewed this and (reasonably) identified that a number of medical conditions hadn't been declared for Mr M when applying for the policy.
- Subject to further findings later in this decision, I think it also promptly requested a

retro screening to be carried out to find out what would've happened if those conditions had been declared at the time. I think that was fair and reasonable. I'm also satisfied that it also asked Mrs M why not all of Mr M's conditions had been disclosed as I'd reasonably expect it to have done.

- I note that Great Lakes has accepted that it delayed requesting Mr M's GP history by a couple of days. It says this didn't have any impact. However, I don't agree. Whilst the GP history was received around the same time as the fit to fly certificate, had the GP history been requested earlier, it's likely that Great Lakes would've received this a day or two earlier than it did. That being the case, although I don't think it's reasonable for it not to begin taking steps to repatriate Mr M, it would've been able to have requested a retro screening earlier. And that would've also led to the process of verifying the claim being completed earlier than it was.
- Further, and in any event, Mr M was critically ill and in the circumstances of this case, I'm satisfied that Great Lakes didn't act fairly by only completing a final retro-screening on around 22 December 2023 – almost one week after the date the fit to fly certificate was issued and first requesting the retro screening. Mrs M had promptly provided her response to Great Lakes' queries about why not all conditions had been disclosed.
- Thereafter, Great Lakes and Mrs M were in communication about its (reasonable) decision to pay a proportion of the costs. And when Mrs M confirmed that she didn't have the funds to do so, it, reasonably in my view, asked her to sign a disclaimer to reimburse Great Lakes for Mr and Mrs M's share of the costs.
- However, I'm satisfied that would've happened much earlier had Great Lakes completed the retro-screening without reasonable delay. Alternatively, if Great Lakes was unable to obtain a retro-screening more quickly, I'm satisfied that it would've also been fair and reasonable for it to have asked Mrs M to provide a disclaimer much earlier in the circumstances of this case, pending the outcome of the retro-screening and verifying cover.
- When making this finding I've taken into account the individual circumstances of this case, including that Mr M was in considerable ill-health. I've also considered the point that the medical assistance team didn't have authority to offer the disclaimer and this needed to be referred to an underwriter. Even so, I think it would've been reasonable for it to have taken that step at a much earlier stage. Had it done so, I've got no reason to doubt that the underwriter would've responded promptly given the urgency of the situation.
- From what I've seen, I'm satisfied that it took almost two days for repatriation to take place after Great Lakes confirmed the booking of the air ambulance, and Mr M was repatriated back to the UK on 25 December 2023. I can't know for sure whether an air ambulance would've still been available before then if delays hadn't occurred, but I've got no reason to think that it wouldn't have been. And I'm satisfied that it's fair and reasonable to assume that had an air ambulance been booked earlier, there would've been a turnaround of up to two days. In my experience of determining complaints involving similar circumstances, that isn't an unreasonable timeframe.
- So, looking at the overall timeline, and on the balance of probabilities, I'm satisfied that Great Lakes would've authorised and booked the air ambulance by early on 19 December 2023 if there hadn't been unreasonable delays. Therefore, Mr M would've most likely have been repatriated by air ambulance before 21 December 2023 (given

a timeframe of up to two days referred to above).

- I therefore find that Mr M was in the treating hospital abroad for around four days longer than he reasonably needed to be. So, I'm satisfied that it would be fair and reasonable for Great Lakes to be responsible (in full) for all medical costs incurred at the treating hospital from 21 to 25 December 2023 inclusive. It wouldn't be fair and reasonable for Mrs M and the estate of Mr M to pay their proportion of these medical costs when Mr M would've reasonably been repatriated earlier than he was but for Great Lakes' errors. For the avoidance of doubt this does not include the costs associated with repatriation of Mr M by air ambulance. Although that took place after 20 December 2023, this was always a cost which would've needed to be incurred even if repatriation had happened earlier.
- I can understand why Mrs M was keen for Mr M to be repatriated back to the UK as soon as possible, particularly given that he was deemed fit to fly by air ambulance. I accept that the delay caused her unnecessary distress and frustration at an already difficult time. Those delays also meant that her contribution towards medical costs was higher than it would've otherwise been (as it included the period 21 to 25 December 2023 inclusive). Although I'm satisfied that Great Lakes has, in principle, acted fairly by proportionately settling the claim, Mrs M had the unnecessary worry of thinking she was responsible for more medical costs than she reasonably ought to have been.
- I'm satisfied that compensation in the sum of £500 fairly reflects the distress and inconvenience caused to Mrs M because of Great Lakes' errors. When making this finding I've taken into account what Mrs M says about being referred to counselling and taking medication. I accept that this would've been a very distressing situation for Mrs M overall. However, I haven't seen any medical evidence which convinces me that the primary reason for this was due to the delay in repatriation.
- However, having considered the overall communication with Mrs M whilst abroad and before Mr M was repatriated, I'm satisfied that it reasonably communicated with her about what was going on and the repatriation plan.
- And although Mrs M was consulted about which UK hospital she'd prefer Mr M to be admitted to, I'm satisfied from what I've seen that Great Lakes made the necessary arrangements with the UK hospital.
- I know Mrs M and the estate of Mr M says that Mr M was in more pain and discomfort (and for a longer period after he returned to the UK) because Mr M was in the treating hospital abroad for as long as he was. I have seen the photos of Mr M's sores and read the UK hospital's notes. However, I'm not persuaded that the medical evidence supports that it was the unreasonable delay in repatriation which caused this. Nor am I persuaded that the medical evidence supports that it was the unreasonable delay in repatriation which caused the sores Mr M experienced, or that they wouldn't have become so severe and painful if he'd been repatriated around four days earlier than he was.
- From the overall medical records, during the time Mr M was in hospital abroad, it looks like he wouldn't have been aware of the delay in repatriation at the time. There's reference to him being sedated, unconscious or scoring low on the Glasgow coma scale. So, although this would've been naturally distressing for Mrs M, I'm not persuaded that Mr M would've been distressed by the delay.

For completeness, I want to confirm that I make no finding about whether Great Lakes' errors in this case caused or contributed to Mr M's eventual death. I'm not a medical expert. Although I've been provided with the recorded cause of death, medical reports from the treating hospital and photographic evidence of his sores, I've not been provided with any medical evidence or expert opinion about whether – and how likely - the delay in repatriation caused or contributed to Mr M's death.

### **Putting things right**

I direct Great Lakes to:

- A. recalculate the amount Mrs M and the estate of Mr M owes it by deducting (in full) the medical costs incurred between 21 and 25 December 2023 inclusive. It doesn't need to deduct the proportionate costs relating to the air ambulance.
- B. pay Mrs M £500 compensation for distress and inconvenience.

### **My final decision**

I partially uphold this complaint to the extent set out above and direct Great Lakes Insurance UK Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 3 December 2025.

David Curtis-Johnson  
**Ombudsman**