DRN-5900103

The complaint

A limited company, I'll refer to as V complains about how Great Lakes Insurance SE has dealt with a claim made on a commercial buildings insurance policy.

Great Lakes is the underwriter of this policy, i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Great Lakes has accepted it is accountable for the actions of the agent, in my decision, any reference to Great Lakes includes the actions of the agents.

Ms A, a director of V, brings the complaint on its behalf.

What happened

Below is intended to be a summary of the key points which led to this complaint. It isn't therefore a full timeline, or does it list everything that happened.

V is a residential management company and holds a policy with Great Lakes for the properties on the estate. In June 2022 there was an escape of water which caused damage to one of the flats, so V made a claim to Greta Lakes.

Great Lakes when undertaking its initial investigations advised V that it believed the property was underinsured. It said it believed the reinstatement value quoted in the policy and, which the policy was based on, was incorrect. It said it believed the true value should have been 10% higher and therefore V was under-insured by the same amount. It said V would need to contribute the equivalent percentage to any cost of repairs, in line with the 'average' term in the policy terms and conditions.

In July 2022, V initially accepted that there was a possibility the reinstatement amount wasn't accurate and that it would need to pay something towards the repairs, but it disputed the percentage amount. It arranged for a valuation to be completed on the property which concluded the percentage was more likely to be around the 5% mark. The surveyor said that the figures were based on Building Cost Information service ("BCIS") rates applicable in early 2022 and they'd used those to work back to late 2021 when the policy was taken out.

While this was taking place, the owner of the flat had found alternative accommodation, the cost of which was covered under the policy. The property was considered dry in January 2023 and ready for reinstatement, but due to the dispute over the under-insurance amount and what contribution needed to be paid, this didn't happen.

Due to the conflicting opinions, in February 2023 Great Lakes arranged for a further valuation of the property to take place. This however concluded the property was under-insured by 36% but was based on rates from 2023. To start the reinstatement of the property, while still disagreeing about the percentage value of underinsurance, V agreed to a 25% contribution to the repair costs.

Repairers were appointed in April 2023 to assess and provide an updated scope of works based on the condition of the property and what was needed to reinstate it to its previous

condition. This amount was much higher than that previously predicted and therefore caused further concern and dispute by V – as it also meant it needed to contribute more to the cost of repairs.

Unfortunately, around the same time the cost of works were being scoped for, there was a further leak which impacted the kitchen of the property in May 2023 and required it again to be dried before any reinstatement could take place.

Discussions around V's further contribution to the costs of repairs continued and at the end of June 2024 Great Lakes set out the amounts that would be required or, as an alternative it offered to make a cash settlement to V for the claim. This was declined by V, the contribution was agreed in July 2023, and the repairers were instructed to start reinstatement of the property at the start of August 2023.

Repairs to the property were mainly completed around October 2023 and the owner's contents were returned in November 2024. There were still some snagging issues outstanding which meant the owner didn't return to the property until January 2024.

V complained about how the claim had been dealt with, it disagreed the property was underinsured by the amount Great Lakes had calculated, and it was unhappy with how long the claim had taken to resolve. It emphasised the owner of the flat was vulnerable, and matters took too long to resolve. V also made the point that the claim costs potentially may have been lower had the claim been dealt with quicker.

Great Lakes considered the complaint but said it didn't think it had done anything wrong. It reiterated what had happened and that it remained of the opinion the property was underinsured. It said it didn't think it was responsible for any delays, as these mainly had come about due to a lack of agreement on the contribution that should be made. It did mention that it thought a party on behalf of V was slow to provide responses to it. It did however offer V £100 compensation for its delay in providing a response to the complaint made.

V disagreed and brought its complaint to this Service to look into. An Investigator considered the complaint and thought it should be upheld. She said she didn't think Great Lakes had demonstrated V had not provided a' fair presentation of the risk' when the policy renewed – which is a requirement under the Insurance Act (2015). Because of this she said it wasn't fair for Great Lakes to rely on the 'average' term in the policy and said it should meet the claim in full, adding interest at 8% simple per year on any payment it makes to V. The Investigator said she did think it had taken some time for the repairs to start however she acknowledged this isn't unusual in cases where underinsurance is an issue. She acknowledged costs had gone up in the meantime but as she was now recommending Great Lakes cover these, she didn't think anything more needed to be done.

The Investigator explained that under this complaint any impact to the owner of the flat could not be considered. They would be entitled to make a complaint of their own to Great Lakes about this. She also acknowledged other complaint points V had made about premium increases and problems with a later renewal, but explained these would need to be raised separately with Great Lakes so it would have the opportunity to respond.

Great Lakes initially did not accept the Investigator's opinion and asked for an Ombudsman's decision. It said it was not able to provide any guidance to V on what value it should place on the property, and it was its responsibility to be guided by experts in that matter. It reiterated that it has been confirmed the property was underinsured and that a qualifying breach of the Insurance Act had taken place. It maintained its position that it was correct to apply the 'average' term in the policy. However, in an attempt to resolve the complaint, it made an

offer to V to reduce the contribution it needed to make to 10%, with it refunding any overpayment made.

V did not accept the offer Great Lakes made; it maintained it hadn't acted incorrectly and also asked for the complaint to be considered by an Ombudsman. It reiterated the time it took for the claim to be resolved, and the flat repaired was too long, causing an undue amount of distress to the owner.

The complaint has been passed to me to 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.

I want to assure V and Great Lakes that I've considered and thought carefully about all of the points which have been made. The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by both parties to reach what I think is a fair and reasonable decision. With the informal nature of our Service allowing me to set out the detail and evidence which are key to the findings I've reached.

Under Insurance

When considering a complaint where the insurer is alleging underinsurance, before considering the policy terms, I must first consider the Insurance Act (2015). Under the Act, a commercial customer has a duty to make a fair presentation of the risk to the insurer. To fulfil a fair presentation of risk, the Act says a commercial policyholder must disclose everything they know, or ought to know, that would influence the judgement of an insurer in deciding whether to insure the risk and on what terms. If the insurer can show that the policyholder didn't fulfil this duty then, to say there has been a qualifying breach, the insurer needs to show that it would have either not offered the policy at all or offered it on different terms.

So, I've first considered whether V made a fair presentation of the risk when declaring the sum insured. I think V needed to provide a reasonable estimate of the cost of reinstating the property. Here V used an assessment provided by a surveyor and valuer, which quoted a building reinstatement cost for insurance purposes. This value was given for the policy year stating in 2019 and quoted a value of £579,205. V had taken out index linked policies and by the policy renewal in 2021 the sum insured was set at £695,064.

A Loss Adjuster instructed by Great Lakes, initially assessed, in 2022, that the building reinstatement cost should have been set at £770,000 for the 2021/2022 policy year. So, it put the level of underinsurance at 10% It is unclear what BCIS rates this estimation was based on, however Great Lakes later discounted this value as it said it was not an accurate estimation as it did not include contingency costs.

V challenged the cost of reinstatement and provided a report from a surveyor and valuer which said based on the BCIS rates from around the time the policy was incepted, the undervaluation was likely more in the region of only 5%.

Great Lakes then instructed a further valuation of the property to take place; I don't think this was unreasonable as there were conflicting opinions. However, this placed the value for reinstatement at £1,081,400 including contingencies and concluded the property was 36% underinsured. This valuation was based on BCIS rates from 2023, so they were not reflective of the time when the policy was taken out.

Great Lakes has argued that the valuation in 2023 actually provided a lower value per m^2 for the property than the valuation provided by V's surveyor and it was only the cost of contingencies that pushed the valuation up. It suggested that this showed that while the valuation was based on later rates, it could be relied upon as giving a fair indication of the correct reinstatement valuation for 2021 including all relevant costs. I've considered this however I disagree. In my mind the contingency costs would also have been based on 2023 values and as such they, more likely than not, would have been higher, skewing the valuation accordingly. I haven't seen any evidence which shows what the contingency costs would likely have been in 2021.

Having considered all the evidence and arguments that have been provided I'm not persuaded Great Lakes has shown V did not give a fair presentation of the risk. The valuation it has relied upon is based on rates that were in force nearly two years after the policy was taken out so they can't be said to provide an accurate estimation of the amount V should have quoted and had the property insured for. I've also considered the fact the initial value V provided was based on a report provided by a surveyor and valuer which gave a reinstatement cost for the property in 2019 and that it had also applied increases to that amount for the relevant policy year. So, in this case, even though the reinstatement amount quoted by V may not have been completely accurate, I think it was reasonable in the circumstances of this complaint, for V to have provided the figure it did based on the information available to it, and that it did so in good faith.

I recognise that Great Lakes most recent offer has been to reduce the value of underinsurance to 10% however this itself shows, in my mind that the actual value still remains unclear. Potentially the nearest estimate to the correct rates at the time puts the underinsurance value at around 5% but again, even this is not certain. And at such low percentage values I don't think Great Lakes therefore can reasonably demonstrate a fair presentation of risk was not given or that the value wasn't given in good faith.

Because of this, it is my decision that Great Lakes should meet the claim in full.

Even if I did accept the property may have been underinsured, I think the Act would consider this breach to be considered a careless breach. In this case, the Act would have required Great Lakes to settle the claim proportionately, based on the premium V paid, compared to what it should have paid.

So, if I should have been persuaded that Great Lakes reasonably concluded there was underinsurance, I'd likely be saying it should have considered what the Act allows as a remedy for that. In other words, a proportionate settlement based on the premium as opposed to the average clause in the policy. Relying on the average clause, rather than following the relevant legislation, might result in it not treating its customers fairly.

Further to this, I think the Act supersedes any term of an insurance policy, unless Great Lakes can show that it contracted out of the Act, which the Act allows an insurer to do so.

Section 17 of the Act lays out the requirements for insurers to present this clearly if it wants to contract out of the Act. I'll now set them out.

"The transparency requirements"

In this section, "the disadvantageous term" means such a term as is mentioned in section 16(2). The insurer must take sufficient steps to draw the disadvantageous term to the insured's attention before the contract is entered into or the variation agreed. The

disadvantageous term must be clear and unambiguous as to its effect." 16(2) as referred above states:

"16(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in Part 2, 3 or 4 of this Act than the insured would be in by virtue of the provisions of those Parts (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term".

I think the application of the average clause has the potential to be disadvantageous as it could put V in a worse position than it would have been in under the Act. Crucially, the explanatory notes of the Act specify that such terms will only be valid if the insurer has complied with the "transparency requirements".

I've looked at the policy, but I don't think Great Lakes did enough to meet the requirements for contracting out as laid out in the Act. I haven't seen anything to show that it specifically highlighted its departure from the law and the possible disadvantage this would have to V. As I don't think Great Lakes did enough to draw the disadvantageous limitation term to V's attention before the policy started, I don't think it can rely upon it.

Under the Act, had it been established V had not provided a fair representation of the risk (to be clear this is not my finding) then Great Lakes would have needed to compare the premium it would have charged V with the premium it did charge it. And, if it can show it would have charged more, then it would be entitled to reduce any settlement by the same percentage difference. However, as I have set out above, Great Lakes hasn't been able to show with any certainty what the true reinstatement value should have been and therefore it would have difficulty working out what premium it should have charged. Where an insurer is unable to show what the impact would have been, it is unable to demonstrate the breach, in this case, underinsurance, would be a qualifying breach (as in it would have done something different had the true facts been known). So, regardless, it would not have been able to take any action to reduce the settlement due to V.

How long the claim took

I've considered how long the claim took but only from the point of view of deciding whether the costs associated with the claim were unnecessarily inflated due to this. I'm not considering the impact of any delays on the owner of the property concerned or whether any actions relating to the owner's flat could or should have been taken earlier. While V has asked us to consider this and make an award of compensation to them, it has been explained to V that the flat owner would be entitled to bring their own complaint about this.

I recognise it took some time to move the owner into alternative accommodation (AA). However, no costs were incurred due to this as AA wasn't being paid for.

While I have found above that Great Lakes can't apply the average clause to the claim, this doesn't mean it wasn't entitled to investigate that matter. And these things do take time. As there were conflicting opinions, I think it acted reasonably to get an alternative opinion. While I can see V did indicate it would be willing to pay an amount towards the claim, it did however dispute what that amount should be, as it was also entitled to do. However, this had the impact of prolonging matters further. I haven't seen any undue delays in V's responses to Great Lakes' correspondence.

V did agree to the proposal to pay a contribution of 25% to get repairs underway. And I am satisfied repairers were appointed quickly once that agreement had been made. It isn't unusual for an accurate scope of works to be put together once a property has been dried

and is ready for reinstatement – so I am not surprised that the predicated cost of repairs increased at that point. An amount for contingencies is also usually built into that price as well. So, while this had the impact of increasing the amount V had to pay, I don't think Great Lakes did anything wrong here.

I've considered whether the cost of the work would have been different if the repairs were completed earlier, and it's possible they may have been. But it can't be said with any certainty by how much and in any event, as I have set out, I think both parties were entitled to take the positions they did at the time. It was unfortunate there was a second leak which further delayed matters and pushed the cost up even further. Overall, I'm satisfied however the claim costs broadly reflect what happened, so I don't think they should be altered.

While there were snagging issues, these don't generally inflate claim costs further, as the work is priced to be done correctly and this is usually the cost the respective contractor must absorb if they are called back to rectify matters.

Compensation

I realise this claim took a long time. For the most part it was managed by a representative of V, however towards the end of the claim Ms A personally became involved. I appreciate this would have caused her an amount of inconvenience and frustration however I must remember that this is a complaint made on behalf of a limited company and there naturally is always a level of inconvenience involved dealing with a claim. So, I won't be making an award of compensation to V here.

Great Lakes has awarded £100 compensation for delaying its complaint response to V. Complaint handling itself isn't a regulated activity, but I can understand this may have added to the inconvenience caused to V. I think this is a reasonable amount and therefore it should be paid to V if it hasn't already been.

Putting things right

To put things right, Great Lakes should do the following:

Pay the shortfall in claim costs to V

Pay 8% interest on this amount, from the date V paid that sum to it, until the date payment is made. If Great Lakes considers that it's required by HM Revenue & Customs to withhold tax from that interest, it should tell V how much it's taken off. It should also give V a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate

Pay the £100 compensation it offered V, unless it has already done so.

My final decision

My final decision is that I uphold Vs complaint against Great Lakes Insurance SE. I direct it to put things right as I have set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 19 January 2026.

Alison Gore
Ombudsman