

## **complaint**

Miss L complains that Great Lakes Insurance SE refused to repair her boiler after she called it out under her home emergency insurance policy. She also complains it charged her for the call out and wrongly said the boiler was beyond economic repair.

Miss L will notice that the name of the financial business has changed from Ageas Insurance Limited to Great Lakes Insurance SE. I'll explain the reasons for this in my findings. Great Lakes is the correct financial business for this complaint to be against, but this doesn't affect the outcome of this complaint.

## **background**

I set out the background to this complaint in my provisional decision, when I said I intended to uphold this complaint. Here is an extract from my provisional decision, in which I've changed references to Ageas to Great Lakes:

*"Miss L called Great Lakes to fix her boiler, which had broken down and so she didn't have heating or hot water. Great Lakes asked Miss L if she'd had the boiler regularly serviced and she said she hadn't. It then told her it would charge her its engineer's call-out costs if the engineer thought any boiler fault was due to poor maintenance. After discussing the position with a private engineer Miss L asked Great Lakes to call out.*

*Great Lakes' engineer reported that the boiler was beyond economic repair ('BER') for a number of reasons due to its poor condition caused by lack of maintenance. Great Lakes then charged Miss L £111.78 for the call out.*

*Miss L didn't accept the boiler was BER. The manufacturer, B, had fixed the boiler under a year's maintenance plan costing £324, and wouldn't have done this if it was BER at the first inspection. She sent Great Lakes a job report from B saying that a secondary heat exchanger and external expansion vessel had been fitted to resolve the problem.*

*Great Lakes said its technical manager reviewed B's report. But he said the boiler was still BER because of the cost of parts together with the engineer's time to replace them. It said this cost might be lower for the manufacture.*

*Our investigator concluded that Great Lakes had reached a fair decision that the boiler was BER due to lack of maintenance. Miss L didn't agree so the complaint's come to me for review.*

## **my provisional findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I intend to uphold this complaint. I'll explain why.*

*The policy provides emergency cover, up to a maximum of £250 per claim, for a complete breakdown or failure of the primary heating system. But it excludes faults or failures that Great Lakes or its contractor think are as a result of the boiler not being maintained to a suitable level. The policy says Great Lakes will ask the policyholder to pay any charges excluded by the insurance, and it would inform them of this before any work is undertaken.*

*the call out charge*

*Miss L has asked why it was reasonable for Great Lakes to charge her £111.78 for the call out when it knew the boiler wasn't regularly serviced. In response, Great Lakes says it told Miss L in advance that as she'd not serviced the boiler within 12 months that it would 'reserve' the call out charge – and apply it if it found the problem was caused by the lack of maintenance.*

*But I don't think it's fair for Miss L to pay this call out fee under her home emergency insurance policy. After Great Lakes first told her about the call out charge she tried to find out herself, with a private engineer, what was causing the problem. She was told it was the expansion vessel (which turned out to be correct, and I'll return to this point below). I think she reasonably believed this was an issue which would be covered under her home emergency problem. It's not fair that Great Lakes effectively charged her for not covering her claim, in addition to not paying the claim.*

*the maintenance exclusion*

*In any event, I don't think Great Lakes did enough to bring the very significant policy restriction about regular maintenance to Miss L's attention in the policy terms.*

*Great Lakes is saying that Miss L didn't maintain her boiler, and it refers to her not having had a service in the previous 12 months. It said the failure to have regular services led to the problems with the boiler, so the faults weren't covered under the policy.*

*So Miss L effectively had to have a regular service on her boiler for her claim to be covered under the policy. In order to rely on this very restrictive term Great Lakes had to make the exclusion very clear in the policy terms – because it meant Miss L had to take positive action to be covered under her policy. I don't think Great Lakes did this.*

*Great Lakes said in "What is not covered" on page 3 that the policy wouldn't assist if its contractors didn't consider the situation was an emergency, including any general maintenance or upkeep required to maintain the property in a good state of repair. On page 6 Great Lakes said it wouldn't cover "Faults or failures that in the reasonable opinion of us or the contractor are as a result of the boiler not being maintained to a suitable level."*

*I don't think Great Lakes did enough in the policy to make the significant policy restriction clear to Miss L. So it's not fair for it to rely on the exclusion to turn down her claim and charge her for the call out.*

*was the boiler beyond economic repair?*

*Even if I thought Great Lakes had made the policy restriction very clear, Great Lakes would still have to show that it was Miss L's failure to maintain the boiler that caused it to fail.*

*Great Lakes has based its argument that the boiler failed due failure to have it serviced on its engineer's report, which said Miss L "wasn't sure when the boiler was last serviced/a few years ago". The engineer concluded with the visit outcome:*

*"Boiler losing pressure...investigated further...heat exchanger leaking causing water damage internally – pump is noisy...PRV [pressure reducing valve] Leaking, AAV [automatic air vent] blocked causing possible leaks...boiler not serviced...in my opinion the boiler is*

*beyond economical repair. If the boiler was serviced regularly the boiler would not be in this state.”*

*Great Lakes said there was no guarantee of resolving the emergency, because it didn't know what effect the internal water leak would have on the other components in the boiler.*

*But Miss L told Great Lakes that the manufacturer B wouldn't have repaired the boiler if it thought it was BER on the first visit under the labour and parts plan, which cost £324 for a year. When B called out to her it did repair the boiler, so as she said it clearly wasn't BER. The visit report she's sent us from B says the diagnosis was "low system pressure", and required the replacement of two parts: an "expansion vessel ext." and a "secondary heat exchanger". And one of those parts was the one Miss L had been told was the problem before Great Lakes called out to her.*

*Miss L said her research on the internet suggested the parts would cost around £11 and £150 respectively. She also said B's engineer told her these faults wouldn't have been picked up even if the boiler had been regularly serviced.*

*Great Lakes says it put Miss L's point to its technical manager, who is a very experienced engineer. I've not seen those comments - only Great Lakes' summary of them. But based on its engineer's evidence, the age of boiler and the parts that needed to be replaced, together with the general condition of the boiler, I understand that Great Lakes' technical manager approved the boiler was BER. It said the poor condition of the boiler meant that it failed, and it hadn't seen any evidence to the contrary.*

*But Miss L has given some evidence. In my view, the fact the manufacturer was able to repair the boiler under a repair plan persuades me, of itself, that the boiler was not BER. Great Lakes says the parts were cheaper for the manufacturer, but I think it would also have been able to source parts at a lower cost than that available to Miss L on her internet searches.*

*Also, I've not seen any persuasive evidence to show that an annual service would have prevented the expansion vessel and heat exchanger failing. Great Lakes' engineer said the heat exchanger was leaking but it's not clear that it had, in fact, caused the additional damage that he suggested. And I don't think Great Lakes has shown that the parts B replaced – fairly typical parts to fail in a 12-year old boiler – failed due to lack of maintenance or servicing.*

*summary*

*Overall, I think Great Lakes didn't treat Miss L fairly. I think a fair outcome is for it to refund her the call out charge, with interest, and pay her the £250 benefit under the policy that she'd have been entitled to if she'd authorised work in addition to the claim limit.*

*I also think Great Lakes' handling of this matter has caused Miss L some considerable inconvenience and distress. She didn't receive the benefit under her policy she was entitled to, when her boiler failed, and in turn didn't have heating and hot water. She'd gone to the trouble of arranging for a heating engineer she knew to have a look at the boiler to give her the confidence to pay the call out charge, but she then found she had to pay the charge anyway. She had to pay additional amounts to have her boiler fixed elsewhere. I think Great Lakes should pay her some compensation for this distress and inconvenience and I assess £200 to be a fair amount.”*

So I said I intended to order Great Lakes to pay Miss L £111.78 (the call out charge) and £250 (the maximum policy benefit for the call out) with 8% simple interest; and that it should pay her £200 compensation for distress and inconvenience.

### **responses to my provisional decision**

Miss L said she accepted my provisional decision.

Great Lakes didn't accept my provisional decision. In summary, it said:

- As I'd relied on the policy wording in my decision it wasn't sure why I thought it was unfair to reserve the contractor's call out charge. Miss L didn't give any evidence the fault was with the expansion vessel, or any job report to confirm this was the case.
- It gave Miss L the chance to go ahead with a repair through the manufacturer and she chose to proceed with Great Lakes through the reservation option.
- It's concerned that I've said Great Lakes didn't make it clear enough that Miss L had to have her boiler maintained regularly to have cover under the policy. It's concerning that I've suggested this means she doesn't have to have regular maintenance, where boiler manufacturers recommended a service every 12 months as part of routine maintenance. So Miss L would have been made aware of this by the boiler's manufacturer.
- It's not the responsibility of Great Lakes' agent company (the one responding to my decision) to make the policy terms clear, as she bought the policy from a different company. It's Miss L's responsibility to be aware of the inclusions and exclusions of the policy they've bought. Great Lakes' agent company wasn't a party to the sale, and it's unreasonable to say that any broker must highlight each exclusion within the policy.
- Miss L hasn't provided any information about the cost of parts, via her internet searches, where it has reasonably relied on the technical diagnosis of two independent engineers.
- I've said that there's no persuasive evidence to show an annual service would have prevented the expansion vessel and heat exchanger failing. But it's questioned that given it has evidence from two Gas Safe engineers confirming the breakdown was due to lack of maintenance.
- It repeated the timeline for Miss L's call out, which included 3 weeks elapsing between her first call and second call. It could have excluded the claim on the basis that the emergency was no longer sudden or unforeseen. But it didn't do so as it took into account what Miss L said about her personal circumstances.
- So it's unfair for me to award £200 compensation, as it's acted on the professional opinion of two Gas Safe engineers, and Miss L hasn't provided evidence to refute this.
- The decision should be against a different insurer - Great Lakes.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I still uphold it. I'll explain my reasons.

Our investigator had written to the insurer's agent while we were looking into the complaint. He said that he'd set the complaint up against Ageas, because the policy document the

insurer's agent had sent us showed Ageas was the insurer. There were no objections to this, and so my provisional decision was issued against Ageas.

In response to my provisional decision we've been told the correct insurer is, in fact, Great Lakes. But the policy we'd been sent said Ageas was the insurer. So we asked the insurer's agent to send us the correct policy, which it has now done. That policy wording is essentially the same as the policy we'd earlier been sent. But I can see that the insurer is Great Lakes, so I've changed the decision to that company.

Great Lakes says that it's not its responsibility to make the policy terms clear to Miss L, because she bought the policy from a different financial business. That may be so. But in this case Great Lakes is seeking to rely on a significant policy restriction. It can't fairly do so unless it has made that restriction very clear to the policyholder in its policy wording. And for the reasons I'll explain I still think it failed to make that policy restriction.

Great Lakes says that Miss L should have been aware of the need to have regular services as this is a recommendation of the boiler's manufacturer. I've not seen any evidence that Miss L was aware of this. And the important point is that Great Lakes has rejected the claim because she didn't regularly maintain her boiler with regular services in line with the manufacturer's guidelines. For it fairly to rely on the significant term that she must maintain the boiler then, as I've explained, it needs to make this very clear to her because it requires her to take some action to benefit from the insurance policy she's paid for. I've read the policy again and for the reasons I've already explained in my provisional decision I don't think it was clear enough.

Great Lakes says that Miss L made the choice to go ahead with the visit from its engineer, knowing that she might be charged for the appointment if the work wasn't covered under the policy. It now also says that the work might not have been an 'emergency' as defined in the policy.

I don't accept Great Lakes' arguments. I've already explained why I don't think it was fair to charge Miss L for a call-out under her insurance policy. I remain of that view, whether or not Great Lakes explained it to her before she agreed it would reserve the charge. So it must refund that amount to her.

There was a time lapse between Miss L's first and second call because she was trying to find out whether it was likely she'd be covered under the policy. This was because she wanted to avoid paying for a call-out if Great Lakes wasn't going to cover the work. I don't think it's fair for Great Lakes now to say that this time lapse might mean the boiler issue wasn't a sudden or unforeseen emergency.

Great Lakes has said that Miss L didn't give it any evidence to show that the fault with the boiler was with the expansion vessel. I asked our investigator to send it the report from B, the boiler's manufacturer, which listed "*expansion vessel ext.*" as one of the two parts replaced. Great Lakes confirmed it had received that report but repeated the point that B could get the parts at cost – unlike the local engineer it instructed who would also have labour costs. It says two Gas Safe engineers – the engineer it sent to inspect the boiler and its own technical manager – said the boiler failed due to lack of maintenance.

I was making the point that the parts which failed commonly fail even on boilers that have been maintained. And I've said that Great Lakes didn't make it clear enough that Miss L's claim might not be accepted if she failed to service her boiler.

I don't think Miss L needed to send details of her own internet search where a quick search shows that the parts which were replaced cost less than £250. Great Lakes says that its engineer wouldn't get parts at cost. That may be so, but I think it's likely they'd be able to get parts at less than retail price. Either way I don't think Great Lakes has shown, given the parts that were replaced by the boiler manufacturer B, that the boiler was beyond economical repair. Had that been the case I don't think B wouldn't have agreed to cover it under the labour and parts plan she took out. So it's fair that Great Lakes should pay her the £250 benefit it would have paid under the policy for work over that amount.

As I've not changed my findings, I remain of the view that £200 compensation is fair and reasonable for the distress and inconvenience that Miss L was suffered. She wasn't able to have the work done promptly under the insurance policy with Great Lakes that she'd taken to cover her in just this situation.

### **my final decision**

For the reasons I've given in my provisional decision and in this final decision I uphold this complaint. I require Great Lakes Insurance SE to pay Miss L:

- £111.78 (the call out charge) and £250 (the maximum policy benefit for the call out), with simple interest on these two amounts at the rate of 8% per year from the date it charged her for the call out to the date of settlement; and
- £200 compensation for distress and inconvenience.

Great Lakes Insurance SE must pay the total compensation within 28 days of the date on which we tell it Miss L accepts my final decision. If it pays later than this it must also pay interest\* on the compensation from the date of my final decision until the date of payment at 8% per year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 11 January 2018.

Amanda Maycock  
**ombudsman**

\*If Great Lakes Insurance SE considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss L how much it's taken off. It should also give Miss L a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.