

The complaint

Mrs W and the estate of Mr W are unhappy with the way Great Lakes Insurance UK Limited handled claims made under a travel insurance policy.

All reference to Great Lakes includes its agents.

What happened

Whilst abroad in 2023, Mr W fell and injured himself. Sadly, a few days later he died.

Great Lakes did arrange for Mr W's body to be repatriated to the UK and paid those costs in full. However, it says that when applying for the policy, Mr W didn't declare all medical conditions. If he had, Great Lakes says the policy would've cost more and so offered to pay 75% of the medical expenses, hospital daily benefit and other out of pocket expenses claimed for under the policy.

Great Lakes also declined a claim under the personal accident section of the policy (providing a death benefit of £20,000).

Unhappy, Mrs W and the estate of Mr W complained to Great Lakes. And when they didn't receive a substantive response, they brought a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and upheld the complaint. She concluded that there wasn't enough evidence to support that the policy would've cost more had Mr W accurately disclosed his medical conditions, so she didn't think it was fair for Great Lakes to pay only 75% of the expenses.

Our investigator recommended Great Lakes to:

- reimburse Mrs W the contribution she made to Mr W's medical fees (25% of the medical fees claimed for) together with 8% simple interest per year from the date she made payment to the date of settlement.
- reassess the claim for out-of-pocket expenses in line with the remaining terms of the policy.
- pay £450 compensation to Mrs W for distress and inconvenience.

Our investigator also found that Great Lakes hadn't yet considered the personal accident claim in light of the further medical evidence provided by Mrs W and the estate of Mr W. She recommended Great Lakes promptly reconsider the claim for the death benefit under the personal accident section of the policy taking into account the further evidence provided.

Great Lakes didn't agree. So this complaint has been passed to me to consider everything afresh and decide.

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Declaring Mr W's medical conditions when applying for the policy

I'm satisfied The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') is relevant to this case. CIDRA 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've offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of 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 listened to the phone call during which the policy was sold. Mr W is asked whether he's ever had raised cholesterol and he answered: 'no'.

He's also asked whether he'd had symptoms or conditions not already covered on the call. He again answered: 'no'.

I'm satisfied that these questions are reasonably clear.

Although during the call Mr W had declared (and answered questions about) some medical conditions, looking at Mr W's medical records, I'm satisfied that Great Lakes has fairly and reasonably concluded that he ought to have disclosed other conditions when applying for the policy.

I'm satisfied that if Mr W had disclosed having other medical conditions, he would've been asked some follow up medical questions. And as a result, I'm satisfied that Great Lakes' overall risk rating score would've increased.

I'm satisfied by the overall evidence provided by Great Lakes that he would've been charged more for the policy at the time of the application. And based on what I've seen, I'm satisfied that Great Lakes has fairly concluded that he'd paid 75% of the premium that he would've been charged if he'd accurately answered questions about his health and medical history. So, the answers to the questions above mattered to Great Lakes.

Great Lakes has concluded that Mr W was careless when answering the above questions at the time of applying for the policy. I think it's fairly concluded that, and I don't think Mr W deliberately or recklessly failed to answer the questions correctly.

Under CIDRA Great Lakes is entitled to do what it would've done if Mr W hadn't made a careless qualifying misrepresentation. From what I've seen, I'm satisfied Mr W would've still been offered the policy, but he'd have paid a higher price for it at the time.

I intend to find that it's fair and reasonable for Great Lakes to be pay 75% of the claim.

Claim for personal accident

The policy provides cover for personal accident. It says:

We will pay to you or your legal personal representatives if you suffer accidental bodily injury during the trip, which within 12 months is the sole and direct cause of death or disablement, one of the following benefits:

Death: £20,000

Accidental means:

An unexpected event which results in your bodily injury, which is due to a violent sudden and external cause occurring during a trip. This must occur at an identifiable time and place.

Bodily injury means:

An identifiable physical injury sustained by you caused by violent, sudden, unexpected, external and visible means.

Great Lakes initially declined the claim for the death benefit under the personal accident section of the policy. I think it fairly relied on the information on the death certificate at the time which reflected that Mr W died from a pulmonary embolism (and the fall was the secondary cause of death).

Mrs W provided Great Lakes with a record of inquest of the hearing dated 2023. It concludes that Mr W died from a pulmonary embolism following a fracture to his hip and this led to pulmonary embolism.

I've seen internal emails from Great Lakes dated December 2023 reflecting that its medical team would consider this report to see whether the death benefit is payable under the policy. I haven't seen any evidence that Mrs W has been kept updated about the progress of whether this report impacted its decision on the claim.

I'm satisfied this would've been upsetting and frustrating for Mrs W and I'm satisfied that this claim should be reassessed in light of the further inquest report and a decision communicated to Mrs W and the estate of Mr W promptly and without further delay.

Other out of pocket expenses claimed

I've seen nothing to show that Great Lakes has paid its proportionate share of the other out of pocket expenses claimed under the policy and accepted by it. It should promptly settle these sums and pay simple interest at a rate of 8% per year from a month after the claim was made to the date of settlement.

Distress and inconvenience

Whilst I don't intend to find that Great Lakes has acted unfairly by proportionately settling the claim, I'm satisfied that it should've provided Mrs W with better service at times, including keeping her updated about what was happening about the various claims made under the policy, including the personal accident claim.

Further, I've seen nothing to show that Great Lakes has paid its proportionate share of the other out of pocket expenses claimed under the policy and accepted by it or given Mrs W a breakdown of what has been paid and when.

I'm satisfied that this would've caused Mrs W unnecessary upset at an already difficult and traumatic time for her. I intend to direct Great Lakes to pay Mrs W £350 compensation for

distress and inconvenience.

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I invited both parties to provide any further information in response to my provisional decision for me to consider.

Great Lakes didn't reply. Mrs W and the estate of Mr W replied to say they had nothing to add, and they accepted the provisional 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.

I haven't been provided with any new information, so I'm satisfied that there's no compelling reason for me to depart from my provisional findings. So, for this reason, and for reasons set out in my provisional decision (which forms part of this final decision), I partially uphold this complaint.

Putting things right

Within 21 days from the date on which the Financial Ombudsman Service tells Great Lakes that Mrs W and the estate of Mr W have accepted this final decision, I direct Great Lakes to:

- reassess the personal accident claim in light of the inquest report and provide Mrs W and the estate of Mr W with an outcome of that reassessed claim.
- pay the proportionate share of out-of-pocket expenses its already agreed to along with 8% simple interest on the out-of-pocket expenses claimed by Mrs W (not including medical expenses) from a month after the claim was made to the date of settlement*.
- pay Mrs W £350 compensation for distress and inconvenience.

*If Great Lakes considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mrs W and the estate of Mr W how much it's taken off. It should also give them a certificate showing this if they ask for one. That way the estate and Mrs W can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I 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 W and the estate of Mr W to accept or reject my decision before 14 January 2025.

David Curtis-Johnson
Ombudsman