

## **The complaint**

Mr and Mrs M complain that Great Lakes Insurance SE unfairly declined a claim they made on their commercial property insurance policy.

Reference to Great Lakes includes its agents.

For ease of reading, I'll refer to Mr and Mrs M as "the M's" throughout this decision.

## **What happened**

As landlords of a residential property, the M's hold a commercial insurance policy insuring them for that property. When they were notified of a leak of sewage from one of their tenants, they made a claim to Great Lakes for the damage caused.

Ultimately, Great Lakes declined their claim. It said the M's hadn't shown they'd suffered a loss covered by the policy. It said by starting to carry out the repairs before it was able to inspect the property properly, the M's had prejudiced its position.

The M's complained about this decision as well as Great Lakes' actions throughout the claim. They didn't think it was fair their claim was declined and thought they'd done enough to evidence the damage caused by the sewage. They said the loss adjuster did all they could to decline the claim from the start, as evidenced by them not properly referencing the policy clause for malicious damage and raising the total sum insured as an issue.

The M's said they couldn't wait any longer to start repairs, because all the time the property was uninhabited, they were losing rent. They thought Great Lakes took too long to inspect the property, so in effect argue it prejudiced their position as opposed to the other way around.

They're also unhappy with how the loss adjuster handled their data and think this was misused in order to get a report from the water company which was then used to turn down the claim.

Great Lakes didn't change its stance. It maintained it was fair to decline the claim based on the evidence available. It didn't think the loss adjuster had acted inappropriately in relation to the M's data. It did acknowledge the loss adjuster should have quoted the policy definition correctly but thought this was a mistake rather than anything done on purpose to not pay their claim.

Unhappy, the M's referred their complaint to us.

Our Investigator didn't recommend it be upheld. They thought Great Lakes was acting reasonably and in line with the policy when declining the M's claim. They pointed the M's to the Information Commissioner's Office to address their data usage concerns. But they didn't think Great Lakes were acting unreasonably when requesting the report.

The M's didn't agree and asked for an Ombudsman's 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.

Having done so, I'm not upholding it. I understand this won't be the answer the M's were hoping for. I'll explain my reasoning.

It's worth pointing out at this point, that while I've reviewed and considered everything we've been sent, I'll not be commenting on every bit of evidence or argument made. Rather, in line with our role as an informal service, I'll comment on what I consider key to the dispute.

Central to the dispute here is Great Lakes' decline of the claim. In its most simple form, Great Lakes has done so on the basis that the M's haven't shown they've suffered a loss covered by their policy.

What's not in doubt here is that there was an incident in which sewage entered the property. I know the M's aren't happy it's been classed as an escape of water and think it should be classed as a flood, but I'm not persuaded that makes a difference here. As mentioned, it's accepted sewage entered the property.

What's in dispute is the damage caused by that event. Great Lakes has said it's not been shown adequately how the sewage caused all the damage that's being claimed for. It's said in part, that's because the M's started renovation work before it was able to inspect the property.

The M's in return have said it took too long for Great Lakes to come out and inspect the property. But from what I've seen I don't think it took too long. The escape of water/flood occurred on 8 July 2023. The M's made their claim to Great Lakes on 24 July 2023 it requested documents. Those documents were received on 1 August 2023 and Loss adjuster attended on 16 August 2023.

I think it was reasonable Great Lakes asked for sight of these documents before progressing the claim. The timeframe between receiving the documentation and the loss adjuster attending is just over two weeks, and ideally that could have been shorter. But considering the tenants had already vacated the property and the time the claim was made, without notice to the M's, I'm not persuaded that two-week period has had any substantial impact on the claim. I understand the M's wanted to carry out rectification work as soon as possible, but agree that doing so before Great Lakes could inspect the property has prejudiced Great Lakes' position.

The rectification work starting before the loss adjuster inspected the property has meant that Great Lakes was not able to see the damage in situ and determine its cause. I appreciate photos of the damage have been sent, but these don't clearly show the cause of the damage. It's therefore not been possible to determine what damage was caused by what event and so it follows that Great Lakes hasn't been able to determine what is covered by the policy.

Great Lakes also has concerns regarding how the incident caused the damage claimed for. And I'm satisfied those concerns are reasonable. From what I've seen, the water company say the water only entered the basement. There's nothing to show clearly how that event caused damage to the ground floor. Great Lakes has also pointed out that this event – a one off escape of water/ flood that was cleared up quickly - isn't likely to cause damage to floorboards, kitchen units and walls. And I think that's reasonable. Some of the pictures and video provided do clearly show evidence of water damage, but it's not clear on the cause of

that damage. And the cause of that damage is important to determine whether there's cover under the policy or not.

This point is relevant with the claim for malicious damage too. With the exception of the toilet seat, Great Lakes said there wasn't clear evidence of malicious damage. They've said the damage looks more likely caused by the negligence of lack of care of the tenant rather than done with the intent to cause damage. From everything I've seen, I think that's a reasonable decision so it's fair Great Lakes say it's not malicious and therefore not covered by the policy.

Considering everything provided, I'm satisfied Great Lake's decline of the M's claim is reasonable.

Great Lakes did make an error when saying the M's weren't covered for malicious damage caused by their tenants when they were. But ultimately I don't think this has impacted them. This is because even with the cover, the claim has been fairly declined as set out above.

I understand the M's also aren't happy with the sum assured being mentioned. I don't consider this to be pivotal to the decline of the claim. So it's not something I intend to spend much time on, other than to say that Great Lakes is entitled to make sure the sum assured is adequate cover for the insured property.

Like our Investigator, I think much of the concerns around how Great Lakes handled the M's data may be better placed with the ICO. But I'm satisfied Great Lakes was entitled to ask for the water company's report, and think it acted reasonably when using that report as evidence in deciding whether or not to pay the claim.

### **My final decision**

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 28 March 2025.

Joe Thornley  
**Ombudsman**