

The complaint

Mr K complains about the way Great Lakes Insurance SE has handled a claim under his motor insurance policy.

Where I refer to Great Lakes, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

In 2020, Mr K was involved in a road traffic accident when he collided with a third party's vehicle. He reported the accident to his car insurers – Great Lakes.

Initially, Mr K didn't want to make a claim as he didn't want to pay his policy excess. He says he was reassured by Great Lakes that the third party was at fault for the accident and that the case would be taken to court to recover his outlay if he made a claim.

Mr K says that, based on this advice, he agreed to make a claim. He paid his excess and Great Lakes arranged for his car to be repaired. Subsequently he was told the case wouldn't proceed to court as the solicitors thought he was at fault for the accident. Mr K was left with a fault claim on his policy, which has increased his premiums and caused his no claims bonus to be lost, and he hasn't been able to recover his excess of £450.

Mr K raised a complaint. He says at no time was he told there was a chance the case wouldn't go to court. He's asking that Great Lakes pay £1000 in compensation for his losses and the distress he experienced as a result.

Great Lakes didn't uphold the complaint. It said:

- The third party's insurers (TPI) disputed liability early in the claims process, and Mr K was informed. Mr K raised concerns about making a claim as he didn't want to pay his excess and he was told the excess would be payable regardless of fault if a claim was made. Mr K chose not to proceed with the claim and the file was closed.
- Mr K returned in 2021 advising that he wished to pursue the claim, so his file was reopened. Great Lakes arranged the repairs to Mr K's car and then sought to recover its losses from the TPI, including Mr K's excess. The TPI continued to dispute liability and confirmed that it would defend any claim pursued against them.
- Great Lakes advised Mr K that it thought the case would settle on a split liability basis, but Mr K disagreed and said he wanted the case to go to court. So Great Lakes instructed solicitors.
- After reviewing the evidence available, including Mr K's dash-cam footage, the solicitors advised there were low prospects of successfully proving the third party was liable for the accident. Great Lakes asked the solicitors to reconsider on two occasions given how strongly Mr K considered the third party to be at fault, but the solicitors explained why they couldn't agree. Based on this advice, Great Lakes

opted not to pursue the TPI for its and Mr K's losses.

Great Lakes has advised Mr K of his option to instruct his own solicitors to pursue the TPI. Alternatively, it's said that it can unwind the claim on the policy – which means that if Mr K pays back the £548.81 Great Lakes has paid to repair his vehicle, Great Lakes will remove the claim from Mr K's policy, reimburse his excess, and restore his no claims bonus.

Mr K remained dissatisfied. He says the repairs were far more expensive having gone through his insurers than if he'd had them done privately. He brought his complaint to our Service. But our Investigator didn't think Great Lakes had done anything incorrect or unfair. As Mr K didn't agree, 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.

Like most car insurance policies, Mr K's cover is subject to an excess, defined in the policy terms as *"the amount you will have to pay if you make a claim regardless of who was to blame"*. Having listened to the calls between Mr K and Great Lakes, I'm satisfied Mr K was informed of this.

Mr K wanted Great Lakes to establish liability with the third party before he made a claim. This was because he didn't want to pay his excess if it later became apparent that he couldn't recover it from the other side. Having listened to the calls, I'm satisfied Great Lakes correctly advised that it couldn't make a claim to the TPI for its and Mr K's outlay until it had one. Ultimately, Great Lakes can't reasonably be expected to start the claims process by contacting the TPI if Mr K hadn't decided he actually wanted to make a claim.

It appears Mr K was referred to an accident management company on the basis that it was thought the third party was at fault and it would avoid Mr K having to pay any costs up front. But as the TPI disputed liability, he was referred back to Great Lakes to make a claim under his policy. In 2021, when Mr K agreed to make a claim on his policy and pay his excess, I'm satisfied he was aware that liability was disputed.

Once Mr K asked to make a claim, Great Lakes arranged for the car to be repaired. On a call with Great Lakes, Mr K specifically requested that his car be repaired by a BMW garage as the car was only a few months old. Great Lakes agreed to this request and instructed the garage of Mr K's choice. He was given a courtesy car under his policy whilst his was being repaired.

Great Lakes submitted its losses to the TPI, and liability continued to be disputed. On a call, Mr K is advised that Great Lakes considers the claim will settle as 50/50 split liability at best. Mr K disagrees and asks to go to court, which Great Lakes agrees to saying the dash-cam footage is in Mr K's favour. But once solicitors assess the evidence, it's determined that prospects of winning are low, and the case doesn't proceed to court. I'm satisfied this was a reasonable decision to make based on the legal advice available.

I appreciate Mr K wasn't told that his case may not proceed to court, rather Great Lakes was very optimistic of the evidence in Mr K's favour. But even if he was told, I don't agree that it would've altered the situation Mr K is now in. I say this because by the time Mr K was told of the possibility of going to court, he'd already made a claim and incurred his excess. And he'd done that knowing liability was disputed.

Mr K says he's left with a fault claim against him which has affected his insurance. But as I've explained, even if Great Lakes had advised him that it would be up to the solicitors to decide whether the case is litigated or not, he'd still be in this position.

In any event, even if I was to find that Great Lakes had misled Mr K into making a claim – which, for the reasons I've explained, I don't – the way our Service expects a business to put things right is to put the customer back in the position they would've been in had nothing gone wrong. In this case, that would mean Great Lakes putting Mr K back in a position where he hasn't made a claim on his policy. And I'm satisfied it's already offered to do that by giving Mr K the option to unwind his claim.

To do so, Mr K will need to reimburse Great Lakes for the cost of the repairs to his car. He says these costs are far higher than if he'd had it repaired himself. I haven't seen any evidence of this and usually insurers can get cars repaired at a cheaper cost due to the contracts it has with its approved repairers. In any event, Great Lakes has used the garage Mr K asked it to so I've not persuaded Mr K would've repaired his car any differently to what Great Lakes has done.

If Mr K wishes to accept the offer to unwind his claim, he should contact Great Lakes directly.

Based on the information I've seen, I don't uphold this complaint on the basis that Mr K made a claim on his policy being fully informed that he would be liable for his excess and that liability was disputed. Whilst Great Lakes could've been clearer that his claim may not proceed to court, this situation arose after the claim had already been made and the conversations at that stage had no bearing on the position Mr K is now in.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 November 2023.

Sheryl Sibley
Ombudsman