

The complaint

M, a limited company, complains Great Lakes Insurance SE turned down a claim it made on its commercial combined insurance policy.

What happened

In August 2022 M contacted Great Lakes to make a claim. It said there had been water ingress to its business premises following a storm which had damaged items stored there. A loss adjuster attended and found the water depth had reached around 80mm though dampness in the blockwork extended to 200mm. Some of the damaged goods were stored on the floor. Others were on racks which were around 50-60mm above floor level.

Great Lakes said the policy contained a condition requiring all stock stored on the premises to be stored at not less than 15 centimetres above floor level. As that wasn't the case here it turned down the claim.

Our investigator agreed M hadn't complied with this condition. But as the dampness at the premises extended to 200mm even if it had done she thought damage would still have taken place. She thought Great Lakes should settle the claim in line with the relevant policy limits and excesses and pay 8% interest on the settlement amount. She also thought it should pay M £500 in recognition of the inconvenience it had been caused by the claim being wrongly turned down.

M agreed with her outcome. Great Lakes didn't and said it would be providing further reasons for this. However, it didn't do so.

I issued a provisional decision on the complaint last month. In summary I said:

The relevant rules and industry guidelines say Great Lakes has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of M's policy. I can see this does contain (within the general obligations section) a condition which says "You must ensure that all Stock stored on the Premises is stored on racks, shelves or stillage not less than 15 centimetres above floor level otherwise all Damage arising from or caused by the Defined Perils of escape of water from any tank, apparatus or pipe, storm and flood will be excluded"

M argues that wasn't included on the description of endorsements which were attached to the policy. I don't think it was (though it is referenced on the policy schedule). But while it might have been a policy endorsement it's also a general condition of the policy. And if M thinks this is something that should have been drawn to its attention when it took the policy out (and wasn't) then under the relevant rules it's for the seller of the policy (which wasn't Great Lakes) to provide it with information about it. So concerns about this would need to be directed to that business.

M has also suggested it wasn't provided with the policy wording. But I think that's something it should reasonably have been aware of when either taking the policy out or at subsequent

renewals. And if it had concerns about this it could have raised these with Great Lakes (or its broker) at the time.

Turning to the condition itself the escape of water followed a storm so I think it's relevant to the claim M made. Nor does it appear to be in dispute that items damaged by the water ingress were either on the floor of the premises or were being stored on racks which were around 50-60mm above floor level. I think the policy condition is clear and I don't think Great Lakes did anything wrong in concluding M hadn't met it.

I've gone on to consider whether it's nevertheless fair of it to turn down the claim M made. In doing so I've taken into account that the Insurance Act 2015 says an insurer can't turn down a claim on the basis of non-compliance with a term (including a condition precedent) if the policyholder is able to show the non-compliance couldn't have increased the risk of the loss which actually occurred, in the circumstances in which it did. That applies to conditions which relate to a particular type of loss or a loss at a particular location or time.

I think that's relevant here because the storage condition relates to loss at a particular location (M's business premises). And I think non-compliance with that condition has increased the risk of the loss which occurred (in the circumstances in which it did). The water damaged items were on the floor of M's premises and on racks which didn't meet the storage conditions set out in the policy.

I accept the dampness nevertheless extended up the walls by 200mm which is more than the minimum storage height set out in the policy. However, it's not clear significant damage was caused by that. The photographs in the loss adjuster's report indicate the damaged items were either on the floor or stored on racks.

The loss adjuster does conclude the damage was exacerbated by moisture soaking into damaged items between the time of the storm and discovery the following morning. But his view is this travelled upwards (presumably from the water). He doesn't suggest there was moisture transference from the walls.

And photographs from the report show items stored at a higher level which weren't damaged by the water ingress. I think it's likely if other items had been stored in the same way (and in line with the condition in the policy) they'd have been clear of any direct water contact and wouldn't have been impacted by any dampness in the walls.

In any case the test as set out in the Insurance Act isn't whether compliance with the condition would have prevented some or all of the loss but whether the policyholder has shown non-compliance didn't increase the risk of that loss occurring (in the circumstances in which it did). I don't think M has shown that. In my view leaving items on the floor or in close proximity to it (in breach of the condition) will have increased the risk of them being damaged (and the resultant loss) when water unfortunately entered the premises following the storm.

So I think Great Lakes has acted correctly and fairly in turning down M's claim. I'm sorry to bring M what I appreciate will be extremely disappointing news.

Responses to my provisional decision

Great Lakes didn't respond to my provisional decision. M did provide further comments. In summary it said:

- The policy endorsement didn't contain the stillage condition and the schedule didn't provide specific detail on this. It thought it had complied with the general wording of the

condition as set out in the schedule. The detailed policy wording wasn't provided to it until after the claim had been made. It thought the schedule and endorsements should have contained the key conditions that needed to be adhered to and didn't.

- It said the insurer for policy year 2022/23 hadn't included the stillage condition on the schedule or endorsements and this was prior to the claim it made concluding. And it queried what difference this made to the claim it had made and whether a condition could be applied if it wasn't listed in the schedule but was included in the policy wording.
- It thought it was difficult to gauge the level of water ingress at the peak of the flood given the loss adjuster didn't attend until some weeks after this had taken place. But it thought the level in the car park close to its premises was more than 200mm based on marks to vehicle wheels and brickwork stains.
- It also highlighted that the handling of its claim had been slow, in particular it had taken nearly two weeks for a loss adjuster to attend.

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.

As I said in my provisional decision, I agree the stillage condition doesn't appear as an endorsement in the document containing these. But it is referenced in the policy schedule. I appreciate that doesn't set out in detail what the requirements were but I think that reference should reasonably have prompted M to obtain further information on this by consulting the policy document which does set out the requirement as one of the general conditions of the policy.

I appreciate M says it didn't have the policy wording until after it made its claim but, as I've already concluded, I think that's something it should reasonably have been aware of when either taking the policy out or at subsequent renewals. And if it had concerns about this it could have raised these with Great Lakes (or its broker) at the time.

And not all of the conditions of a policy do need to be included in the schedule. However, it's the responsibility of the seller to provide M with information about the significant exclusions and limitations. If M feels that the condition in relation to stillage is something that should have been drawn to its attention when taking out the policy (and wasn't) then it could raise its concerns with that business. But for the reasons I've explained I don't think it's unfair of Great Lakes to rely on the stillage condition when considering the claim M made. And it's the policy in force at the point the damage occurred which is relevant here.

Turning to the points M has made about the claim itself I appreciate the loss adjuster didn't attend until some weeks after the flood had taken place. I recognise it's difficult to say exactly what level the water reached. But even if M is correct to say this exceeded the level set out in the stillage condition I don't think that changes things.

As I've already said the test, as set out in the Insurance Act, is whether the policyholder has shown non-compliance with a condition didn't increase the risk of the loss occurring (in the circumstances in which it did). I don't think M has shown that. In my view leaving items on the floor or in close proximity to it (in breach of the condition) will have increased the risk of them being damaged (and the resultant loss) when water unfortunately entered the premises following the storm. So it remains my view that Great Lakes acted correctly and fairly in turning down M's claim.

I've also thought about the time taken to progress the claim. It does appear to have taken some weeks for a loss adjuster to attend. I'm not clear why that was but for the reasons I've explained I don't think that's impacted the outcome of the claim. And I don't think the overall time taken to deal with the claim was unreasonable. I can see M told Great Lakes about this in mid August and the initial claim decline was issued in early October with a final decision being provided the following month.

M has also drawn attention to the lack of response from Great Lakes to our service. I appreciate Great Lakes didn't provide the further information it said it would following our investigator's view. But that doesn't change the fact I need to reach a decision based on what's fair and reasonable in all of the circumstances of the case. And I've explained here and in my provisional decision why I think it was fair of it to turn down the claim M made.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 22 November 2023.

James Park
Ombudsman