

The complaint

Mr S complains Great Lakes Insurance SE unfairly declined a claim he made on his landlord insurance policy for subsidence damage.

Mr S has been represented in bringing this complaint, but for ease I've addressed the decision to Mr S. And any reference to Great Lakes also includes its agents.

What happened

In early April 2022, Mr S took out a policy with Great Lakes. Around three weeks later he made a claim on his buildings insurance policy for damage caused by subsidence. He thought there was an issue with a drain, which had led to subsidence damage at the rear of the property.

Great Lakes assessed the claim but declined it. They didn't think the damage was 'new' subsidence damage. So it declined the claim.

It initially thought Mr S had failed to disclose historical subsidence damage when he took out the policy. But it hasn't sought to avoid Mr S' insurance. Mr S disputed the outcome of the claim, so Great Lakes sent a further surveyor to assess the damage. On the basis of that report, it didn't agree to change its position. It said the policy had only been active for 19 days before the claim was brought, so any damage happened before the policy started, so was excluded under the policy.

Mr S complained, he said a neighbour had the same issue and his claim had been paid, and that he'd had the property since 2011 and Great Lakes hadn't shown the damage happened before this time. Great Lakes didn't revise its position, so Mr S brought the complaint to our service.

Our investigator didn't think Great Lakes had acted unfairly in declining the claim. He said whilst Mr S had provided comments from his own experts, the only people who'd gone out to visit and assess the property were appointed by Great Lakes. So he was persuaded that the evidence showed the building wasn't suffering from new subsidence damage.

Mr S didn't accept that, he asked for copies of the evidence relied on by the business, such as the images and bore hole data. He said he'd asked Great Lakes to provide this previously, but it hadn't done so.

He also said that since repairs to drains had been carried out by the water company, the movement appears to have stopped. He said this supports it was the drains that caused subsidence to the property and so it should be covered on his insurance. He said it is for the insurer, not the policyholder, to prove that all the subsidence happened prior to 2011, when he bought the property. He also asked for fees charged by his professional representative during the claim.

As Mr S didn't agree, the matter has come 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.

As an informal service I haven't responded to every point or piece of evidence provided by Mr S or Great Lakes. But I'd like to reassure both parties that I have read everything provided.

Mr S' policy does cover his property for damage caused by subsidence. But it says it will not pay for damage *'which commenced prior to the effective date [as stated in your schedule]'*. The date in the schedule is 7 April 2022. So I consider there are two things to review; is there evidence of subsidence damage, and, if so, did it commence before the policy started.

Whilst it is for an insured – so in this case Mr S – to show they have a valid claim under the policy, in cases where subsidence may be a cause, we would expect an insurer to assist in establishing if subsidence has been the cause of damage. Great Lakes has carried out two reports on the property.

The findings of the first report from May 2022 were that there was evidence of a longstanding issue with the drains that needed to be addressed. And that the property was suffering from lateral movement which should be inspected by a structural engineer. But regarding the damage, it concluded *"we do not believe these are as a result of current subsidence"*.

The second report from July 2022 reported damage in the property, and noted, in line with the first report, significant outward movement of the property. And it noted there was evidence that the rear of the property had suffered historic subsidence damage due to the slope noted on the cellar floor. But ultimately said *"we are of the view that there is no evidence of active subsidence damage that has occurred within the period of the policy cover."*

So based on those reports, I don't think Great Lakes has acted unreasonably in declining a claim for subsidence damage.

Mr S has asked Great Lakes to provide proof that the drains haven't caused some foundation movement. But I don't consider it needs to. The two reports conclude there isn't any evidence of recent subsidence damage, and provide their rationale for reaching those conclusions. The drains were noted as a long-standing issue in the first report. But I don't consider it is for Great Lakes to disprove that the drains are an issue when it has two reports which have concluded there is no evidence of recent subsidence damage.

As far as I'm aware, Mr S hasn't provided any of his own reports from experts which demonstrate that the drains have caused subsidence damage. I understand his representative in bringing the complaint is a surveyor, but I only have their comments on Great Lakes' reports; they've confirmed they haven't carried out a defect report on this property. So I have no report from Mr S or anyone appointed by him which contradicts the findings of Great Lakes' reports.

Mr S has provided a drainage report he had carried out, this shows an issue was found where the house drain and the main drain connected in the back street behind the property. Mr S has said the same issue was found to his neighbour's property, and that neighbour has had their subsidence claim accepted. However, the report makes no comment on any foundation movement. And I can't consider the comments about the neighbour's property because I have to assess this case on the evidence presented on Mr S' property. So on balance I'm more persuaded by the evidence from Great Lakes that there is no insured damage.

Mr S has also asked Great Lakes to provide evidence to show the date on which historic movement commenced. Again I don't think this is necessary for it to fairly decline the claim. The property had been insured with Great Lakes for around three weeks when the claim was made. And the policy sets out clearly that any subsidence damage which commenced before

this date is excluded. So Great Lakes doesn't need to pinpoint an exact date that any 'historic' damage happened, and it doesn't need to show the damage happened before 2011. It only needs to show that damage hasn't commenced whilst the policy was in force [from 2022]. Based on the above reports I consider it has done this.

There is a domestic subsidence agreement in place for policyholders. Mr S has said Great Lakes should have collaborated with previous insurers to come to some form of arrangement under this agreement. Under this agreement, where a claim was made eight weeks or less after the start date of the current policy, the previous insurer will deal with the claim. This is because it is considered more likely that the movement that caused the damage claimed for started before the policy did. So even if I agreed there was evidence of new subsidence damage – which I don't based on the evidence I have – Great Lakes still wouldn't have to cover the damage under this agreement.

It's also important to note that this agreement covers domestic properties only, i.e. a policyholder's home. But this isn't the case here. Mr S rents this property out. Sometimes this service would still consider it fair and reasonable to apply the domestic agreement even to non-domestic properties. But I don't need to make a finding on whether that would apply here or not, because this complaint is being brought to the current insurer, not the previous one. And crucially, the evidence doesn't support there is current subsidence damage in any event.

So for the reasons given above, I consider Great Lakes has acted fairly in not accepting the claim.

Mr S has asked for his professional representative's fees to be paid by Great Lakes. I don't consider it would be fair and reasonable to ask Great Lakes to cover these fees. We sometimes consider that a business should pay for reports if those reports show that insured damage has been suffered in a property. But bringing a claim to an insurer, and a complaint to this service, can be done for free. And as I consider Great Lakes' claim decline to be fair based on the evidence it had, it follows that I think it unfair it should have to pay for any fees Mr S incurred.

My final decision

My final decision is that I'm not going to ask Great Lakes Insurance SE to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 January 2024.

Michelle Henderson
Ombudsman