

The complaint

Mr C is unhappy with the service provided by HCC International Insurance Company Plc trading as Tokio Marine HCC (HCC) following a claim for damage to his watch, under his contents and personal possessions insurance policy.

What happened

HCC are the underwriters of this policy. Part of this complaint concerns the actions of the agent, company T. As HCC have accepted they are accountable for the actions of company T, in my decision, any reference to HCC includes the actions of company T.

Mr C purchased a watch in 2016. Mr C's watch was designed to be used underwater. The operating instruction manual for Mr C's watch explained:

Water-resistance: a watch's water-resistance cannot be permanently guaranteed. It may notably be affected by the ageing of gaskets or by an accidental shock to the crown. We recommend you have the water resistance of your watch checked once a year by an authorised [watch] Service Centre.

What are the service intervals? Like any precision instrument, a watch needs regular servicing to ensure that it functions perfectly. We cannot indicate the frequency of such work, since it depends entirely on the model, the climate and the owner's individual care of the watch. As a general rule, a watch should be serviced every 5 to 8 years, depending on the conditions in which it is used.

Mr C says he was aware of the need for his watch to be serviced every 5 to 8 years as this information was given to him when he visited a watch retailer in 2018.

Mr C arranged for insurance for his watch with cover starting on 1 January 2022. The policy terms and conditions explained:

D) Your duties

1) You must take all reasonable steps to prevent loss, damage or an accident

The policy terms and conditions included the following exclusion in the event of a claim:

l) Wear and tear, anything that happens gradually and general maintenance

This insurance does not cover loss or damage resulting from wear and tear, anything that happens gradually, general maintenance or a lack of sealant or grout.

In April 2022 Mr C wore his watch underwater for the first time. Mr C noticed condensation on the inside of the watch shortly after using it underwater.

Mr C contacted HCC to make a claim under his insurance policy. Mr C confirmed that he hadn't had his watch checked or serviced since he'd purchased it.

HCC arranged for an inspection of Mr C's watch by a third party specialising in the assessment of jewellery claims. The third party noted *'In order to maintain the watch waterproof the seals have to be replaced every 12-18 months as well as the crown/glass/valve checked if the watch is used regularly in water.'*

HCC didn't accept Mr C's claim because of the exclusion relating to wear and tear, which they said applied in this case. HCC said the inspection of the watch determined that the condensation had been caused by the *'failure of the internal rubber seals that had perished over time.'* HCC also said that if Mr C had had his watch checked or serviced since he'd purchased it, *'the perishing of the internal rubber seals would have been discovered and the seals replaced, preventing the failure of the watch's waterproofing when you were in the water.'*

Mr C was unhappy with this decision, and brought his complaint to this service for investigation. Mr C said the terms and conditions for his insurance policy did not specify servicing of the watch in order for a claim to be accepted. Mr C also said the watch was in perfect working order before he used it in the sea, and therefore it could not have been gradual wear and tear that had caused the issue.

The investigator found that HCC hadn't dealt with Mr C's claim fairly. The investigator found that Mr C was aware that his watch would need to be serviced every 5- 8 years. As the incident had taken place before a service was reasonably due, it wouldn't be fair for HCC to rely on the wear and tear exclusion for rejecting the claim. The investigator also said that Mr C had used his watch under water for the first time so it was reasonable for him to not have had a water resistance check on his watch before the incident had happened. The investigator asked for HCC to reconsider Mr C's claim.

HCC didn't agree with the investigator's findings. HCC said the requirement to have a water resistance check carried out was made clear in the operating instructions booklet, and on the watch retailer's website. As Mr C hadn't done this, HCC wouldn't be able to accept the claim.

As the complaint couldn't be resolved it was passed to me for 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 reviewed the evidence I agree with the investigator's outcome on this complaint for broadly the same reasons. I've focused my comments on what I think is relevant. If I haven't commented on any specific point it's because I don't believe it's affected what I think is the right outcome.

The main reason for rejecting Mr C's claim is because HCC consider that Mr C didn't do enough to fulfil the care instructions for his watch- namely, the servicing of his watch, and annual water resistance check, which they say would've prevented *'the failure of the watch's waterproofing when [Mr C was] in the water.'*

It's not disputed that Mr C was aware of the need to have his watch serviced every 5-8 years. As the investigator has explained, Mr C was well within this window at the time of making a claim. So I don't think it would be reasonable for HCC to rely on this requirement as a reason for rejecting Mr C's complaint.

In response to the investigator's findings, HCC have focused on Mr C's failure to complete an annual water resistance check. HCC say the damage caused to Mr C's watch is a direct result of Mr C's failure to carry out this requirement. So I've considered whether HCC have acted fairly in reaching this decision.

HCC say the operating instructions explained the need for Mr C's watch to be checked on an annual basis. But I haven't seen anything in the policy terms and conditions provided to Mr C which make this requirement clear.

The operating instructions say '*We recommend you have the water resistance of your watch checked once a year by an authorised [watch] Service Centre*'. This information is provided in page 5 of a 35 page densely worded document. I think HCC needed to do more to make this requirement clear in the policy terms and conditions. Had HCC considered the care requirements in the operating instructions a condition of a claim being met, then this should've been clearly specified in the policy terms and conditions. I can't see that it was.

HCC say regardless of the frequency that Mr C was using his watch underwater, he should've had the water resistance checked annually. As I don't think this requirement was made clear at the time insurance was taken out, I've considered whether this is something Mr C should've done in order to meet the policy requirement of taking '*all reasonable steps to prevent loss, damage or an accident.*'

The third party that assessed Mr C's claim specifically noted that a time span of 12-18 months between having the watch checked would be expected '*if the watch is used regularly in water*'. It's not disputed that Mr C used his watch underwater for the first time in 2022. I don't think it's unreasonable that Mr C hadn't had his watch checked for water resistance before this time, as he didn't regularly use it for leisure underwater.

I don't think HCC have shown that Mr C failed to take reasonable care with his watch. The make and model of Mr C's watch supported underwater use so it is fair for Mr C to have used it this way without anticipating any problems. Mr C hadn't regularly used the watch underwater so I don't think there's enough evidence to say that he should've been aware of the need to have regular checks of the watch- specifically to ensure the water resistance features of the watch were functioning correctly.

Mr C has given a compelling testimony about the care and attention provided in looking after his watch- including the frequency of its use, and insurance taken out for the purpose of maintaining its value. I think Mr C did what was reasonably required of him to maintain and look after his watch.

I don't think HCC have done enough to evidence reliance on the '*wear and tear*' exclusion of Mr C's policy as a reason to reject the claim. HCC say a requirement in order for this exclusion not to apply in this case would be evidence of Mr C having his watch checked for water resistance, as this would've prevented the issue with the faulty rubber seal. But I don't think the terms and conditions made this requirement clear, and given Mr C's use of the watch, I don't agree that it's something he ought to have known.

Putting things right

To put things right HCC must assess the claim for damage to Mr C's watch without relying on the wear and tear exclusion. The claim must be assessed in accordance with the remaining terms and conditions of the policy.

My final decision

For the reasons provided I uphold this complaint.

HCC International Insurance Company Plc trading as Tokio Marine HCC (HCC) must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 March 2023.

Neeta Karelia
Ombudsman