

The complaint

Mr S complains about Chubb European Group SE's ("Chubb European") decision to decline his claim under his mobile phone insurance policy.

What happened

Mr S travelled overseas and, while there, he visited a beach together with his cousin. Mr S says he lost his phone while at the beach and he then made a claim under his policy. Chubb European declined the claim on the basis Mr S had left his phone unattended and out of sight for a period of time. Mr S then complained about Chubb European's decision.

Chubb European responded and explained the claim was correctly declined based on a policy exclusion which said Mr S shouldn't leave his phone in a place where he couldn't see it, but others could. So, they didn't uphold this part of the complaint. They partially upheld the complaint though as they accepted the claim investigation took longer than they'd expected and there was a delay in reaching a decision on the claim. So, they applied a £50 credit to Mr S' account.

Our investigator looked into things for Mr S. She thought Chubb European's decision to decline the claim was unreasonable and recommended they reassess the claim further and pay £150 compensation. Chubb European agreed to reconsider the claim but Mr S disagreed so the matter has come to me for a 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've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. I'll start by saying, I can see Chubb European have issued Mr S with a £50 credit to his account for the delay in providing Mr S with an outcome to his claim. And I think that's fair and reasonable in the circumstances. The main dispute here relates to Chubb European's decision to decline the claim – and central to that dispute is whether Mr S failed to comply with the terms and conditions of the policy by knowingly leaving his phone in a place where he couldn't see it, but others could. So I've considered all the information to determine whether Chubb European's decision to decline the claim is fair.

My starting point is Mr S' mobile phone insurance policy booklet. This sets out the terms and conditions and under the heading 'What is not insured?' it says, *"If you or an authorised user knowingly leave it in a place where you can't see it but others can,"* And further into the terms and conditions, it says, *"Just because you have insurance...doesn't mean you can be careless with your device. You mustn't leave it in a place where you can't see it, but others can."*

I've reviewed Mr S' detailed account of the event set out in the claim report, and this says he travelled to the beach in a caravan together with his cousin. They parked the caravan and made their way to the beach and Mr S confirmed his phone was in the pocket of his shorts. Mr S confirmed he was wearing sports style shorts and his phone was kept in the front pocket, but it was a tight fit meaning his phone had to be pushed to fully fit in. Mr S explained, once on the beach, they laid out their towels and placed their bags on top and then sat there for a while. They then later decided to go for a swim in the sea. Mr S explained they were already wearing their swimwear underneath their outer clothes, so they removed their outer clothes, placed these next to their bags, and then went swimming. Mr S explained they were swimming for around 20-30 minutes.

Mr S said when they returned to the beach, Mr S went to check his phone for any missed calls or messages, but his phone was missing from his shorts pocket. Mr S explained they searched around the immediate area, but they couldn't find his phone. Mr S said they tried calling his phone but there was no answer and it continued ringing. Mr S explained they returned to the caravan and tried locating his phone through a 'find my phone' application and this showed his phone being located on the beach and not far from the spot they'd laid their towels. Mr S said they weren't then able to locate his phone as he believes the battery might've finished. Chubb European asked Mr S what he thought had happened to his phone and he said he believed it must've fallen on the beach at some point. Chubb European asked how it could've fallen out of his pocket given that Mr S had described it being a tight fit, and he explained he didn't know but didn't believe anyone had taken his phone as they could see their bags and belongings all the time they were in the sea. The information also shows, during the first notification of loss call, when Chubb European clarified with Mr S how the phone might've fallen out of his pocket, he explained it was probably down to the fact his shorts didn't have a zip.

Mr S has made a claim for his phone and his account of events suggests he lost his phone because Mr S believes it fell out of his pocket. I've looked at the policy terms and conditions and this provides cover in the event Mr S loses his phone. So, based on Mr S' account of the event, it appears an insured event has taken place. On this basis, and given that Chubb European are relying on an exclusion in support of their decision to decline the claim, it's for them to show why the claim shouldn't be met. But, from the information I've seen, and what Chubb European have relied on, I'm not persuaded they've shown why the claim shouldn't be met.

Chubb European say the claim has been declined as the phone was left unattended and out of sight for a period of time, but the specific exclusion they're relying on here contains two components. The first is that the phone was left in a place where Mr S couldn't see it, and the second component is that the phone was left in a place where others could see it. So, I've carefully considered Mr S' testimony and applied the precise wording of the exclusion to this. Mr S says he believed his phone was still in his shorts pocket when he went swimming. And that being the case, it would suggest Mr S couldn't see it while he went swimming, but it would also suggest others couldn't see it either. So, I'm not persuaded Mr S' account here meets both limbs of the exclusion that Chubb European have applied. In addition to this, as well as Mr S confirming they could see their belongings, he also says they kept watching over and didn't see anyone else approach their belongings.

So, I don't believe Chubb European have demonstrated here that Mr S' phone was stolen while he was swimming or, and more specifically in relation to the exclusion, left in a place where he couldn't see it, but others could.

Mr S also raises a possibility that his phone could've fallen out of his pocket at some point while on the beach. And if that's the case, then I can't see the exclusion Chubb European

are relying on here applies in the circumstances as Mr S hadn't knowingly left his phone in a place where he couldn't see it, but others could.

In these circumstances, I think Chubb European have unreasonably declined the claim. So I think the fair outcome is for Chubb European to reconsider the claim. It's clear from the information I've seen Mr S has been caused upset and inconvenience as a result of Chubb European's decision to decline his claim. Mr S has maintained through all his communications with Chubb European that his phone wasn't likely stolen while he was swimming and could possibly have fallen out of his pocket. So it's understandable Mr S was upset when the exclusion was applied suggesting his phone was left in a place where he couldn't see it, but others could. Taking this into account, I think Chubb European should pay Mr S £150 compensation for the upset and inconvenience caused.

Putting things right

I've taken the view that Chubb European have unfairly declined Mr S' claim. So, Chubb European should reconsider Mr S' claim further, in line with the remaining terms and conditions of the policy. It is of course open to them to make any other further enquiries they feel are necessary, but I don't think it's reasonable for them to use the reasons they have to justify their decision to decline the claim. Chubb European should also pay Mr S £150 compensation for the upset and inconvenience caused. This is in addition to the £50 credit already applied to Mr S' account, but the £150 should be paid as compensation, and not as a credit to Mr S' account.

My final decision

My final decision is that I uphold the complaint. Chubb European Group SE must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 May 2024.

Paviter Dhaddy
Ombudsman