DRN-5119642

The complaint

Miss A complains that Chubb European Group SE ("CEG") unfairly declined a claim on her motor insurance policy following the theft of her vehicle.

Miss A has been represented by a solicitor. For ease, I will refer only to Miss A.

What happened

Miss A held a motor insurance policy underwritten by CEG.

In the summer of 2023, Miss A's car was stolen. So, she made a claim to CEG.

CEG considered the claim but took the decision to decline it. CEG said Miss A's policy includes a condition that she fits an anti-theft security system to the car and maintains an active subscription for it. CEG received confirmation from the provider of this system that Miss A did not hold an active subscription at the time of the theft. So, CEG thought it was entitled to decline the claim.

Miss A complained to CEG but it didn't change its stance. So, Miss A referred the matter to the Financial Ombudsman.

I reviewed the complaint and issued a provisional decision. I didn't think CEG had acted unfairly in declining the claim. I said:

> "I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
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> Having done so, I'm intending to reject the complaint. I know this will be deeply disappointing for Miss A and I'm sorry about that. But I'm satisfied that CEG has acted fairly and reasonably. I've focused my comments on what I think is relevant. If I haven't commented on a specific point, it's because I don't believe it affects what I consider to be the right outcome.
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> It's the longstanding view of this service that an insurer can generally rely on a breached condition to decline a claim if the condition was made clear and if the breach was material to the loss. So, I've considered this along with the arguments the parties have made.
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> Is the clause a condition precedent to liability – and is it clear?
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> Miss A says CEG's anti-theft clause is not a condition precedent to liability. She says this type of condition must be defined as such and must clearly set out the consequences of non-compliance. She doesn't think it was here. She says the clause must therefore be interpreted as a bare condition, which wouldn't usually allow CEG to decline the claim.

A condition precedent does not always need to be stated as such. No special words need to be used to create it. Determining whether a clause is a condition precedent is generally a matter of construction. The courts will usually give regard to the contractual context of the clause and whether it makes the parties' intentions clear.

CEG's anti-theft clause is shown on Miss A's policy schedule as a 'contract modification'. It adds the anti-theft clause to the list of policy conditions found in Miss A's policy booklet. Miss A says that it's unreasonable to expect a consumer to read across both documents to interpret a clause, and so it isn't clear and shouldn't be regarded as a condition precedent.

It's standard industry practice for an insurance schedule to be read together with a policy booklet. The two documents generally can't be read alone. And, together, they form the contract of insurance. This was explained in Miss A's policy schedule as follows:

> "Your Policy Schedule shows the covers, sums insured, the related premiums and any contract modifications that apply to Your Policy.
>
> Please read Your Policy for full details of Your Policy covers, conditions and exclusions that apply. Your Policy Schedule is part of Your Policy."

It was also explained on the first page of Miss A's policy booklet as follows:

> "This is Your Policy booklet which should be read alongside Your most recent Policy Schedule, Certificate of Insurance, any Amendment to Cover Notices and any Endorsements. They explain in detail the covers as well as any conditions You must comply with."

So, I don't think it was unreasonable for CEG to expect that the two documents would be read together. And I don't find this unusual.

I've gone on to consider the clause's overall construction and the contractual context in which it sits. The clause itself is shown in the following way on Miss A's policy schedule:

> "The following changes apply to Your Policy
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> The following condition is added to the Policy Conditions part of Your Policy. Anti-theft vehicle tracking system - You a Covered Person or a Family Member must ensure that an anti-theft vehicle tracking system with Pro-Active Automatic Driver Recognition is securely fitted and that You a Covered Person or a Family Member must maintain the vehicle tracking subscription on Your a Covered Person or a Family Members Vehicle(s) bearing the registration number(s) [car 1] and [car 2] throughout the Policy Period. The anti-theft vehicle tracking system must be in full working order at the time of the theft."

I think it was clear that the clause was added to the 'policy conditions' section of cover. So, I think it's reasonable that it needs to be read together with that section.

The 'policy conditions' section said, at the beginning:

> "This part of Your Policy details the terms and conditions which form part of Your policy. Failure to comply with the Policy Conditions may invalidate Your claim.
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> These conditions apply to Your Policy in general and to each cover in it."

I think this clearly set out that breaching a policy condition may invalidate a claim. And as the clause was added to the list of policy conditions, I think the consequences of non-compliance were made clear. I don't consider this construction to be unusual for consumer insurance contracts. And I don't think it could reasonably have been interpreted another way.

I also don't think the use of "may" invalidate rather than "will" invalidate should mean that CEG is not able to rely on the clause. Conditional phrasing like this is common in consumer insurance contracts.

Miss A has cited case law to suggest that the clause is not a condition precedent to liability. She's cited the cases of Pratt v Aigaion Insurance [2009] and Sugar Hut Group Ltd v Great Lakes Reinsurance (UK) Plc [2010]. I've reviewed these but I didn't find them helpful. They underscore that conditions need to be stated in clear terms to be relied upon in the event of a breach. But I've explained why I think the clause in Miss A's policy was stated in clear terms and why I don't think there could reasonably have been another interpretation of it.

Miss A has also cited the case of Scotbeef Ltd v D&S Storage Ltd & Lonham Group Ltd [2024]. My two takeaways from the case are that a clause needs to be read as a whole to work out whether it's a condition precedent to liability; and a clause must include the consequences of non-compliance in a way that's clear and not contradictory.

I've considered the judgment in full, but it doesn't persuade me that CEG's anti-theft clause should be viewed as anything other than a condition precedent to liability. I think it's reasonable for the clause to be read in full in its proper place in the context of the 'policy conditions' section. And reading it that way I think it's clear that non-compliance may invalidate a claim. I don't find that to be contradictory. I also think it's clear that CEG intended to frame the clause as a condition precedent to liability. And I've seen nothing to persuade me that Miss A would have reasonably thought otherwise.

Finally, I've seen no suggestion that Miss A was unaware of the condition. She installed the requisite security system and had maintained an active subscription for it before.

With all this in mind, I think it was fair and reasonable for CEG to interpret the anti-theft clause as a condition precedent to liability – and I think the condition was made clear.

Was the breach material to the loss?

It isn't in dispute that the condition was breached.

The Insurance Conduct of Business Sourcebook (ICOBS) at 8.1.2 states that the rejection of a claim due to a breached condition is unreasonable unless the circumstances of the claim are connected to the breach.

Section 11 of the Insurance Act 2015 sets out that if a policyholder can show that the breached condition, which tends to reduce a particular risk, could not have increased the risk of the loss that occurred, then the insurer can't rely on the breach to decline the claim.

So, I've considered whether the breach was material to the loss, i.e. whether it was connected to the circumstances of the claim, and whether it increased the risk of loss for CEG.

CEG thought that the breach was material. Miss A doesn't agree. Miss A says this type of security system doesn't reduce the risk of theft and she believes the thieves would have defeated the system even if it had been active.

On the first point, I don't think it's relevant whether the system reduced the risk of theft. What's relevant is whether the system reduced the risk of loss – i.e. the risk that CEG would have to pay out. So, I've had to consider whether the system would have increased the chances of the car being recovered after the theft.

CEG has explained the features of the security system. It says it included a driver-recognition system, GPS tracking, tow-away and tamper alerts, crime-in-progress information, and stolen-vehicle tracking, which, together, work to alert the provider and the police, provide the car's location, and assist with its recovery. I accept that the system wouldn't have guaranteed recovery. But I think it's reasonable for CEG to say that the system would have increased the likelihood of recovery if all those features had been active.

Miss A has shared an email from the system provider to suggest that the thieves would have defeated the system anyway. The email says:

> "Having checked the device we have been unable to establish any communication since the vehicle was reported stolen.
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> All the messages have expired and in my opinion this could be a result of the device being tampered with, removed or a device to block the signal."

I've thought carefully about this, but it doesn't persuade me that Miss A's non-compliance caused no increase in the risk of loss. The email shows the provider tried to connect to the system after the car had been reported stolen. I think that's important because it doesn't say how long after the theft that the provider tried to connect. It also doesn't address what would have happened if there had been a subscription in place during the theft.

The provider has listed some things that *could* have caused the failed connections. But this doesn't tell me whether those things were done during the theft or whether they were done some time after. I don't think the provider being unable to establish a connection at an unknown time after the theft demonstrates that the thieves would have defeated the system without any alerts being raised.
While I appreciate what Miss A has said about sophisticated car theft in her region, she hasn't persuaded me that her failure to maintain the security system caused no increase in risk for CEG. It's also clear to me that the circumstances of the claim are materially connected to the breach.

> Further, the supplementary guidance for section 11 of the Insurance Act asks whether the non-compliance could potentially have had some bearing on the risk of the loss. The guidance adds that a direct causal link between the non-compliance and the loss is not required. That is, the relevant test is not whether the non-compliance actually caused or contributed to the loss. So, I only need to be satisfied that Miss A's failure to maintain the security system had *some bearing* on the loss – and I'm satisfied that it did.
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> This would not be the case if the car had been in an accident or had caught fire. But as the car was stolen, CEG has persuaded me that Miss A's non-compliance was material to the loss – in that it increased the likelihood that the vehicle couldn't be recovered and therefore the likelihood that CEG would have had to pay out. CEG's position has therefore been prejudiced and it follows that it was entitled to decline the claim.
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> I'd like to reassure Miss A that I've carefully weighed the arguments presented to me. But I think the outcome CEG has reached is fair and reasonable. So, I don't intend to interfere with its decision or direct it to do anything further."

Neither party responded to my provisional decision. As the deadline has passed, I now consider it appropriate to issue my final 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.

As neither party has provided any further arguments or evidence, I see no reason to change my view of the complaint.

So, my provisional findings are now the findings of this, my final decision.

My final decision

For the reasons set out above, I don't uphold Miss A's complaint about Chubb European Group SE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 29 November 2024.

Chris Woolaway
Ombudsman