

## **The complaint**

Mrs H complains Chubb European Group SE (Chubb) unfairly declined a claim for damage under her purchase protection cover.

Any reference to Mrs H includes the comments of her representative.

## **What happened**

The circumstances of this complaint are well known to both parties, so I've summarised what happened.

- Mrs H's card account includes purchase protection which covers: *"Up to £2,500 towards repair or replacement if an eligible item purchased on the Card account is stolen or damaged within 90 days of purchase."* The policy is underwritten by Chubb.
- Mrs H made a claim on it when a hoverboard she'd bought for her son stopped working.
- Chubb declined the claim saying the damage was attributable to normal wear and tear. Mrs H disputed this saying it had been used as intended and it was less than 90 days old. She said the damage had occurred during normal use of the item and that the hoverboard stopped working after her son used it on a bumpy surface - which she said damaged it and affected the functionality of it.
- Chubb maintained its position and said as there was no evidence of a particular incident which damaged the hoverboard, it was most likely defective and that is why it malfunctioned after a short period of time. So, it said the damage was excluded because it was due to a manufacturing defect.
- Mrs H disagreed and brought a complaint to this Service. An Investigator considered it and upheld the complaint as he wasn't satisfied Chubb had shown the damage was due to a manufacturing defect. Though Chubb had completed a desktop review of the damage, he said it should physically inspect the item to determine if the damage was due to a manufacturing default as it had suggested.
- Chubb disputed the Investigator's findings and said it didn't have the means to inspect the hoverboard. It said Mrs H hadn't evidenced how the damage had occurred and so, it was most likely a warranty issue.
- The Investigator considered Chubb's comments but maintained his position that the complaint should be upheld. But he said owing to Chubb's lack of resources to inspect the item, it should instead pay the claim.
- Chubb disagreed and so, the complaint has been passed to me for a 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.

Having done so, I agree with the outcome the Investigator reached – and I'm upholding this complaint. I'll explain why.

When making a claim it's the policy holder's responsibility to show an insured event occurred – meaning Mrs H needs to show there's a valid claim. It's not in dispute the hoverboard was purchased on her card, or that it was damaged and stopped working within 90 days of it being purchased, but Chubb has said Mrs H hasn't shown a specific incident caused the damage.

Mrs H has said she believes the hoverboard's loss of functionality to have occurred because of her son using it on bumpy ground. From what I've seen, it seems most likely the hoverboard was damaged in this way – with the scratches to it indicating it had come in to contact with a raised, hard surface. As I'm satisfied loss of functionality can be reasonably be considered 'damage', I'm satisfied Mrs H has done enough to demonstrate an insured event took place as it is evidently damaged.

Chubb initially said the damage was excluded because it was attributable to "*normal wear and tear*". Later, it said the damage was "*caused by product defects*". As Chubb is seeking to rely on these exclusions to limit its liability, the onus is on it to show the exclusion applies.

With regards to the "normal wear and tear" exclusion, I don't consider it reasonable for Chubb to suggest an item - which was being used as intended, and for less than three months after it was purchased - can reasonably be considered to have reached the end of its shelf life through normal wear and tear – given it had stopped working altogether. So, I'm not persuaded it can rely on this exclusion to decline Mrs H's claim.

I'm also not persuaded Chubb has demonstrated the hoverboard was defective. I note Chubb has said that if the item stopped working through normal usage less than three months after purchase, then the conclusion must be that it's defective. I accept this is a possibility, but the onus sits with Chubb to evidence this.

Given Mrs H has provided a plausible account for the how the damage occurred, and Chubb hasn't inspected the item or provided technical evidence to support its position, I don't consider it reasonable for it to conclude the item is defective. Whilst it has said Mrs H's previous hoverboard stopped working because of a manufacturing defect and so it's reasonable to presume her current one was afflicted with the same issue - I'm not persuaded a problem with her previous hoverboard proves her current one is defective without evidence to support this position.

Finally, I note Chubb has said Mrs H should arrange an inspection of the item to disprove there is a manufacturing defect, but given it is seeking to rely on the exclusion – and I'm satisfied an insured event occurred – the onus is on Chubb to show the exclusion applies, not Mrs H.

So, I'm not satisfied Chubb has shown the exclusions apply and I, therefore, consider its decision to decline Mrs H's claim to be unfair. To put things right it must pay the claim.

## **My final decision**

My final decision is I uphold this complaint and direct Chubb European Group SE to pay Mrs

H's claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 3 January 2024.

Nicola Beakhust  
**Ombudsman**