

The complaint

Mr M's complaint is about WDP Insurance Limited's refusal of his claim under his mobile phone insurance policy.

What happened

I issued a provisional decision on this matter in April 2022, the main parts of which are copied below:

"In January 2021, Mr M made a claim as he had lost his phone while out shopping. Mr M says he bought the phone in December 2020, insuring it with WDP a few days later, and that he used an existing SIM card which had previously been used in his old phone, in the new one. Mr M provided his mobile phone bill that he said supported what he had told WDP.

WDP refused the claim, as it says there is no evidence that the new phone had been used at all, contrary to what Mr M told them. While Mr M provided a phone bill, WDP says this only showed that the SIM card had been used and not which device it had been used in. WDP said it had obtained a usage report from the network provider, which showed that there had been no use of the new phone since it had been bought, which was contrary to what Mr M had told them. WDP says it can't show what device the SIM was being used in, as it can only do so if it were also on the same network, which is clearly not the case here. WDP says it believes the claim to be fraudulent.

One of our Investigators looked into the matter. She recommended that the complaint be upheld and that WDP reconsider the claim. The Investigator said that the phone bill shows usage of the SIM card up to the date and approximate time Mr M lost the phone, which supports his testimony and he received a replacement SIM which he used in his old phone after he reported the loss to his airtime provider.

The Investigator also made further enquiries with the network provider, who told her that it could not say which device the SIM had been used in. Overall the Investigator didn't think there was enough evidence to establish that this was a fraudulent claim.

What I've provisionally 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.

It is for Mr M to establish his claim. In this case that means that he has to establish, on the balance of probabilities (*i.e.* that it is more likely than not), that he owned the device being claimed for and that it was lost in the way he has claimed. Provided he is able to do this, and unless there are any other policy terms that would apply, WDP should meet the claim. Mr M has provided proof of purchase and delivery of the insured phone but WDP says the claim is fraudulent and the phone was not lost in the way Mr M has claimed. It relies entirely on the usage report to support this.

WDP has in fact provided three versions of the usage report, which takes the form of a

spreadsheet. Each version of the spreadsheet says that “*no usage found*” in relation to the the insured phone (identified by its IMEI number). The spreadsheets also record that the device was blacklisted the 14 January 2021 (the day after the reported loss).

The spreadsheets also apparently record the last usage of Mr M’s SIM but the dates and times are different on each of the spreadsheets. One says the last time the SIM was used was on 15 January 2021, one February 2021 and one September 2021. I’ve not seen any explanation for this, although it may be that the checks were run at different times.

However, Mr M has provided his itemised phone bill, which shows regular use of his SIM for calls, texts and data use, for the period from 18 December 2020 to 13 January 2021 (the day he lost the phone). The usage on the mobile number stopped from the afternoon of 13 January 2021 which is consistent with Mr M’s testimony. There is then a gap of six days before a replacement SIM was sent to him and usage shows again on his bill from 19 January 2021 onwards. There is no record of a call on 15 January 2021, so the spreadsheet usage report does not tally with this.

WDP has also provided a copy of a letter from a representative of the airtime provider which says that he used a system to trace usage but while there was usage of the SIM he found no usage from the insured phone. The letter says he was unable to carry out the same check again due to the time lapse.

However, the airtime provider told our Investigator that “*we would have access to see the SIM is being used but not always the handset its being used in*”. WDP says this is the case if it is not being used on the same network but that is not what the network provider told the Investigator. I think this, and the different dates of the last SIM usage, casts some doubt on the veracity of the usage report.

Overall, I am not persuaded that WDP has provided sufficient evidence that Mr M is claiming for a loss that did not happen. I therefore consider that WDP should have met the claim subject to the remaining policy terms.

It is not clear if Mr M has continued using his old phone or has replaced the insured phone. I can see the insured phone was purchased on a credit agreement, so I assume he has continued to pay for the phone. I would ask Mr M to confirm what has happened since this claim in response to this decision.

If Mr M wants a replacement phone from WDP, then it should provide that but in the circumstances a cash settlement in lieu of a replacement phone might be more appropriate. I would ask WDP to confirm the cash value of the replacement phone in response to this provisional decision. This should be based on the value of the phone at the time of the claim, rather than today’s date.

If WDP has recorded this as a fraudulent claim on any database that should also be removed.

Finally, I also consider that some compensation is appropriate for the incorrect refusal of this claim, and the trouble it has caused. I consider the sum of £100 to be appropriate.

My provisional decision

I intend to uphold this complaint and require WDP Insurance Limited to do the following:

- meet the claim subject to the remaining terms of the policy and the comments made above;
- remove any reference to the fraudulent claim or the policy being cancelled for fraud

- from any database; and
- pay £100 compensation for the distress and inconvenience caused to Mr M by the handling of the claim.”

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further evidence or arguments they want considered.

WDP does not accept my provisional decision. It says it is shocked that I have given greater weight to an itemised phone bill than a statement from the fraud department of the network provider. It has a responsibility to combat fraud and I am assisting the complainant in committing fraud if I uphold this complaint. WDP also says the information provided by the network provider to the Investigator was incorrect. The fraud department categorically stated there had been no usage of the insured phone; and in saying that it cannot rely on this evidence in this case, it means they cannot use information from the network provider to decide on its claims.

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 stated in my provisional decision, it is for Mr M to establish his claim on the balance of probabilities. In order to refuse that claim on the basis of fraud, WDP has to establish that the claim didn't happen in the way Mr M claimed. An allegation of fraud is a very serious matter and so, we apply a higher burden of proof that is closer, but not identical, to that applied in criminal matters, *i.e.* beyond reasonable doubt. The more serious the allegation, the stronger and more compelling the evidence required to discharge the ordinary balance of probabilities standard of proof.

WDP produced a statement from the fraud department of the network provider and three spreadsheets of the last usage of the SIM and the insured phone. As stated in my provisional decision the three different usage reports show different dates for the last usage of the SIM, all after the claim but also all after the last entry on the bill for that SIM. There has still been no explanation as to why this is and it does cast some doubt on the information in those reports.

The Investigator also spoke to one of our contacts at the network provider, she said they would usually be able to tell which phone a SIM has been used in but in this case the insured phone had dual SIM capacity, which means it would have two IMEI numbers. The representative said this can cause problems when trying to identify which device was being used. WDP was able to find usage to the SIM in Mr M's old phone for earlier in 2020, but has not been able to state which device the SIM was being used in at the relevant time.

WDP says the dual SIM capacity is not relevant, as the network provider doesn't issue eSIMs. However, my understanding which is confirmed by the updated statement from the network provider sent by WDP, is that it can have capacity for two nano SIMs. Mr M has not said he used two SIMs but the information provided to the Investigator by the network provider is that the existence of the dual SIM capacity can sometimes cause difficulty in identifying which phone a SIM is being used in. In addition, Mr M bought the insured phone as part of his contract with this network provider, to be used with his existing SIM.

I have not stated that the usage reports cannot be relied on generally. Each case is decided

on its own merits and in this case there are other circumstances and information which casts some doubt on the usage reports in this case.

I have also considered again Mr M's testimony about the circumstances of the loss, and the itemised bill showing regular use of the phone until the time he said it was lost, and then no usage for a few days while he waited for a replacement SIM. Taking all the evidence into account, I remain of the opinion that WDP has not established to the required level that the claim was fraudulent.

My final decision

I uphold this complaint and require WDP Insurance Limited to do the following:

- meet the claim subject to the remaining terms of the policy and the comments made in my provisional decision (so Mr M should tell WDP if he wants a replacement phone or a cash settlement instead);
- remove any reference to the fraudulent claim or the policy being cancelled for fraud from any database; and
- pay £100 compensation for the distress and inconvenience caused to Mr M by the handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 August 2022.

Harriet McCarthy
Ombudsman