

The complaint

Miss M has complained that Assurant General Insurance Limited (Assurant) has rejected her claim for the loss of a mobile phone.

What happened

Miss M has insurance for her mobile phone as a benefit with her bank account. On 20 June 2021 she made a claim against Assurant for the loss of a mobile phone. She says that the phone belonged to her, but her brother was the main user although she used it as well. She says that the phone was in her bag as she had taken it off him. She had then left her bag behind after taking her children to a music lesson. When she returned to look for her bag it had gone. When Miss M made her claim, she told Assurant that the phone was always in use and was last used on the day it was stolen or just before.

Assurant undertook some checks with the phone's network service provider which confirmed that the SIM card for the number Miss M had given for the phone which ended in "413" had never been used in that phone, and that the phone had last been used with a different SIM number ending with "850" on 14 June, some six days before the loss. It said that the phone reported as lost couldn't therefore be placed in her possession at the time of the reported incident.

Assurant declined Miss M's claim on the ground that the information Miss M had provided about its use wasn't correct, and she'd provided it with misleading information. It referred to a term of Miss M's policy which says:

"It is important that when applying for insurance or submitting a claim you or anyone acting on your behalf must take reasonable care to answer all questions honestly and to the best of your knowledge. Failure to do so may affect the validity of your policy or the fulfilment of your claim."

When rejecting Miss M's claim, Assurant also referred to the following term as the basis for its rejection:

"We will refuse to honour your claim if you knowingly provide us with false or fraudulently exaggerated information to support your claim in any respect. This also applies to any claim made for loss, theft or damage caused by your wilful act, or with the intent to defraud us or the insurer".

Miss M was unhappy about Assurant's rejection of her claim and the suggestion that she'd been fraudulent, so she brought her complaint to this service. Our investigator's initial view was that while Assurant was provided with incorrect information, she didn't think that information would've impacted the validity of the claim or the amount that would've been paid out for the claim.

However, our investigator did point out that Miss M's policy only covers one phone per bank account holder. As Miss M is the sole account holder and has her own phone insured with

Assurant, the phone used by her brother, although owned by Miss M, wouldn't therefore be covered. Our investigator's initial view was therefore that Miss M's claim should've been declined, but not due to fraud.

In response to our investigator's view, Assurant said that it didn't accuse Miss M of committing fraud, but had advised her of its concerns regarding the information she'd provided, as it didn't match the usage it could see from her network. Because the SIM card number Miss M had provided had never been used in the phone that was lost, it says it couldn't place the phone in her possession at the time of the reported incident, and as such this placed doubt as to whether the incident had happened as she'd described.

In relation to the policy term that it only covers one phone per account holder, Assurant has said that although only one device is covered at a time on the policy, a customer can change the device they wish to be covered on the policy and also raise a claim at the same time, but a proof of purchase will always then be requested.

Assurant maintained that Miss M's claim had been correctly declined in line with the policy terms, and as it didn't accuse Miss M of committing fraud no redress is warranted.

In response to comments received from Miss M and Assurant, our investigator revised her view. She was satisfied with Assurant's explanation that it had declined Miss M's claim due to her providing false usage information and not for fraud. She also took into account that the incorrect information had led Assurant to doubt whether the claim happened in the way Miss M said it did, and that the policy terms confirm Assurant has the right to decline a claim in the event that false information is provided. She was therefore now satisfied that Assurant had acted in line with the terms of the policy and couldn't say that it had acted unreasonably in declining Miss M's claim.

As Miss M didn't agree with our investigator's revised view, she asked that her complaint be considered by an ombudsman.

I issued a provisional decision as my initial view was that Assurant had acted unfairly when considering Miss M's claim. Miss M had no additional comments to make in response to my provisional decision. Assurant made further submissions which I've taken into account in issuing this my final decision from this service.

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 considered Assurant's further submissions, I'm not persuaded that my provisional view was incorrect. I'm therefore continuing to uphold Miss M's complaint and I'll explain why.

Having seen the information provided by Assurant following the enquiries it made, I'm satisfied that Miss M provided incorrect information to Assurant when submitting her claim. This misinformation related to the usage of the phone prior to its loss and the SIM card it contained. It doesn't relate to the actual circumstances of its loss, or the amount she's claiming for it.

I've listened to the telephone conversation between Miss M and our investigator. She's explained that she has her own phone, and the phone that was lost, although owned by her, was mainly used by her brother. That leads me to the view that the inaccurate information she provided to Assurant was because she'd made assumptions about her brother's usage

of the phone. She hadn't checked this information with him and his actual usage was different.

It's less clear why Miss M provided an incorrect SIM number, as it would be reasonable to assume that the SIM number she provided to Assurant would correspond to the number she had for her brother's phone. But a SIM number doesn't identify the phone itself as SIM cards can be changed between devices. I'm not persuaded that the fact that the phone didn't contain the SIM card that Miss M originally said it did is relevant to the circumstances of the loss. As it wasn't her phone, she wouldn't necessarily have known the SIM card it contained or when it was last used. Assurant doesn't appear to dispute the circumstances of the loss of the phone that Miss M has described and whose purchase she has evidenced.

I've quoted above the policy term Assurant has referred to which states *"We will refuse to honour your claim if you knowingly provide us with false or fraudulently exaggerated information to support your claim in any respect"*.

In my provisional decision I said I couldn't find this wording in the policy. In response, Assurant referred me to the "Fraud" section of the policy where it says that wording appears. It doesn't. But it does say the following (my emphasis underlined):

*"If false or inaccurate information is provided and fraud is identified then we may:
– Reject the claim and we may cancel your policy. If an excess has been paid this will be returned."*

Assurant has told our investigator that Miss M's claim was declined for the provision of false and misleading information, and not for fraud. Referring to the policy term I've quoted above, it's strongly arguable that fraud has to be present, and if it is, a claim may be rejected. The policy doesn't state that a claim will or may be rejected on the ground of false or inaccurate information alone.

I'm persuaded that the incorrect information Miss M provided was true to the best of her knowledge at the time. I don't consider that she knowingly provided false and misleading information to Assurant that would've caused a claim to be paid which wouldn't have been paid if correct information had been given. I consider that Assurant is rejecting Miss M's claim based on the mere fact that false information was given rather than the nature of that information. I'm not persuaded that the nature of the information said to be false is relevant to the circumstances of the loss. Whilst the burden is on Miss M to show that she has a valid claim, Assurant hasn't challenged Miss M's version of the circumstances giving rise to the loss.

My conclusion is that I don't consider that the nature of the false information Miss M provided to Assurant affects whether or not she has a valid claim, or how much is paid. She's also provided evidence that the phone she was claiming for belonged to her even though she wasn't clear about the SIM card within the phone itself.

As Assurant has said that a customer can change the device they wish to be covered on the policy and also raise a claim at the same time subject to proof of purchase being provided, my view is that Assurant should re-consider Miss M's claim but subject to the other terms and conditions of her policy.

Miss M says she's continuing to make payments of £60 per month to her network provider for a phone she no longer has. I consider Assurant should reimburse to Miss M the payments she's able to evidence that she'd paid to her network provider for this phone following Assurant's rejection of her claim.

My final decision

For the reasons I've given above, I'm upholding Miss M's complaint.

I require Assurant General Insurance Limited to assess Miss M's claim subject to the other terms and conditions of her policy.

I also require Assurant General Insurance Limited to reimburse to Miss M any payments she's able to evidence that she's made to her network provider for this phone from 15 July 2021 until her claim is paid unless her claim is rejected in reliance upon any other term of her policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 20 June 2022.

Nigel Bremner
Ombudsman