

The complaint

Mr T's complaint is about the refusal of his claim under a mobile phone insurance policy with Assurant General Insurance Limited.

What happened

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

"In March 2021, Mr T made a claim under his policy with Assurant as he had lost his mobile phone. Mr T had gone overseas for a few weeks and says that after a trip to his bank on 11 March 2021, realised his phone was missing. Mr T notified Assurant of the loss by email on the same day and made sure the phone was blocked. Mr T then called Assurant on 22 March 2021, the day he returned to the UK.

Assurant says that Mr T told the claims-handler that a UK SIM card was in the phone when it was lost. Assurant says Mr T later said he had swapped the UK SIM card for an overseas one (for cheaper calls) and it was the overseas one that had been in the phone when he lost it. Assurant obtained a record of Mr T's UK SIM card usage which showed that it was last used five days before the loss of the phone. Assurant refused to meet the claim, as it said Mr T had provided it will "*false or misleading information*" about which SIM card was in the phone at the time of the loss. Assurant says Mr T knowingly provided two conflicting accounts of the usage of his phone and SIM card at the time of the loss and it cannot therefore be certain which account is correct and cannot therefore proceed with any claim. Assurant also cancelled the policy.

Mr T is very unhappy about this. He says there is nothing in the policy to say that a particular SIM card has to be in the insured phone. Mr T says his phone had a dual SIM facility but sometimes he would remove the UK network SIM card, as it would switch back to roaming charges, without him realising. He says he thought both SIMs may have been in the phone when he lost it after visiting a bank. Mr T says he didn't say he was using the UK SIM the whole time he was abroad.

Mr T says the refusal of the claim has caused him considerable trouble and he has been treated unfairly; he had no phone and had to self-isolate when he came back to the UK so couldn't get a replacement. Mr T says he had to go for an upgrade on his contract, which he would not otherwise have done. Mr T has asked for the claim to be met, or his premiums refunded with interest, to compensate for the stress caused to him.

One of our investigators looked into the matter. He recommended the complaint be upheld and that Assurant reconsider the claim. The investigator says the policy terms require fraud to be established before it allows Assurant to refuse a claim and there was not enough evidence of fraud. He said Assurant should reconsider the claim and pay Mr T £75 compensation for the trouble caused.

Assurant doesn't accept the investigator's assessment, so the matter has been passed to me.

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.

Assurant has essentially alleged that Mr T has made a fraudulent claim and that the phone was not lost in the way he reported or at all. I do not agree that it has done enough to establish this and will explain why.

Mr T's phone had a dual SIM operation, which means that two SIM cards can be installed at the same time and a user can switch between two separate mobile network services manually, or can set up automatic switching. So Mr T would not need to remove the UK SIM and replace it with the overseas SIM in order to make calls on the overseas network and vice versa. Essentially both SIM cards can be in the phone at the same time. Mr T however says he sometimes physically removed the UK SIM card, as it would sometimes revert to the UK network SIM and he'd incur charges he wanted to avoid.

Assurant has provided evidence of usage of the UK network SIM card. This shows over 75,000 usages between 4 May 2019 and 6 March 2021. I am prepared to accept that this means there was no usage after 6 March 2021 (and Mr T has not disputed this). However, this in itself doesn't establish the pattern of usage of either SIM during Mr T's time overseas on this trip, *i.e.* between 16 February and 22 March 2021. Mr T has said he intended to use the overseas SIM for calls.

I have listened to the phone calls referred to by Assurant. In the first call, Mr T explains that he lost the phone after a trip to the bank. There was some discussion and then the claims handler asked Mr T if the UK network SIM card was in the phone at the time it went missing and Mr T said it was. He was not asked if he had made calls using that SIM card. Three days later, Assurant called Mr T to ask him further questions. I have set out below the relevant parts of that call:

Assurant: *What SIM card was in the phone at the time?*

Mr T: *The [UK network] ... SIM card*

Assurant: *Were you using the ... [UK network overseas]? ...*

Mr T: *Yes ... at one point I also used [an overseas] ...SIM card but at this particular time it was a ... [UK network] SIM card that was there...*

Assurant: *Did you have apps downloaded...*

Mr T: *Yes I have [a social media account] ... and banking app...*

Assurant: *...It was definitely the [UK network] ...SIM card in the phone on that day ...*

Mr T: *Yeah.*

Assurant: *Had you made any calls on that day, sent any text message? Had you been on the internet?*

Mr T: *You mean during that day? No... no, no, I can't remember ... doing that.*

Assurant: *And prior to that, when was the last time you had the local SIM card in the phone?*

Mr T: *Erm... sometimes I pop it in if I want to call local then I take it out but ... I cannot remember ...*

Assurant: *The local SIM card was that intended to just be used to put in and take back out again and it was normally your ... [UK network] SIM card in there?*

Mr T: Yes.

Assurant then told Mr T that the claim had been referred to its fraud department. The representative said they had checked when Mr T's UK network SIM card had last been used and this was shown as being 6 March 2021, five days before it went missing, which is at odds with what he had told them, *i.e.* that the UK SIM had been in the phone most of the time and was in the phone on the date of loss. The conversation then continued a little longer and Mr T explained that he can use two SIMs in the phone and to the best of his knowledge UK network SIM was in the phone at the time it was lost. Mr T confirmed that he no longer had the UK SIM so it must have been in the phone.

There is also a part of the call when it is difficult to make out exactly what Mr T is saying but it sounds like he is saying he questioned whether he had left his phone at home when he first discovered it missing from his pocket while out, as he had not made any calls on it.

It is clear from the phone calls that Mr T did tell Assurant that the UK network SIM was in the phone at the time of the loss. However, the phone can hold two SIM cards at the same time. Mr T didn't say that he had been using the UK SIM to make calls or for online activity on the day of loss, or in the days before, only that it was sometimes in the phone because it had all his contacts on it. As I understand it, looking at contacts stored on a phone would not trigger a 'usage' of the SIM. There is no convincing evidence that the UK SIM was not in the phone at the time of the loss, as both SIMs could be in the phone at the same time. I do not therefore think it has been established that Mr T was not being truthful, or gave deliberately misleading information, during his conversations with Assurant.

Having considered all the evidence, I do not consider that Assurant has done enough to establish this is a fraudulent claim and in my opinion, it should have proceeded with the claim.

Ordinarily, Assurant would provide a replacement phone when settling a claim such as this but Mr T has said he took another phone via his network provider. So if he does not wish to receive a replacement phone, Assurant should make a cash settlement instead.

I would ask Mr T to confirm what he did to replace the phone and if he would rather have a cash settlement, in response to this provisional decision. I would also ask Assurant to confirm the cash value of the phone at the time of the claim in response to this decision.

I also agree with the Investigator that some compensation is warranted for the trouble the wrongful refusal of this claim has caused Mr T. I agree that £100 is appropriate.

My provisional decision

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

1. meet Mr T's claim, subject to the remaining terms of the policy. If Mr T would prefer it should make a cash settlement in lieu of replacing the phone, together with interest

at 8% simple per annum from the date of the claim to the date of reimbursement;

2. remove any record of having cancelled this policy on the basis of fraud; and

3. pay Mr T £100 compensation for the distress and inconvenience caused by its handling and wrongful refusal of the claim.”

Responses to my provisional decision

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

Mr T has responded and confirmed he accepts my provisional decision. Mr T has also confirmed that he would be happy to receive a replacement of the phone he lost in settlement of the claim. He also says that if Assurant had provided him with a replacement phone, he would have opted for a SIM only contract, rather than upgrading his phone. As a result he is paying more for his contract. Mr T has provided evidence that he has entered a new contract from March 2021 to 2023, paying around £60 pm for the phone contract. Prior to this his contract was due to run to May 2021 and he was paying £63 pm roughly for the phone contract. Mr T says the SIM only deal would have been around £20 per month.

Assurant has not responded to my provisional 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.

Given that Assurant has not provided any further information, I remain of the opinion that it should have met the claim in March 2021. Mr T has confirmed he would accept a replacement of his insured phone and so it should now proceed with that. If, for any reason, that is not possible then it should provide a cash settlement. Interest will only be payable if there is a cash settlement of the claim. I also remain of the opinion that Assurant needs to remove any record of it having refused this claim on the basis of fraud.

Because Assurant didn't meet his claim, Mr T had to replace his phone himself. It is difficult to know exactly what he would have chosen to do at the end of his contract in May 2021, if Assurant had replaced his phone. He has said he would have opted to take a SIM only contract. From the bills provided by Mr T, I can see that his contract (both pre March 2021 and afterwards) includes an entertainment package, as well as high data allowance with 5G. From what I can see, a SIM only deal with the same provider, with the same options and roughly the same data allowance, would have been around £27pm. So Mr T could have been spending less than he currently is, if he had chosen to keep his insured phone at the end of his contract in May 2021. However, I do not think I can reasonably ask Assurant to reimburse Mr T the difference between the contract he is currently paying and the £27pm a SIM only contract would have cost. I say this because he has had the benefit of the other phone and because there were other options available that might have been cheaper overall (such as buying a refurbished handset and still taking the SIM only contract). In addition, as stated it is very difficult to be certain what would have happened. However, overall, Mr T was required to obtain a replacement phone himself, which should not have been the case and this would have involved some additional expense for him.

I provisionally decided that Assurant should also pay £100 compensation. I am going to increase this to £175 to recognise the fact Mr T incurred some avoidable expense as a result of the refusal of the claim and the trouble this caused him.

My final decision

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

1. meet Mr T's claim, subject to the remaining terms of the policy. Mr T would prefer a replacement of his insured phone. If that is not possible then Assurant should make a cash settlement in lieu of replacing the phone, together with interest at 8% simple per annum from the date of the claim to the date of payment;
2. remove any record of having cancelled this policy on the basis of fraud; and
3. pay Mr T £175 compensation for the distress and inconvenience caused by its handling and wrongful refusal of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 July 2022.

Harriet McCarthy
Ombudsman