

The complaint

Mr P is unhappy with the settlement The Society of Lloyd's (SOL) offered after he claimed under his gadget insurance for his damaged mobile phone.

What happened

Mr P bought insurance for his mobile phone online, as a non-advised purchase. He claimed under the policy after accidentally damaging his phone. SOL accepted his claim.

SOL was unable to repair the phone, so it offered Mr P a replacement or cash settlement. However, Mr P was unhappy with the replacement and the amount it offered. He paid £629 for his phone as new, and followed the online advice when he bought the policy, which was to register the value as the nearest option available. Mr P registered the phone value as £750 and expected SOL to settle his claim to that amount or provide a new phone.

SOL initially offered £299 but it increased its offer to £489 to reflect what it would cost it to replace the phone with one in the same condition. SOL waived the £50 excess as a gesture of goodwill.

However, Mr P felt that SOL didn't provide what it should've done under the policy and he felt discriminated against because of his age and disability. He asked for the full insured value of £750 along with SOL's offer to waive the excess.

Our investigator upheld Mr P's complaint. While she agreed that SOL offered to replace or cash settle in line with the policy, she didn't think the first offer was reasonable. Our investigator also said SOL failed to return Mr P's phone when he asked, and it took a few weeks to offer the appropriate cash settlement. Because of the impact on Mr P, our investigator recommended that SOL pay Mr P £150 compensation in addition to the offers it had already made in its final response which was to cash settle at £489, waive the excess and confirm cover would be available to Mr P should he wish to accept it.

Mr P didn't agree. He remained of the view that SOL was unable to replace his phone with one of the same type, so he wanted the full insured value of £750, the excess waived and at least £150 compensation.

The complaint was passed to me to decide.

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.

I've decided to uphold Mr P's complaint, but I won't be asking SOL to do any more than our investigator recommended. I'll explain.

My role is to decide whether SOL's offer was fair and in line with the policy terms and conditions. I'll also consider whether there's any evidence that SOL didn't treat Mr P fairly in

light of his comment that it treated him unfavourably because of his age and disability. I won't comment on every piece of evidence – our rules don't require me to. Instead I'll look at the complaint as a whole and comment on the evidence which I think best helps explain my decision.

Insured value

Mr P followed the advice to register his phone's value as the nearest available from the drop-down options when he bought his policy. The nearest options were £500 and £750, so he chose £750. That's reasonable and in line with the instructions. However, the policy provided cover *up to* the insured value. If Mr P had damaged his phone beyond repair even on the day of purchase, he would only have been covered for the original cost, less the excess. The policy wouldn't have paid £750 because that would've meant Mr P made a profit.

I'm satisfied that SOL hasn't done anything wrong by refusing to cash settle at £750.

Replacement phone

The policy is to indemnify Mr P for his loss, which means that after making a claim he should have a working phone of a similar age and specification or the cash equivalent to buy one of a similar age and specification. SOL sourced a replacement phone of the same type but Mr P rejected it. He wanted a new phone of a similar specification or the full policy value.

The policy explains how SOL will settle a claim:

How we settle claims for mobile phones and games consoles.

- 1) Replacement Equipment - If a mobile phone/games console cannot be replaced with an identical mobile phone/games console of the same age and condition, we through our preferred suppliers, will replace it with one of comparable specification or the equivalent value taking into account the age and condition of the original mobile phone/games console. We cannot guarantee that the replacement mobile phone/games console will be the same colour as the original item. Where an equivalent refurbished item is not available, we will replace with new.*

The policy provides for a new phone only if SOL can't source a comparable one. It did source one, so I'm satisfied its offer was in line with the policy. I understand Mr P disputes this because the phone offered wasn't from a preferred supplier. I don't think it was wrong of SOL to make the offer. If Mr P had accepted the replacement phone, SOL would've fulfilled its responsibility under the policy to provide him with a working phone of similar age and specification. I don't think it's fair to say Mr P would've suffered any detriment because SOL didn't obtain the phone from a particular supplier. However, as he rejected the replacement phone, SOL was entitled to offer a cash settlement instead.

Cash settlement

SOL originally offered Mr P £299 for his phone. It accepts the offer was too low and shouldn't have been made because it wasn't based on the replacement phone sourced from its preferred suppliers. I've taken this service shortfall into consideration when deciding the overall compensation amount.

SOL's next offer was £489, which is what it would've cost it to source a replacement phone of a similar specification from a preferred supplier. Going back to the policy, it says:

If we agree not to repair or replace an item, we will make a cash or voucher settlement equal to the cost we would have paid for replacement or repair through our preferred suppliers.

Therefore, I'm satisfied SOL's offer was in line with the policy.

Policy excess

Mr P asked for the policy excess to be waived. SOL decided not to charge the excess as a gesture of goodwill. The policy says:

Where an excess applies, this will be taken off the amount of your claim.

In line with the policy, SOL's offer to Mr P would've been £489, less the £50 excess. As SOL agreed to waive the excess, I'm satisfied it amounts to a gesture of goodwill by way of apology for not making the correct cash offer in the first place. I've taken this into consideration when deciding the overall compensation for the service shortfalls.

Discrimination

Mr P feels SOL has discriminated and breached the Equality Act 2010 (EqA) because it made inappropriate settlement offers which he thinks were due to his age, despite SOL knowing he relied on his phone to access study support.

I must point out that it is not my role to decide whether the EqA 2010 has been breached – that's for a court to decide. However, I've looked at whether SOL treated Mr P fairly. SOL made its low cash settlement offer after finding a replacement phone from a well-known supplier of refurbished phones. The offer was based on the cost to buy. I can't see anything about this offer which indicates SOL was treating Mr P unfairly specifically because of his age or disability. I agree it wasn't a fair offer, but SOL corrected that when Mr P complained.

As I've already concluded that SOL's other offers were fair and in line with the policy, I haven't seen any evidence to indicate that SOL treated Mr P differently to any other customer in the same circumstances.

Access to phone software

Mr P complained that SOL failed to return his phone promptly when he asked for it. He explained he needed it to gain access to specific software to support his studies. SOL's records show that it received Mr P's request but failed to respond promptly because it was looking at the impact of the claim value if the phone was returned. Given Mr P's express request for its return, I find that SOL's failure to respond was a service shortfall that warrants compensation.

SOL's final offer

SOL offered to resolve Mr P's complaint by cash settling his phone claim at £489 without deduction of the policy excess as a gesture of goodwill. It also confirmed the policy would provide cover for a refurbished replacement device should Mr P wish to continue cover.

While SOL's offer to waive the £50 policy excess goes some way to apologise for its service shortfalls, I don't think it adequately addresses the inconvenience caused to Mr P by its failure to return his old phone promptly despite him making several requests. Our investigator proposed a further sum of £150 and, having considered the evidence, I think that's fair.

As a final comment, I've noted Mr P's extensive analysis of the terms and conditions of the policy, comparing them to other policies, and explaining why he thinks he should've been offered the full policy value or a brand-new phone. I see little benefit in commenting on every part of his analysis because I don't think it will bring him any level of satisfaction unless he achieves the outcome he'd hoped for. I know Mr P compared the policy to other, similarly worded policies but I can only look at what his policy provided. And, overall, I'm satisfied that SOL did make a fair and reasonable offer to settle his claim in line with the terms and conditions of his policy.

My final decision

For the reasons given above, my final decision is that I uphold the complaint and The Society of Lloyd's must:

- in addition to its offer in its final response letter dated 10 March 2022, pay £150 compensation by way of apology for the inappropriate cash settlement offer and the delay responding to Mr P's request for the return of his old device.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 September 2022.

Debra Vaughan
Ombudsman