

The complaint

Mr D is unhappy American International Group UK Limited (AIG) won't replace his mobile phone. He says repairs completed by AIG under his mobile phone and gadget insurance have been carried out poorly, which has resulted in damage to his phone.

What happened

Mr D has a mobile phone and gadget insurance policy via his bank, underwritten by AIG. When his phone screen was damaged, he made a claim under the policy and his phone was repaired and returned to him.

However, the phone subsequently got wet and water entered the casing. This caused water damage internally.

Mr D says the repair carried out by AIG previously hadn't been effective, as his phone was waterproof prior to the repair, and post repair water was able to enter the casing and cause damage.

Mr D complained to AIG that as a result of their failed repair, his phone had been water damaged. He also complained about the amount of time he was on hold trying to make a claim.

AIG apologised for the time Mr D spent on hold. But they didn't uphold the rest of the complaint. AIG said that sometimes repairs fail, but the warranty for repairs doesn't cover water damage. They say Mr D deliberately damaged his phone by getting it wet. So, they didn't agree to repair or replace his phone.

Mr D remained unhappy and approached this service.

Our investigator looked into things but didn't uphold the complaint. She said that Mr D had deliberately placed his phone under a running tap causing damage.

The investigator noted Mr D wanted to test it, and she accepted that the repair had failed. But she said Mr D had deliberately placed it under the tap, increasing the risk of it being damaged, so she said AIG hadn't acted unfairly by declining the claim. She also recognised that Mr D had to remain on hold whilst trying to make a claim but said some inconvenience will always be incurred when needing to make a claim, and AIG had apologised for this.

Mr D didn't agree and asked for a final decision from an ombudsman.

I provisionally reached a different outcome to our investigator. So, I issued a provisional decision to give both parties an opportunity to comment on my initial findings, before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've provisionally reached a different outcome to our investigator. I'll explain why.

Mr D sent his phone in for repair. Prior to this it was waterproof. After it had been repaired by AIG, the phone was returned to Mr D. He says that he was assured by the engineer that they had used genuine manufacturer parts, and the phone was again waterproof – which was important to Mr D as he says he used it to take pictures under water.

However, Mr D ran his phone under a tap and water was able to enter the casing causing damage. Therefore, the phone was evidently no longer waterproof post repair.

AIG says repairs come with a guarantee, but this excludes water damage. And they say Mr D has deliberately damaged his phone by running it under water, so they don't think they are responsible for replacing or repairing it. However, I'm not minded to agree.

The fact here is that, but for the repair carried out by AIG, the phone would've been waterproof. This means that running the phone under a tap for a short period shouldn't have caused it to be damaged. In fact, it could've been, as per the manufacturer, submerged in water to a depth of 1.5m for up to 30 minutes.

But because the repair wasn't carried out effectively, this did then allow water to enter the casing causing damage. Given the phone was waterproof pre-repair, Mr D would've reasonably expected it to be waterproof post repair, and able to handle being run under a tap for a few seconds (if not considerably more than this).

So, I'm not minded to agree that Mr D deliberately damaged the phone. Instead I think he had a reasonable expectation that it should've been waterproof as it was before, after AIG had repaired it.

I also note our investigator mentioned a term in the policy which says:

"Failure to Take Reasonable Care of Your Device. If You don't take care of Your Device and thereby knowingly put the Device at risk, your claim may be denied."

However, in my view the same point above would apply. Mr D had a reasonable expectation that his phone would still be waterproof post repair. So, I don't think running it under a tap, means he has put it at risk, when it was otherwise previously able to withstand those conditions (and advertised by the manufacture as capable of withstanding significantly more water exposure than this).

AIG has also said their repairs are guaranteed but this excludes water damage. But the terms under Mr D's insurance policy don't exclude water damage. And whilst the repair guarantee itself might not cover that, I don't think that means a lasting and effective repair doesn't need to be carried out by AIG in the first place – which it hasn't been - as the phone was no longer waterproof.

Therefore, unless anything changes as a result of the responses to my provisional decision, I'm minded to conclude AIG need to repair or replace the phone, or if Mr D has already replaced it with the same model, reimburse the costs incurred (subject to proof of purchase) with 8% interest added from date of payment to date of settlement.

I recognise that AIG has apologised that Mr D needed to remain on hold for some time when making a claim, and I think an apology is enough for that. But it's clear that having a device repair which is faulty, which has then caused the phone to be damaged has been inconvenient to Mr D. Albeit this is his second rather than main phone. But I'm also minded to direct AIG to compensate Mr D £50 for the distress and inconvenience caused."

Therefore, I said I was minded to direct AIG to repair or replace Mr D's phone, or if he had already replaced it with the same make and model, to reimburse the cost incurred (subject to proof of purchase) with 8% simple interest added from date of payment to date of settlement. I was also minded to direct AIG to pay Mr D £50 compensation.

The responses to my provisional decision

Mr D responded to say he accepted my provisional decision and was happy that someone could see his point of view. He also said he'd like the phone replaced as he doesn't think it can be repaired.

AIG also responded to my provisional decision, but they didn't agree. They referred to the manufacturer website, and guidance, which gave hints on how to maintain the water and dust resistance performance, which includes not exposing it to water at force, including from a tap, oceans or waterfalls. So, AIG maintained their view that Mr D had deliberately caused the damage by not taking care of his device.

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.

And I've thought carefully about the conclusions I came to in my provisional decision, along with the responses from both parties. Having done so, my view remains the same.

Firstly, I note Mr D thinks that his device can't be repaired and has therefore requested a replacement. However, at this stage that's not known with certainty. So, I'm not going to direct AIG to replace the phone from the outset.

Instead, AIG will need to establish if it can be repaired, or if it can't be, or they decide not to repair it, then they will then need to look to replace it. As mentioned in my provisional decision, I said AIG should reimburse Mr D if he had *already* replaced the device with the same make or model (with 8% interest added). But from Mr D's response, he hasn't already replaced it. So, AIG will need to repair or replace it as outlined.

I also acknowledge AIG's additional comments in response to my provisional decision.

However, the website referred to mentions 'tips for maintaining water and dust resistance'. Within that it says do not expose the device to water moving with force, including ocean waves, waterfalls and taps. So, I think here the key part in *maintaining* water resistance is avoiding water at 'force', based on those examples.

But I'm not persuaded AIG has shown Mr D has exposed his device to water '*at force*', instead he says it was run under a normal tap for a couple of seconds. And this could just as likely, given it was a bathroom tap, be at regular or low household tap pressure, rather than '*at force*'.

I'd need to be persuaded that it was that action, and that level of 'force', which caused the water to enter the phone casing and cause damage alone – and that it was unrelated and unconnected to the repair AIG carried out beforehand. But based on the information provided, I don't think AIG has shown that – or consequently it is Mr D that has caused the damage on the basis of his actions alone.

Instead, on balance, I'm still persuaded that Mr D's phone was waterproof prior to AIG's repair, and not after. And it was this that was the proximate cause of water being able to enter the phone casing and causing damage.

If it wasn't for Mr D testing his device, on balance, I think it's likely that the first time he was to use his device to take pictures under water (which he says is of key importance to him), then due to AIG's repair, water would've entered the casing causing damage in any event. So, although this happened after being run briefly under a normal tap, on balance, I think it would've happened regardless when exposed to water, and that's most likely due to AIG's poor previous repair.

So, my decision remains that AIG need to repair or replace Mr D's phone. And they also need to compensate Mr D £50 for the distress and inconvenience caused.

My final decision

It's my final decision that I uphold this complaint and direct American International Group UK Limited to:

- Repair or replace Mr D's phone
- Pay Mr D £50 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 August 2022.

Callum Milne
Ombudsman