

The complaint

Mr H complains that the claim settlement Assurant General Insurance Limited (AGI) offered him for his lost phone isn't enough.

What happened

Mr H had mobile phone insurance underwritten by AGI, through his bank account. He claimed for his lost phone and AGI accepted his claim.

After looking into replacement phones, AGI offered Mr H a cash settlement of around £450, which was equal to the amount he paid for his phone two years earlier. Mr H didn't think the offer was enough because he couldn't source a replacement phone of the same specification for that amount. He complained to AGI and asked for a specific replacement phone.

AGI explained that the phone Mr H had was no longer available to buy, so it couldn't offer a replacement of the same model. The phone he asked for was a newer and higher specification phone which AGI said amounted to betterment. Mr H brought his complaint to this service.

Our investigator tried to mediate and AGI offered to replace with, or cash settle to the value of, the nearest specification model. AGI offered Mr H £679.99.

Mr H didn't accept because he said the phone had a smaller storage capacity than his previous phone. AGI repeated that it couldn't find the same phone, but it didn't accept Mr H's request for the more up to date phone. AGI explained again that he would've been getting a better phone than the one he originally had.

AGI's final offer was £679.99, which would allow Mr H to buy a better specification phone than the one he'd lost, albeit without the same amount of storage. AGI pointed out that Mr H could buy a memory card for the phone to increase its storage.

Mr H rejected its offer and asked for just under £1,000 to buy a higher specification model.

Our investigator decided that AGI hadn't made an offer in line with the policy terms and conditions. He thought AGI should pay a cash settlement of £999.99 to Mr H to allow him to buy a replacement phone of similar specification, or source the phone he wanted.

AGI disagreed. It said its final offer was fair and if it paid the amount proposed, Mr H would be in a better position than before the claim.

I issued a provisional decision in September 2022 explaining that I was intending to uphold Mr H's complaint. Here's what I said:

provisional findings

I've provisionally decided to uphold Mr H's complaint, but I won't be asking AGI to pay more than £679.99, which is what it offered during mediation. I realise this will come as a disappointment to Mr H, but I'll explain my reasons.

In reaching this decision, I looked at the cover provided in the event of loss. The policy states:

If your mobile phone is lost or stolen we will replace it with a mobile phone of the same make, model and memory size. If we cannot do this you will be given a choice of models with an equivalent specification.

There's no dispute that AGI couldn't source a replacement phone of the same model. So, my consideration is whether it offered a replacement phone of similar specification or a cash amount for Mr H to buy a similar specification phone in line with the policy.

I've looked at the specification of Mr H's phone compared to that on which AGI offered a cash settlement. As AGI offered its settlement based on a newer phone, it's understandable that many of the features are of a higher specification. So, on the face of it, AGI made a fair offer.

The dispute seems to be about the phone's storage. Mr H's phone had 1TB whereas the one AGI looked at had 512GB. While Mr H may be able to source a newer phone with 1TB of storage, AGI isn't required to match that specification.

I understand that memory and storage are terms which have been used interchangeably here, so I've looked at the manufacturer's details to see whether it classes storage as memory. The manufacturer states:

Phone memory refers to RAM (Random Access Memory). RAM is the part of the phone that is used to store the operating system (OS) and where apps and data currently in use are kept. Whereas, phone storage is used to store data such as apps, photos, videos, and files that are necessary for the phone to run.

Based on this, I'm satisfied that the issue in dispute is about storage rather than memory. The terms and conditions state that AGI will replace based on make, model and memory size. There's no reference to storage, so AGI isn't required to replace the phone based on that part of the specification.

The phone AGI based its offer on has 16GB RAM (memory). Mr H's phone had 12GB RAM. Therefore, AGI offered a settlement based on a phone of higher memory size than Mr H's lost phone. I'm satisfied that AGI's final offer was reasonable.

In summary, AGI's final offer was in line with the terms and conditions of the policy. As AGI didn't make that offer before Mr H brought his complaint to our service, I'm provisionally upholding the complaint. But I won't be asking AGI to increase its current offer to cash settle at £679.99.

I said I was intending to uphold Mr H's complaint and I was minded to require Assurant General Insurance Limited to:

- *pay Mr H £679.99 to cash settle his claim for his lost phone.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

AGI accepted my provisional decision.

Mr H didn't agree. He said the storage of the phone is taken into account in the model number. And, as storage is part of the specific model number of a phone, AGI needs to consider storage because the terms of the policy say it will match the model.

Further, Mr H provided a screenshot of the claim form on which AGI recorded the phone with lower storage, suggesting that AGI was purposely trying to make a lower offer. However, he was able to prove the correct storage by looking up the IMEI number on the manufacturer's website.

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 H's complaint, but I won't be asking AGI to do any more than I proposed in my provisional decision.

Firstly, I'll address the issue of the incorrect details recorded on the claim form. AGI had already provided a copy of the completed claim form so I took this information into consideration when I reached my provisional decision. The claim form does, indeed, show the phone as having 128GB storage. It also showed the incorrect network provider and other description boxes were blank. However, the form asks that the details are amended if incorrect and it also asks for the memory size separately to the model number.

So, based on the information on the otherwise incomplete form Mr H provided, I can't agree that AGI was trying to "fob him off" with an inferior phone. On balance, the claim form suggests AGI regarded the memory size as a separate specification to the model number.

This brings me onto Mr H's point about the storage capacity being reflected in the model number. I understand the point he's making – if the model number includes a reference to the storage capacity then, to match the model, AGI must also match the storage capacity.

Taking a step back, I've thought about what the insurance policy is there for. It's to indemnify Mr H for his loss - that is to put him back in the position he was in before the loss. That's not always possible, and in those circumstances I'd expect AGI to put Mr H into a position as close as possible to the one he was in before his loss.

AGI couldn't replace Mr H's phone with an exact match because it simply wasn't available. So, the terms of the policy allow it to give him a choice of models with an equivalent specification. The terms also state that any replacement will be "a remanufactured (not brand new) device".

Mr H had a two-year-old phone which he bought for around £450. Therefore, AGI was responsible for providing him with a two-year-old phone – not a new phone. While I realise Mr H is focussing on the storage capacity, I can't fairly ask AGI to provide him with a cash settlement equal to the cost of a brand-new phone, with higher specification, just to match the storage capacity. By doing so, I'd be asking AGI to match the storage capacity without regard for the fact that the phone would be a new, different model, higher memory, and an overall higher specification. That doesn't feel fair.

So, looking again at AGI's offer during the mediation process, it offered a cash settlement of £679.99 which was based on a newer phone, with higher memory size and an overall higher

specification. Mr H would be receiving a settlement of more than the cost of his original phone. I remain satisfied that AGI's final mediation offer was fair and in line with the policy.

For clarity, as AGI didn't make that offer before Mr H brought his complaint to our service, I'm upholding the complaint. But I won't be asking AGI to increase its current offer of £679.99.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr H's complaint and Assurant General Insurance Limited must:

- pay Mr H £679.99 to cash settle his claim for his lost phone.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 November 2022.

Debra Vaughan
Ombudsman