

The complaint

Mr L complains that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. (Telefonica) added mobile phone insurance to his mobile phone contract without his consent. He said he didn't want the insurance. And asked Telefonica to refund the premiums he's paid.

What happened

Mr L had mobile phone insurance with Telefonica since June 2017. He said it had been unfairly added to his contract when he was upgrading his mobile phone. He said he had been charged £7.50 each month for 59 months since then.

Mr L said he didn't ask for the mobile phone insurance. And that he'd never used it. He said it had been added to his account without his consent. And that he hadn't ever benefitted from it, as he didn't know he had it. Nor did he need or want to make a claim, even if he had known about it.

Mr L said that he first noticed he was paying a monthly premium for the mobile phone insurance when he downloaded an electronic statement to check the charges. He said the insurance wasn't listed on his bill as "phone insurance". He felt this was a stealthy and deceptive way of defrauding customers. So he didn't realise it was on the bill. He said it was disguised under another name: "[phone provider name] refresh". And that it didn't appear on the online digital dashboard. He said that even now when going online it was almost impossible to view a clear bill and find it.

Mr L said that at the time of his upgrade he was asked about insurance. He said he had declined, because he felt that his phone wasn't of sufficient value to warrant insurance. And he'd never broken one.

Mr L complained to Telefonica on 19 April 2022. It issued its final response to the complaint on 22 April 2022. It didn't think it had done anything wrong. It said it had confirmed that the policy terms and conditions were issued and delivered to Mr L's correct email address on 14 June 2017. Telefonica said that the terms and conditions gave Mr L 14 days from receipt to review these documents and decide if the policy was appropriate. And that if it wasn't, he could've cancelled his policy without charge or penalty within that period.

Unhappy, Mr L brought his complaint to this service. Our investigator asked Telefonica for a copy of the upgrade call recording to demonstrate if the insurance was properly discussed and disclosed to Mr L. Telefonica said that they were unable to provide this as the call had been taken by the mobile phone provider.

Our investigator didn't think the complaint should be upheld. He felt it was reasonable to assume that Mr L had received the policy terms and conditions. And that he should've been aware of the policy and payments being deducted.

Mr L didn't agree with our investigator. He felt that Telefonica had added the policy without his knowledge or consent. And that our investigator's decision put the obligation on

customers to notice the error.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 13 October 2022. It said:

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

Having done so, I intend to uphold it. I don't consider that Telefonica have provided sufficient evidence that Mr L consented to the addition of his policy, or that he knew it existed before he raised his complaint. I'll explain the reasons for my decision.

I would first like to say that I've had to make my provisional decision with very little of the information I would like to have seen. Without a copy of the June 2017 call recording, it's impossible to confirm what was said when Telefonica said that Mr L had asked for the insurance to be added. So I've had to make my decision on this complaint based on the information available to me.

I've also not been provided with copies of Mr L's phone statements.

I would be grateful if either Mr L or Telefonica could provide this service with a copy of the phone recording or a copy of the relevant phone statements between now and any final decision. But to date, they've been unable to.

Mr L said he neither asked for the insurance or consented for it to be added to his policy.

Telefonica said that they'd sent Mr L policy details to his confirmed email address. And that these included his cancellation rights on the policy. These gave him the right to cancel within 14 days from the date he received the full policy documents from them. They also said that the insurance premiums were listed on his phone statement. So they felt he would've been aware of the insurance.

Having carefully considered what both parties have said, and the limited information they've both provided, I'm more persuaded by Mr L's argument that it shouldn't be a consumer's responsibility to spot an insurer's error before an insurance policy the consumer didn't ask for is cancelled and refunded.

I say this because I've seen no evidence that Mr L requested the insurance be added. He said he didn't ask for it to be added. And I'm satisfied that he's given a reasonable explanation about why he wouldn't have asked for such insurance.

I acknowledge that many consumers would've noticed the additional amount they were being charged each month on their phone statement. But I'm persuaded that Mr L didn't notice until he raised his complaint. I say this because Mr L has told this service that the insurance charge wasn't listed clearly as such. So it wasn't clear what the charge was for. And while I asked Mr L to provide copies of his phone statements so I could see the charges myself, he has been unable to provide them.

I also acknowledge that Telefonica emailed Mr L a copy of the policy details for the insurance policy they said he requested. I would normally agree that it would be reasonable to expect a person who had requested insurance to look out for the policy details. But in this case, Mr L said he didn't request the policy. So I'm of the view that he wouldn't have been expecting to receive any policy details. And I'm therefore persuaded that he didn't receive them. I say this because I consider that if he had received them at the time, he would've

complained that he hadn't requested the insurance.

Overall, I don't agree with our investigator that Mr L should've have a reasonable awareness of an issue shortly after the June 2017 call. And as I've seen no evidence that Mr L requested the insurance be added to his policy, I intend to require Telefonica to refund all the premiums he's paid for the insurance policy. I intend to ask them to add simple interest at 8% each year to the refund.

Responses to my provisional decision

Mr L accepted my decision. Telefonica didn't respond.

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.

No new information has come to light to change my opinion. So I remain of the view I set out in my provisional decision.

Putting things right

Telefonica must refund Mr L all the premiums he paid for the mobile phone insurance. And add 8% interest each year in acknowledgement of Mr L having been deprived of the use of that money.

My final decision

For the reasons set out above, I uphold Mr L's complaint. I require Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. to take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 December 2022.

Jo Occleshaw
Ombudsman