

The complaint

Mr and Mrs W have complained that Assurant General Insurance Limited deemed Mrs W's phone to be beyond economical repair and replaced it with a reconditioned phone without discussing it with her.

What happened

Mr and Mrs W held mobile phone insurance with Assurant through their bank account. Mr and Mrs W held mobile phone insurance with Assurant through their bank account. Although this complaint is brought by Mr and Mrs W, I will refer to Mrs W throughout as it is her phone that is the subject of this complaint.

Mrs W had a brand-new phone for her birthday with a two year warranty. Unfortunately, a week later she cracked the screen, and so she made a claim with Assurant under her policy and sent the phone to them for the screen to be replaced. It was received on 4 October. On 7 October Assurant sent Mrs W a replacement device which was a refurbished phone in a different colour.

On 11 October, Mrs W rang and complained about this. The agent advised that a refurbished device had been issued in accordance with the terms and conditions, but Mrs W remained unhappy and so she logged a complaint. She also said that the replacement device was faulty.

Assurant have advised Mrs W to return the device for assessment of the fault, but she hasn't returned it as she wants a guarantee that she will get a brand new phone in the original colour.

Assurant didn't uphold Mrs W's complaint. They said that a refurbished phone had been provided in accordance with the terms and conditions of the policy.

Mrs W was unhappy with this response and brought her complaint to us. She says that Assurant should have contacted her prior to sending the replacement and given her the choice to have her phone returned rather than replaced.

One of our investigators has looked into Mrs W's complaint. He thought that Assurant had acted in accordance with the terms and conditions of the policy.

Mrs W disagreed with this and so it came to me to review.

I issued a provisional decision on the complaint. My provisional findings were as follows:

I'm intending to reach a different conclusion on this complaint to our investigator. Because of that, this decision will be provisional, and I'll give both sides a chance to comment before I make a final decision.

What I have to decide is whether Assurant have acted fairly and reasonably and in line with the terms of the policy when dealing with Mrs W's claim, so I've looked at the policy terms and I've thought about how Assurant have applied them.

The policy terms in relation to repairs state:

If your mobile phone is damaged or breaks down we will either:

- (1) repair the mobile phone (where possible), or*
- (2) 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.*

Replacements

- (1) Where we replace the mobile phone the replacement will be a remanufactured (not brand new) device*
- (2) We will attempt to replace your phone with one of the same colour but we can't guarantee to do this or replace any limited or special edition mobile phones*
- (2) Where we send you or your Family member a replacement or repaired item, this will only be sent to a UK address*

The policy terms are clear that Assurant can either repair or replace the phone, and so I'm satisfied they have strictly speaking complied with the terms of the policy by providing a replacement phone. There is no obligation on Assurant to provide a new phone, or to provide one of the same colour.

However, in the circumstances of this case I think it would have been fair and reasonable for Assurant to have made contact with Mrs W to discuss the fact that they couldn't get the part in their normal timescales, and offer Mrs W the option to have her phone back unrepaired.

The claim notes indicate that the phone was logged as received by the repairer at 19.27 on 4 October. It was allocated to a work bench the following day – 5 October at 21.00 and was held awaiting parts. On 7 October at 13.43 a swap was ordered. Assurant have told me that the timescales for repair are 1 – 3 working days and that as the parts had not arrived by 7 October – the third day - a swap was ordered and Mrs W's original phone would have been recorded on their system as "beyond economical repair".

I can't see that either in the policy, or when she made the claim, Mrs W was advised that there was a 1 – 3 day timescale for the repair, and that if parts couldn't be obtained in this time, she would be sent a reconditioned replacement. The terms of the policy do appear to read as if a replacement will only be sent if a repair isn't possible. And so, I don't think it was clear to Mrs W what might happen. She had only sent the phone in because of a lightly cracked screen and so she had no expectation that her original phone wasn't going to be repaired and returned to her.

In addition, it looks to me from these notes that the phone was in the workshop for less than 48 hours before it was decided a replacement would be sent, which isn't at the limit of the 3 working days. There is no indication in the notes of how long the parts were going to take, but I do think that given that the phone was almost brand new, and Assurant's repairer's were unable to provide a like for like replacement, it would have been reasonable for them to have contacted Mrs W to make her aware that a part wasn't available within their normal repair timescales and given her the option to wait or have her phone returned. Mrs W has

told me that if she had known that this was going to happen, she would have asked for her phone back unrepaired and got it repaired privately.

And so, I think that Assurant could have done more to make it clear to Mrs W what would happen and offer her options.

Although it's not her original phone, Mrs W has a replacement device of the same model, which she says is faulty. Assurant have offered to take it back in and repair it or replace it under the terms of their warranty which I'm satisfied is fair. I appreciate that Mrs W has asked for a brand new device as replacement. However, although her original phone was only a week old, it was no longer "brand new", and the terms of the policy don't allow for used devices to be replaced with brand new ones.

However, as I have said above, I propose to uphold this complaint and ask Assurant to put things right.

In the light of these findings, I therefore intended to uphold Mrs W's complaint and award her some compensation, and so I invited the parties to comment

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 received comments from both parties. Mrs W has accepted my provisional decision but Assurant haven't. They say they have complied with the terms and conditions of the policy by providing the replacement phone. They have provided a repair letter which was sent to Mrs W when she made her claim which they say makes the position clear about what will happen in the repair process.

This letter says:

"WHAT HAPPENS WHEN OUR REPAIR CENTRE RECEIVES YOUR DAMAGED/FAULTY DEVICE:

- They will aim to repair and return your handset within 3 working days of receiving it. Once your phone has been repaired it will be sent to you the next working day"*

What happens if we cannot repair your phone?

If we are unable to repair your phone, a replacement will be sent to you within 3 working days. If we don't have the same make and model in stock, we will contact you within 2 working days to discuss the other options available".

I've thought about this, and whilst I can see that Mrs W was advised about the three day turnaround, I still think that this letter indicates a replacement will only be provided if the phone can't be repaired, not if it can't be repaired in the three day timescale. Mrs W has confirmed to me that her phone was still working perfectly after she cracked the screen, and so she would have had no expectation that it would be unable to be repaired. I think that if the phone was to be replaced simply because a part can't be obtained in three days, it would have been fair to notify Mrs W and give her the choice to have the phone returned. And so, in light of the above, I'm making my final decision in line with my provisional findings.

Putting things right

In order to put things right I think that Assurant should:

- Take back the phone sent to Mrs W and repair or replace it
- Pay Mr and Mrs W £150 for the distress and inconvenience caused by their failure to make their processes and her options clear to her.

My final decision

My final decision is that I'm upholding Mr W and Mrs W's complaint and direct Assurant General Insurance Limited to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 6 March 2023.

Joanne Ward
Ombudsman