

The complaint

Mr C complains about Assurant General Insurance's Limited's handling of a claim made under his gadget insurance after he lost his mobile phone.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr C had gadget insurance underwritten by Assurant. He made a claim in July 2022 after his mobile phone was either lost or stolen.

Mr C says he bought the phone in June 2022 and used it only for taking photographs or videos. He didn't make calls or texts or use data on his phone.

The policy was taken out on 19 July 2022. Mr C says the phone was lost or stolen on 20 July and that was reported to the Police on 21 July. The claim was made on 27 July.

Assurant declined the claim. They said they had nothing to substantiate that the phone has been in Mr C's possession at any point after he'd taken out the policy.

Mr C wasn't happy with this and made a complaint to Assurant. When they maintained their position, Mr C brought his complaint to us.

Our investigator looked into it and thought the complaint should be upheld. He thought Assurant hadn't given Mr C a fair chance to produce any evidence that the phone was in his possession after he bought the policy.

On that basis he asked Assurant to re-consider the claim, taking into account any further evidence Mr C might be able to produce. And he asked Assurant to pay Mr C £100 in compensation for his trouble and upset.

Assurant disagreed and asked for a final decision from an ombudsman. They think the claim was handled correctly and in a timely manner. And they don't agree with the proposed compensation, which they say is for issues Mr C didn't include in his original complaint to them.

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.

Mr C's policy says that when a policyholder makes a claim, they're expected to provide proof of ownership of the lost or damaged item, such as a till or on-line receipt.

Mr C should have no difficulty providing that given that he bought the phone in June 2022. But Assurant haven't asked him for that because it wouldn't prove that Mr C had the phone in his possession when he bought the policy (in July 2022, the month after he bought the

phone).

The policy is clear that it will only cover loss or damage that's happened since the policy was taken out. And it goes on to say:

"If your gadget is a mobile phone we may ask for evidence or contact the network directly in order to verify that the mobile phone was being used after the start date of this policy. If we are unable to validate the mobile phone was being used we may decline your claim."

Clearly, Assurant have that clause in their policy because otherwise, they would be open to unscrupulous individuals only taking out a policy after their gadget has already been lost, stolen or damaged.

I don't think there's anything unfair or unreasonable about that policy term. And it's stated clearly and given due prominence in the policy documentation.

In all the circumstances, I also have no problem with Assurant asking Mr C in this case to provide proof that he had the phone after he bought the policy. And it's clear Mr C hasn't as yet provided any such evidence.

The issue I *do* have with Assurant's actions in this case is that they haven't asked Mr C to provide any such evidence, or indeed listened to anything Mr C has had to say about how he might prove that he was in possession of the phone when – and after – he bought the policy.

In other words, they've assumed that the only possible way to evidence possession of the phone after the policy's inception is through records of usage provided by the network provider.

Clearly, Mr C isn't going to be able to produce that evidence because he says he uses the phone only to take photographs and videos.

Looking at the policy term quoted above, I note that Assurant say they may ask for evidence *or* contact the network (my emphasis). Which suggests they think there may be other evidence which might prove possession at the relevant time as well as – and separately from – evidence from the network provider.

It also says that Assurant *may* (again, my emphasis) decline a claim if they aren't able to validate that the mobile phone was being used. Which presumably leaves them some discretion to make a decision based on what's fair and reasonable in all the circumstances.

In my view, when they receive a claim and have concerns about the possession of the gadget in question, Assurant (having explained they will need proof of possession) should invite the policyholder to produce any evidence or information which might support the claim. They should then take that and any other available evidence or information into account when making a decision about the claim.

That didn't happen in this case. In fact, when Assurant contacted Mr C, they were adamant that they needed usage records from the network provider, or the claim would be declined. And it was clear there wouldn't be any such records given what Mr C said about his use of the phone.

Assurant didn't give Mr C any real chance to state his case or allow him to think about or discuss other ways to prove the phone was in his possession.

Assurant *did* go into great detail with Mr C about the circumstances surrounding the loss of the phone. Even questioning him, in a very direct manner, about what shops he went to the following day and how he paid for the items he bought there – facts which appear on the face of it, entirely irrelevant to the claim in hand.

At times, in those conversations, the manner of Assurant's employee was blunt and dismissive, if not rude. And, as a consequence, I don't think Mr C had any idea at all that he might be able to provide other evidence to support his claim – and/or that any such evidence would be taken properly into account.

Putting things right

Given the nature of the conversations between Assurant and Mr C - and Assurant's clear assumption that the only evidence that might be of any use would be usage records from the network provider – I'm satisfied Assurant haven't properly and fairly considered Mr C's claim.

And so, I agree with our investigator that Assurant now need to give Mr C an opportunity to provide any evidence or information he has which might suggest the phone was indeed in his possession at the alleged time of the loss.

It is entirely possible that Mr C will not be able to provide anything to substantiate his claim. And that Assurant will, in all the circumstances, decline it. But if so, they will have come to that conclusion via a route that is fair to Mr C and which takes all the available evidence into account.

I also agree that Mr C wasn't treated fairly and reasonably in the communications with Assurant, particularly the phone calls about the claim. That must have been frustrating, annoying and upsetting for Mr C. And I agree that £100 is fair compensation for Mr C's trouble and upset.

Assurant have said they don't think we can make an award for alleged failings in customer service because Mr C didn't complain to them about those issues and so would need to raise a new complaint with them - and give them the chance to resolve it – before he brings that to us.

I don't agree with that view. I think it's a very reductive way to look at Mr C's complaint. He complained about the decision to decline the claim, but it's wrong, in my opinion, to say that means he didn't express concerns about the way he was treated whilst the claim was being considered.

Taking a more complete view of it, Mr C's concerns were about the means of getting to the decision to decline the claim as well as the actual decision itself. And the decision was reached, at least in part, on the basis of the conversations with Mr C.

So, I'm satisfied that we can look at the way Mr C was treated in those conversations and communications as part of this complaint.

My final decision

For the reasons set out above, I'm upholding Mr C's complaint.

Assurant General Insurance Limited must:

- give Mr C an opportunity to provide any further information or evidence he thinks may support his claim; then

- re-consider the claim in light of any further evidence provided by Mr C; and
- pay Mr C £100 in compensation for his trouble and upset.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 March 2023.

Neil Marshall
Ombudsman