

The complaint

Mrs W has complained that Assurant General Insurance Limited returned a repaired phone to her that was still faulty, and that when she returned it to them for the fault to be repaired, they wanted to charge her a further excess.

What happened

Mrs W held mobile phone insurance with Assurant through her bank account. In October 2022 Mrs W had a repair completed under the policy which carried a repair warranty.

In November Mrs B contacted Assurant again as further faults had developed on the phone, and one fault had been present since the phone was returned. Mrs W wanted these repaired under the repair warranty.

Assurant sent out DPD labels for the return of the phone by e mail and sent a returns note by post. Mrs W says that she didn't receive these and had to make contact again at least twice to have them resent. She eventually returned the phone in February 2023. When Assurant received the phone, they said that the repair warranty was invalid as the back of the phone was damaged, and Mrs W would have to pay a further excess, as it would have to be treated as a new claim.

Mrs W was unhappy with this response and brought her complaint to us.

One of our investigators looked into Mrs W's complaint and he thought that Assurant hadn't voided the warranty fairly as there was no evidence that the reported defect was caused by the damage to the back of the phone. He recommended that the repair should be completed in line with the warranty, but that if Mrs W wanted the defect on the back of the phone fixed, she would have to pay a second excess.

Assurant disagreed and said that they couldn't repair the phone and leave the back damaged and also that they couldn't be sure that the faults that had arisen weren't as a result of the damage.

Our investigator then issued a second view, recommending Assurant also repair the back of the phone free of charge.

Assurant 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:
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.

I'm intending to uphold Mrs W's complaint but with different reasoning and a different outcome to the investigator and I will explain why.

The faults reported on 11 November

When the phone was returned to Mrs W in early November, the repairs were covered by a warranty which says:

“Your warranty covers any mechanical and electrical failures as a result of any manufacturing faults or defects. [...] The warranty will not be valid if the defect is caused by any faults resulting from customer damage, misuse, neglect or tampering, or if any alterations and/or repairs are carried out by someone other than us or our approved repairers”

Assurant say that the damage caused to the phone invalidates the warranty. However, I don't agree that this is quite what the warranty says. This term says that the warranty will not be valid if the defect is caused by any faults arising out of customer damage.

So, I would need to be satisfied that the issues with face ID and the volume button that Mrs W reported were caused by customer damage in order to say it was fair for Assurant to invalidate the repair warranty.

I have listened to the call that Mrs W made to Assurant on 11 November 2022 when she first reported that there was a fault on the phone following the repair. She says that the face ID isn't working and that the phone is displaying a message to say that there are non-genuine parts on the phone. She says this fault was also present prior to this repair, following on from a previous unrelated repair. Mrs W also said that the side volume toggle wasn't working and was permanently on loud. The call handler asked her if there was and further damage to the phone since she had received it back and she replies, “No, not at all”. I have no reason to doubt this.

Assurant haven't provided me with any evidence that the reported fault was more likely than not caused by the physical damage to the phone, and given the short period of time between the phone being returned and the reporting of the issue, and Mrs W's description of the faults and lack of damage during her call, I'm not persuaded that the fault was caused by damage to the phone. The type of fault reported also seems to be consistent with a faulty repair with non-standard parts rather than physical damage.

And so, I agree with the investigator that Assurant should repair these issues free of charge under the terms of the warranty as I don't think it's fair to invalidate it.

The physical damage

When the phone was received by Assurant, it had physical damage to the back. Mrs W says that when she sent the phone it was in good physical condition, and that the damage must have been caused in transit.

Assurant say that given that there was a delay between Mrs W's first report to them and their receipt of the phone, they can't be sure that the damage wasn't caused prior to it being sent, and so they are not willing to repair the physical damage. They advise Mrs W should raise a new claim and pay a new excess. They have also said that they are unable to repair the technical issues that she has reported unless the back is also repaired as it wouldn't pass quality control.

I can't say for certain when then physical damage occurred. Mrs W hasn't provided us with any evidence of the condition of the phone when it was posted to Assurant, but we do know from the evidence provided that it was received by Assurant in a damaged state. I appreciate that it may have been damaged in transit, but without evidence of the condition prior to

postage, I don't think it's fair to say that Assurant should repair the physical damage under the warranty, and so unfortunately, if Mrs W wants the back of the phone repaired, she will have to make a new claim and pay a further excess.

Customer Service failings

Mrs W is clear that she asked Assurant to send the returns form to her new address, and I can see from the case notes provided that this was recorded by Assurant.

I have asked Assurant for evidence of when and where the returns letters and labels were sent to. They have provided me with a screen note of an e mail sent to the post room asking them to send out the returns letter to the alternative address, but they are unable to evidence it actually being sent.

I note that the copy of the returns letter sent on 20 January 2023 which Assurant have provided to us is addressed to Mrs W's old address, and so I think it's possible that other letters were also sent there. Mrs W has told me that she didn't receive any of the letters until the last one, and I think that the fact that she contacted Assurant a further two or three times after the initial fault report indicates that something went wrong, and it seems likely on the balance of probabilities that the form wasn't sent out correctly.

In view of that I don't think Mrs W has had the customer service that she should have, as the returns letter should have been with her shortly after she first reported the issue, and that might have avoided this complaint.

In view of that I propose to award Mrs W a payment in recognition of the inconvenience caused by the forms not being received and the delay in her being able to return the phone.

In the light of these findings, I therefore intended to uphold Mrs W's complaint, and 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.

Assurant haven't responded to my provisional findings. Mrs W has responded and advised that the phone has now been returned to her unrepaired, and that it was also sent to her previous address. This suggests that Assurant haven't updated the address on their systems and supports Mrs W's account of matters.

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 Assurant should:

- Repair the faults on Mrs W's phone reported on 11 November 2022 under the repair warranty
- Pay Mrs W £100 for the inconvenience caused by Assurant not sending the return forms to her correct address until February 2023.

Assurant will need to make arrangements for the phone to be returned to them for repair.

My final decision

My final decision is that I'm upholding 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 Mrs W to accept or reject my decision before 6 June 2023.

Joanne Ward
Ombudsman