

## **The complaint**

Mr P complains that after accepting a claim on his mobile phone insurance policy Assurant General Insurance Limited trading as Vodafone Care agreed to provide a replacement phone but the package he received did not contain a phone and it would not send a replacement.

## **What happened**

Mr P made a claim on his policy after he lost his mobile phone. Assurant accepted the claim and sent a replacement phone to him by courier.

Mr P then complained that when he opened the package delivered to him there was no phone inside. He said there was a hole in the package and it was clear it had been tampered with. He asked Assurant to provide another phone.

Assurant said it didn't accept what Mr P said about the delivery of the package and would not send another phone. Mr P complained but Assurant didn't agree it had done anything wrong.

When Mr P referred his complaint to this service our investigator thought it should be upheld. She asked Assurant to issue a replacement phone and pay compensation of £200 for the distress and inconvenience caused to him by its actions.

Assurant doesn't agree and has requested an ombudsman's decision.

## **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.

Under the terms of Mr P's policy, where a claim is accepted for a lost phone, a replacement will be provided. Assurant accepted the claim and sent a phone to Mr P but he says when the package was delivered there was no phone inside; what the box actually contained was a mobile phone car holder.

Our investigator discussed with Assurant what investigations it had carried out, and there was reference to checks with the network provider about whether the phone was still in use. There's evidence to show the phone was blocked, but Assurant said this was only by Mr P's network provider, so it's possible the phone is being used with a different network.

This doesn't confirm conclusively whether the phone is in use, but it does show Mr P wasn't using it under his existing network provider and indeed the phone had been blacklisted.

Assurant says checks were carried out by the warehouse before the replacement phone was despatched but the information it has provided is a generic list of the checks that are done and are not specific to Mr P's replacement phone. And even if it was checked before being sent, that wouldn't prevent it being tampered with between it leaving and being handed to Mr P.

In any event, Assurant made its decision on the basis that what Mr P said about the package is not consistent with the photos of the package that he provided. That's the crux of the matter – whether it was reasonable for Assurant to make the decision on that basis.

Assurant refers to a call with Mr P when he was asked about what happened. He was asked where the hole in the package was and said it was near the security tape, but it was on the opposite side of the package. And he said the security tape was not intact when in fact it was. Assurant says this shows his testimony is not reliable.

The photos show a hole in the packaging on the opposite side of the packaging to the security tape. But it was at the same end – immediately on the reverse of the security tape – so was very close to it; both the hole and the security tape go across to the side of the package and at that point they almost meet. Listening to the call, it's clear English is not Mr P's first language and he struggles at some points to explain clearly what he means. When asked if the security tape was intact he says "*not really*" and then later says no. But it's not clear to me from his explanation if he's referring to the security tape specifically or the packaging.

I don't think there's enough to rely on here for Assurant to say the phone was delivered.

Assurant also relies on photos from the courier service of the package being delivered. But the photo of the package itself is not very clear and it's not possible to tell from that what the condition of the package was.

The courier's evidence does show the courier didn't initially deliver the package, saying there was no answer, but it was delivered a few minutes later. Mr P's testimony is consistent with this – he described how he saw the driver outside the property and went to speak to him, at which point the package was handed over.

I appreciate Assurant didn't consider Mr P's comments were consistent with the photos. But the onus is on Assurant to show that it successfully delivered the replacement phone to Mr P and I don't think it has done so. It hasn't provided what Mr P is entitled to where a claim is accepted on his policy and so a further phone should be sent to him.

Finally, Assurant says Mr P should not have accepted the package if he was concerned it had been tampered with and should have realised that the weight wasn't correct if only a plastic car holder was in there. It's likely a customer would accept delivery of a parcel they were expecting unless it was so obviously not right, and that's not the case here.

Mr P was understandably upset that he didn't receive the replacement phone. He says the contract is still running, so he is still paying for a phone that he doesn't have. And he was frustrated by the way Assurant dealt with the matter. In these circumstances a payment of compensation to reflect the distress and inconvenience caused is reasonable.

### **My final decision**

I uphold the complaint and direct Assurant General Insurance Limited trading as Vodafone Care to:

- issue another replacement handset to Mr P; and
- pay compensation of £200 for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 September 2023.

Peter Whiteley  
**Ombudsman**