

The complaint

Mr H and Mrs H complain that Assurant General Insurance Limited (Assurant) didn't settle their mobile phone insurance claim fairly.

For ease of reading, I'll only refer to Mr H throughout this decision.

What happened

On 6 September 2022, Mr H logged a claim on his mobile phone insurance policy as his iPhone 8 had water damage. Assurant accepted the claim, and Mr H received a replacement phone on 25 September 2022.

On 27 September 2022, Mr H emailed Assurant requesting help. He said the replacement phone was faulty as there was an issue with the microphone and the touchscreen appeared unresponsive in some places. Unfortunately, the email was sent to an incorrect address. Mr H has said he then struggled to contact Assurant until his bank gave him the correct details. He's also said that after identifying the problem, he turned the phone off and stored it away securely.

On 17 October 2022, Mr H emailed Assurant again and repeated his concern that the phone was defective. In response, Assurant asked Mr H if the phone had any physical or liquid damage. Mr H said it didn't, so they arranged for the phone to be inspected under the terms of the warranty. Mr H has said he returned the phone to Assurant using the same packaging he received it in.

Assurant then said Mr H would need to make a new claim and pay a further policy excess as the back of the phone was cracked and damaged. Mr H strongly disputed this. He said it was unfair he'd received a defective replacement phone and he was now being asked to pay a second excess due to damage he didn't cause. He said he'd essentially been accused of lying and was very unhappy. So, he asked Assurant to send the damaged phone back to him.

In response to Mr H's complaint, Assurant explained they hadn't done anything wrong as they received the phone in a damaged condition and the warranty doesn't provide cover in such circumstances.

An investigator at this service then considered the complaint and upheld it. She said the claim should be settled as Mr H reported defects within two days of receiving the replacement phone, and there was no evidence he caused damage to the device.

Mr H also asked the investigator to consider the customer service he received from Assurant, but she didn't identify any errors or conclude Assurant did anything wrong in this respect.

Mr H accepted the investigator's opinion, but Assurant didn't. In summary they said:

- Mr H hasn't provided any evidence to show there were faults with the replacement

phone and it was thoroughly quality checked before it was sent to him.

- It took Mr H two months to return the phone, so the damage may have taken place during this time.
- The warranty provides no cover for damage regardless of whether it is linked to previous faults or defects.
- If the damage had been caused by one of their staff, they would have accepted responsibility for it straight away and not blamed their customer.

Prior to reaching this decision, I asked Assurant to clarify if an engineer had completed an inspection upon receiving Mr H's phone. In response, they said they didn't think this was necessary as the phone was damaged and no cover was available under the terms of the warranty. They also said it would have been impossible to determine the cause of the defects Mr H reported. However, they may have been able to complete repairs if the back of the phone hadn't been damaged.

Lastly, the case handler explained that packaging isn't routinely retained, but photographs would have been taken if broken glass had been found in Mr H's phone packaging. So, she didn't think it was likely the damage happened during transit.

I also asked Mr H to provide some information about the current condition of the phone. He said he'd recently tested it and it worked normally despite the damage to the back of the phone and the microphone defect. He also said the touchscreen appeared to be fault free despite his initial concern about this.

So, I've now reached a final 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.

Having done so, I uphold this complaint and I'll now explain why.

Where the evidence is incomplete, inconclusive, or contradictory, as some of it is here, I reach my decision on a balance of probabilities – that is to say, what I consider is more likely to have happened based on the evidence that is available and the wider surrounding circumstances.

As I've detailed above, Mr H received a replacement phone and within two days attempted to report problems with it. I appreciate his email didn't reach Assurant, but I'm satisfied it was sent. I also note that Mr H didn't report any damage to the back of the phone at this time. So, this means, one of the following scenarios is likely to have happened:

- Mr H was sent a defective replacement phone and it took him two days to report the issue. The phone was later damaged either while in his care, in transit or with Assurant.
- Mr H received a satisfactory replacement phone, and the reported defects were caused as the phone was damaged within the first two days. Mr H therefore lied to Assurant when he reported his concerns via email and said the phone was defective on receipt.
- Mr H received a satisfactory replacement phone, he didn't cause any damage to it during the first two days, and he was mistaken when he reported the microphone and touchscreen defects. His defect free phone was then later damaged.

Having carefully considered each of the above options, I think the first is more likely to have taken place. I've reached this conclusion as two days is a reasonable time frame to test a phone, notice there is a problem and report it. Mr H's testimony and version of events have also been consistent throughout. The only exception being the improvement he's identified with the touchscreen issue. However, I see no reason to conclude this is anything other than an honest update.

Assurant think it's concerning Mr H used the wrong email address instead of calling to report the problem with the replacement phone, but I don't see what he could have reasonably gained by deliberately using the wrong details. I think the most likely explanation is he simply made a genuine mistake. I also note that Assurant have put a lot of weight on the time it took Mr H to return the phone, but as Mr H reported the problem within two days, I think this is the most relevant time frame. I also see no benefit in Mr H purposely delaying the return of the phone if he caused the damage.

I agree with Assurant that Mr H hasn't provided any evidence to show the phone was faulty when he received it, but I wouldn't reasonably expect him to do so. Mr H isn't a phone expert or an engineer, so I would only reasonably expect him to promptly report the problem. As detailed above, I'm satisfied he attempted to do so here despite using the wrong email address. I'm also aware, that Assurant completed a full quality check of the phone before it was dispatched, but I don't think this means there is no way the reported defects could have been missed. I also think it's unlikely Mr H would have contacted Assurant unless he genuinely thought there was a problem with the device.

Assurant decided against completing an inspection of the phone. So, I have no expert evidence which shows if the defects Mr H reported exist or how they were caused. I appreciate the difficulties associated with completing an inspection of this nature, but I don't think this reasonably justifies Assurant's decision to make no attempt. For example, they could have at least checked if the phone was operational by trying to turn it on. They could also have removed the back cover to try and establish if any of the internal parts had been damaged.

Mr H has said with the exception of the reported defects and the damage to the back cover, the phone works normally. I've been given no evidence which contradicts Mr H's assessment of the phone, and I've no grounds to conclude his comments are false. As it appears Mr H phone works normally, this suggests the damage Assurant identified may only be cosmetic in nature. It also supports Mr H's position that the defects he reported after two days were unrelated. So, based on the limited available evidence and on balance, I don't think it's likely Mr H received a satisfactory settlement to his original claim or a defect free phone.

I appreciate the damage may have prevented Assurant from repairing the phone and putting things right for Mr H, but I haven't been provided with any evidence which supports this. For example, a report from an engineer which explains they identified the microphone problem, attempted a repair, but couldn't complete it due to the risk of causing further damage to the rest of the phone.

It's also possible that depending on the work that was needed and the availability/cost of necessary parts, Assurant may have concluded the phone needed to be replaced in any event. I appreciate Assurant's case handler has said this possibility is unlikely, but it's not clear what this conclusion was based on. She's also highlighted the fact only an engineer would be able to comment on this issue for certain. So, I'm not convinced Assurant have done enough to show they suffered a detriment or that it was fair to request a further excess due to the damage visible on the back of the phone.

I'm aware Mr H still owns the faulty phone, so an inspection could still take place. However, given the time that has passed, and the fact Assurant previously declined this opportunity – I don't think this would be fair. I also note that Mr H has questioned whether he actually received a different device in response to his original claim. However, as the phones have different IMEI numbers I'm satisfied he did.

I'm also mindful of the fact that by declining to settle this matter, Assurant have indirectly accused Mr H of consistently lying both to Assurant and this service. This is a serious accusation, so I've carefully considered if there is another explanation which could reasonably explain what happened. As mentioned above, I find Mr H's testimony to be persuasive and his version of events to be consistent. I also note that he strongly denied Assurant's claim that the phone had been damaged until it was sent back to him, and he could see it for himself. So, all of his actions and comments reflect what I would reasonably expect under the circumstances.

I equally see no reason to question Assurant's policy for reporting staff damage and can understand why they don't routinely keep photographs of phones in their packaging – despite how helpful this may have been here. I also see no grounds for concluding Assurant's staff would have deliberately caused damage to Mr H's phone. However, this doesn't rule out the possibility of an accident taking place, perhaps without the staff member even realising what had happened. Ultimately, there is no way I can establish for certain what happened, and I don't think I need to reach a definitive finding about this to fairly resolve this complaint. However, I do acknowledge the strength of feeling on both sides and accept its possible either party could be responsible.

In any event, for the reasons I've explained, I don't think Mr H has been treated fairly. I'm satisfied on balance, that he didn't receive a fair settlement to his original claim. And I'm unconvinced Assurant have been able to justify (with supporting evidence) the reasons they now think a second excess is payable. In light of this, I think it would be fair and reasonable for Assurant to settle the claim without requiring a second excess. This remains the case irrespective of the uncertainty surrounding the cause of the damage to the back of the phone.

I've also considered Mr H's concerns about the customer service he received throughout the claim and complaint. I appreciate his frustrations, but I haven't identified any failings in this regard. It's unfortunate, Mr H struggled to identify the correct contact details for Assurant in the first instance, but I'm satisfied this information was clearly available to him. I also appreciate his strength of feeling about the contents of Assurant's final response, but I'm satisfied they followed the correct process by sending it to him.

Putting things right

The policy terms and conditions allow for claims to be settled with a repair or replacement refurbished phone. However, I'm mindful of the fact Mr H has already waited a long time for this matter to be resolved and he may have already purchased a replacement device. So, to resolve this matter fairly and swiftly, I'm satisfied he should be given the option of receiving a cash settlement. This settlement should be based on the amount Assurant would reasonably need to pay to provide a replacement phone.

To resolve this complaint, I therefore direct Assurant General Insurance Limited to:

- Arrange for the damaged phone to be returned to them should they require it.
- Fully repair the phone or provide a replacement as per the policy terms and conditions. Alternatively, should Mr and Mrs H prefer, pay a cash settlement based

on the amount it would reasonably cost them to provide a replacement handset.

My final decision

I uphold this complaint and direct Assurant General Insurance Limited to settle it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 8 November 2023.

Claire Greene
Ombudsman