

## The complaint

Mr M has complained that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. (trading as Telefonica Insurance UK Branch) (Telefonica) has rejected a claim for the loss of his mobile phone.

References to Telefonica include its agents and claims administrators.

## What happened

Mr M had a mobile phone provided by a network that I'll refer to as Network A. This was a replacement phone that Mr M had been given following a problem with a previous phone.

When this replacement phone was lost between the time of boarding a plane and arriving at his destination, he made a claim under the insurance policy with Telefonica that was provided by Network A. He provided the phone number that he had for the phone which Network A recognised as his.

Telefonica declined Mr M's claim. It said that another number was being used on his phone at the same time as his. This might have been due to the phone having a dual Sim – a physical Sim and an electronic Sim. Mr M says that this was investigated by Network A and a mistake or error was identified. Telefonica says that the number Mr M provided wasn't the last number used by the phone. If he could provide the number used, it would suggest that at the time of the loss the phone was being used by him.

Mr M has consistently maintained that he doesn't know the other number used from his phone. He says he's never given his phone to anyone. Network A knows the other number and that it's being used by one of its customers, but it won't provide this information to Mr M for data protection reasons. Mr M maintains that it is within Telefonica's power to obtain this information.

In its final response letter to Mr M, Telefonica explained that it considered that the information that Mr M had provided was inconsistent. It says that he'd told Telefonica that Network A had told him that a previous user of the phone may have inserted an e-Sim into the phone and this hadn't been removed before the phone was supplied to him. When Telefonica spoke to Network A, it couldn't confirm this information, but confirmed that the e-Sim, had been inserted into the phone after it had been delivered to Mr M. It therefore said it was unable to fairly assess Mr M's claim and declined it by reference to the following policy term:

*"You must take reasonable care to ensure that the information provided to Us when You take out Your policy is complete and accurate and that no facts are misrepresented to Us. If any fact is misrepresented to Us or if You fail to answer a question in full, or fail to provide the requested information to Us, this could invalidate Your insurance cover and could mean that part or all of Your Claim may not be paid. Your policy is void at Our discretion in the event of a misrepresentation by You which is deliberate or reckless."*

Telefonica went on to explain that in order to validate the claim, it would need to establish that Mr M was in possession of the phone at the time of loss. As Mr M wasn't able to confirm key details of the phone and its usage, it couldn't validate this.

Mr M says he has health concerns and has suffered considerable stress and anxiety over Telefonica's failure to deal with the various complaints he's made and to adequately investigate who is using the other number from his phone. He brought a complaint to this service.

Our investigator's view was that Mr M's explanation that there may have been an e-Sim on his replacement phone that hadn't been removed by Network A before the phone was provided to him could be correct, and that Telefonica hadn't done enough given its resources to confirm the validity of what Mr M had said before rejecting his claim. She therefore didn't consider that Telefonica had acted fairly towards Mr M and that it should settle his claim.

Mr M has accepted our investigator's view. Telefonica hasn't provided any response to it despite a reminder having been sent.

Mr M's complaint has therefore been referred to me as an ombudsman for a final decision from this service.

### **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'm upholding Mr M's complaint and I'll explain why.

Whilst I understand why Telefonica needs to satisfy itself that Mr M was in possession of the phone at its time of loss, and that he hadn't, for example, sold it to somebody else, I don't see how Mr M can prove possession by knowing the other number associated with the phone. Continuing the example of his having sold his phone to a third party, Mr M wouldn't be expected to know the number of a new Sim inserted by the new owner.

It is for Telefonica to show why Mr M's claim should not be met and that a policy term covers this decision. I consider that the term I've quoted above refers to misrepresentations when taking out a policy and doesn't extend to information provided when making a claim. I consider that if there is any concern about the accuracy of information provided by Mr M when making a claim, the policy term relating to Fraudulent Claims is more appropriate, but Telefonica has not alleged any fraud by Mr M.

Telefonica hasn't provided any response to our investigator's view, which might have addressed the point I've raised above. I consider it reasonable to regard such failure as suggesting that it has nothing further to add, or that it takes no issue with our investigator's view. It has had the opportunity to clarify its position.

In these circumstances, I don't consider that Telefonica has done enough to prove on the balance of probabilities that Mr M's claim is not valid. It would've been helpful if Telefonica, in response to our investigator's view, could've clarified why it considered it appropriate to decline his claim.

I should add that whilst Mr M has made a number of other complaints about Telefonica, this service isn't able to address complaints relating to claims handling as that is not an activity which we regulate.

**My final decision**

For the reasons I've given above, I'm upholding Mr M's complaint.

I require Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. (trading as Telefonica Insurance UK Branch) to settle Mr M's claim subject to any other terms and conditions of his policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 October 2023.

Nigel Bremner  
**Ombudsman**