

The complaint

Mr S is unhappy that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. trading as Telefonica Insurance UK Branch (Telefonica) declined a claim he made under his mobile phone insurance policy, for the loss of his handset.

What happened

Mr S is unhappy that Telefonica declined his claim. He's also unhappy with the level of service he received, in particular, failed call backs. He wants his policy premiums returned and significant compensation to be paid for the service failings.

Telefonica says information Mr S gave them about the sim card which was in the lost handset was inconsistent with the evidence it obtained. Based on this inconsistency, it said it couldn't validate the claim. Telefonica referred to a term in the policy which allowed it to decline fraudulent claims or claims where it reasonably suspected fraud.

Our investigator didn't think Mr S's complaint should be upheld. He said Mr S was asked about the location of his sim card and that he gave information inconsistent with the evidence, and later confirmed that the information he had given was accurate – when it wasn't. So, our investigator said that Telefonica's decision to decline the claim was in line with the policy terms and was fair and reasonable in the circumstances.

Mr S didn't accept our investigator's findings. So, as no agreement had been reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator. So, I issued a provisional decision, to give the parties the opportunity to respond before I reached my final decision. Here's what I said:

"What I've provisionally 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 intending to reach a different outcome to our investigator. I'll explain why.

It's not for me to determine whether Mr S's claim was fraudulent or not. What I need to determine is whether Telefonica's decision to decline the claim based on the inconsistent information provided by Mr S was in line with the policy terms, and whether it was fair and reasonable in the circumstances of this claim and complaint. Mr S's policy contains the following terms and conditions, the latter of which Telefonica referred to when declining Mr S's claim:

“You must provide Us with all information, documentation and assistance reasonably required by Us to validate and handle to (sic) Your Claim...”

“(d) Fraudulent Claims If You make a fraudulent Claim or we reasonably suspect fraud, We will not be liable to pay the Claim, We will be entitled to recover any sums paid to You in respect of the Claim, and We may by giving You notice treat this policy as having been terminated with effect from the time of the fraudulent act.”

Fraud is a serious issue with significant consequences for a policyholder accused of it by an insurer. As such, our service expects an insurer wanting to rely on an accusation of fraud to support the allegations with strong evidence.

We consider each complaint about alleged fraud, or potential fraud, on its own merits. But, in general terms, it's unlikely that an insurer's belief or opinion will satisfy that a fair and reasonable allegation of fraud has been made. This is because there are two parts to a fraudulent claim. The first is a policyholder not being truthful. But the second, key element, being that the untruthfulness was put forward by the policyholder with a view to gaining a benefit from the policy they weren't otherwise entitled to receive.

So, in order for me to conclude that Telefonica's decision to decline the claim based on the fraud term was fair and reasonable, it would need to demonstrate that Mr S lied, and that he lied with a view to gaining something he wouldn't have otherwise been entitled to receive under the policy.

It's not in dispute that Mr S told Telefonica that his sim card was in the handset when it was lost and that it had never been in his other handset. Nor is it in dispute that the technical evidence obtained by Telefonica confirms this wasn't the case, and the sim card was instead being used in his other handset at the time of loss and after it. And I think it's reasonable that such an inconsistency would give Telefonica cause for concern.

However, Mr S has argued that he didn't intentionally give the incorrect information or make a fraudulent claim. He says he simply misremembered, which isn't implausible. And, crucially, Telefonica hasn't provided any evidence or arguments which would persuade me, on the balance of probabilities, that Mr S most likely lied deliberately in order to gain something he wouldn't have otherwise been entitled to under his policy.

I say this because Mr S's policy provides cover for accidental loss, which is defined as:

“loss of Your Equipment in one of the following circumstances:

- a) You have unintentionally left Your Equipment in any location and it has then*
- b) disappeared;*
- c) Your Equipment is in a known location, but You are not reasonably able to retrieve it;*
- d) Your Equipment has disappeared and You are not sure how...”*

Based on the above, I see no reason why Mr S would feel the need to lie about the location of his sim card, at the time of loss, in order for his claim to be paid.

Even if, in response to this provisional decision, Telefonica could persuade me that Mr S deliberately lied about the location of the sim card, it would also need to show, on balance, that he did so to gain a benefit he wasn't entitled to under the policy. And it seems unlikely to me that it will be able to do so, given the wide cover provided under the accidental loss section of the policy. From what I've seen, it seems more likely to me that Mr S's claim would have succeeded in any event.

To summarise, I'm not persuaded that Telefonica has done enough to demonstrate that Mr S's claim was most likely fraudulent, i.e. that he provided false information in order to gain something he wouldn't have otherwise been entitled to under the policy. It also hasn't argued, or demonstrated, that any other policy exclusions – relative to the accidental loss cover – would apply either.

So, in order to put things right, I'm currently minded to decide that Telefonica should reconsider Mr S's claim for the loss of his mobile phone in line with the remaining terms and conditions of the policy.

Should this result in Telefonica deciding to accept the claim, and paying a cash settlement, I would also expect it to add 8% simple interest to the amount due to Mr S, from one month after the date of claim, until the date of settlement. This is to compensate Mr S for being without the use of funds he would have reasonably been entitled to under the policy, but also recognising that Telefonica would have required some time to investigate and accept the claim.

In terms of the service Mr S received, Telefonica has acknowledged that he wasn't given a call back when he was promised one. It has offered £25 compensation and its apologies. I'm aware that Mr S would like a significantly higher amount. However, I've not been provided with evidence to suggest that he was so severely impacted by the failed call back, that £25 compensation would be insufficient. I accept it would have been frustrating and inconvenient, but overall, I think £25 is enough to fairly compensate Mr S for the impact of the failed call back.

However, I'm also minded to decide that Telefonica's claim decision was unfair. And this would have no doubt added to the distress and inconvenience Mr S has experienced given the significance of a fraud allegation. So, in addition to the £25 offered for the service issues, I think Telefonica should pay a further £100 for the impact its, in my view, incorrect claim decision has had on Mr S – taking the total compensation to £125."

I said I was intending to direct Telefonica to remove any fraud markers it might have recorded against Mr S and to pay him £125 compensation. I also said Telefonica should reconsider the claim in line with the remaining terms and conditions of the policy, and if this resulted in it deciding to offer a cash settlement, it would need to add 8% simple interest to the amount due from 30 November 2022 to the date of settlement.

I asked both sides to send me any further comments or evidence they wanted me to consider, before I reached my final decision.

Mr S responded to confirm he was broadly happy with my provisional findings. However, he said he felt an amount of £1,250 compensation would be fairer, and more in line with our service's published guidance for awards in cases of this nature.

Telefonica didn't respond to my provisional decision, and the deadline to do so has now passed, so I'm moving forward with my 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.

I've also carefully considered the response to my provisional decision. Having done so, and while I appreciate it may come as a disappointment to Mr S, my conclusions remain the same as set out in my provisional decision. I'll explain why.

Neither side has provided any further comments or evidence to persuade me that what I said about Telefonica's claim decision was unfair or unreasonable. So, in the absence of further evidence, my conclusions on this point remain the same as set out in my provisional decision – and for the same reasons.

Mr S's sole point of contention was with the level of compensation I provisionally decided would be fair. He feels a significantly higher amount is warranted. He's also referred to our website and what he thinks are comparable scenarios to his. Whilst I note what Mr S says, I've considered what is fair and reasonable in the particular circumstances of his case, taking into account what I've been told about the impact of Telefonica's errors. And, having done so, I'm satisfied the amount I proposed in my provisional decision is fair and reasonable in the circumstances here.

I accept that having an insurance claim unfairly declined would have been upsetting and frustrating. But I've not been provided with any evidence to suggest that Mr S suffered from a "*substantial level of distress or inconvenience, serious offence or embarrassment*" which is what he has referred to on our website. So, in the circumstances, I remain of the view that by removing any potential fraud markers, reconsidering the claim (with a potential interest award to be made on a potential future settlement) and paying £125 compensation, Telefonica will have done enough to fairly resolve this claim and complaint.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr S's complaint.

Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. trading as Telefonica Insurance UK Branch must:

- Remove any record of fraud that its recorded, both internally and externally
- Reconsider Mr S's claim in line with the remaining terms and conditions of his policy*
- Pay Mr S a total of £125 compensation for the distress and inconvenience it has caused him

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 September 2023.

** Should Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. accept the claim and pay a cash settlement, it will need to add 8% simple interest** to the amount due to Mr S, from 30 November 2022, until the date of settlement.*

***If Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Adam Golding
Ombudsman