

## The complaint

Mr L complains about AWP P&C SA's ("AWP") decision to decline his claim under his travel insurance policy.

## What happened

Mr L made a claim for two phones which were damaged during a trip. Mr L says, first AWP said there was a limit to the amount he could claim for phones under his policy, but then said phones weren't covered under the policy. Mr L says he challenged this and then AWP declined his claim for both phones saying they couldn't understand how one phone had become water damaged and that Mr L didn't act with reasonable care for the other phone. So, Mr L complained about AWP's decision to decline his claim.

AWP responded and explained Mr L's claim was declined under the policy terms and conditions.

Our investigator looked into things for Mr L. She thought AWP's decision to decline the claim was unreasonable and recommended they reconsider the claim further, and also pay Mr L £100 compensation. Mr L agreed but AWP disagreed so the matter has come to me for a 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've decided to uphold the complaint. And, I think the investigator's recommendation is a fair way to resolve matters.

My starting point is Mr L's travel insurance policy booklet. This sets out the terms and conditions and, under a section headed 'Baggage' it says Mr L is covered for baggage damage, loss or theft – and this includes up to £250 in total for all high value items. The policy defines baggage as "*Personal property you take with you...*" The definition of high value items lists a number of items which includes, "...mobile devices, smartphones..."

The policy says cover will be provided for the cost to repair or replace damaged baggage, and also sets out conditions which apply in relation to a baggage claim, and this includes "*You have taken necessary steps to keep your baggage safe and intact and to recover it.*"

I can see Mr L emails AWP to make a claim for two phones. He explains phone 1, "...was damaged due to being covered in water" and phone 2, "...fell when I was disembarking the plane after landing back." Mr L then completes a claim form which says one of his phones "*Got covered by incoming water on the beach. By the time I found my phone it had already been covered in water.*" Mr L explains his phone was on a towel next to him at the time. In relation to the other phone he says, "*Spare phone (different SIM) fell as I was disembarking the plane and smashed.*" Mr L explains the phone was in his hand prior to it falling.

Following receipt of Mr L's claim, AWP email Mr L to acknowledge his email and confirm receipt of correspondence relating to his claim. They remind Mr L that phones are classified as high value items under the policy – which are covered to a maximum £250 for all items being claimed for. They email again and explain they're unable to consider Mr L's claim as he cannot claim for phone damage under his policy. A couple of days later they email again and explain they're unable to consider Mr L's claim as phones aren't covered under his policy.

The policy provides cover for baggage – which includes high value items. And the definition of high value items includes mobile devices and smartphones – which is what Mr L is claiming for. So, I think AWP have made an error here in initially saying there's no cover under the policy for phones or phone damage.

AWP then write to Mr L and explain they've completed an assessment of his claim and decided to decline it. They explain they've noticed in the information provided that a liability of the policyholder is present in the event regarding the claim for not having taken all reasonable precautions to prevent the damage. They say Mr L “...*did not take necessary steps to ensure phone would not fall from a secure location while disembarking from the plane. Also, I cannot understand how the phone was underwater, unless [Mr L] was also underwater.*” AWP say, in line with the terms and conditions of the policy, the event isn't covered.

Mr L emails AWP and asks how they determine if necessary steps are taken to ensure a phone isn't dropped. Mr L explains he was looking to book a taxi and he dropped his phone “...*despite holding it with two hands and looking at it.*” Mr L asks AWP what additional steps should he have taken when holding a hand-held device with both hands. In relation to the other phone, Mr L explains he “...*was on the beach sun bathing and a wave came up further than normal and cover us and all our belongings, including my phone. When the wave retreated, it took a couple of minutes to find and gather our belongings. By this time water had obviously gotten into the phone.*”

I can't see AWP responded directly to Mr L on these points. But they have provided a response to our service and say they agree, from Mr L's description of holding his phone, that he did take reasonable steps to protect his phone from dropping. In relation to the other phone, AWP say they don't deem Mr L to have taken reasonable care given that the tide would come in/out slowly throughout the day, and they feel that a wave coming in isn't a sudden or unforeseen event. They say Mr L therefore should've taken more care to protect his phone. So, there doesn't appear to be a dispute in relation to Mr L's phone which fell. AWP still believe though that Mr L didn't take reasonable care in relation to his phone which had water damage.

The policy contains general provisions and conditions which apply, and this says, “*You must take reasonable care to protect yourself and your property against accident, injury, loss and damage, as if you were not insured...*” The policy doesn't define reasonable care. The test of recklessness we use is set out in the leading legal case on 'reasonable care' – *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559.

For AWP to be able to reasonably turn down the claim on the basis that Mr L failed to take reasonable care there needs to be evidence to show he acted in a way that amounted to recklessness. That means AWP needs to show Mr L recognised a risk but took it anyway by taking measures which he knew were inadequate or no measures at all.

Mr L says he placed his phone on a towel beside him. I acknowledge AWP's points about a tide coming in/out slowly throughout the day, but Mr L hasn't said that was the case here. And neither have I seen any evidence of Mr L saying that he noticed the wave, which caused the damage, approaching him or that he was aware from previous waves the water was

slowly approaching, but decided to risk leaving his phone where it was. Given Mr L's testimony, I'm not persuaded this demonstrates he recognised a risk but took it anyway. So, I don't think AWP have shown that Mr L's phone was damaged because he didn't take reasonable care.

In these circumstances, I think AWP have unreasonably declined the claim. So I think the fair outcome is for AWP to reconsider the claim. As well as declining Mr L's claim unfairly, and as mentioned above, I think AWP also incorrectly informed Mr L that phone damage wasn't covered under the policy. I think this caused confusion as they'd previously explained a phone is classified as a high value item under the policy and is covered up to £250. I also think there was frustration caused to Mr L when AWP didn't respond to his email providing further clarity to the claim circumstances. Taking this all into account, I think AWP should pay Mr L £100 compensation for the confusion and frustration caused.

### **Putting things right**

I've taken the view that AWP have unfairly declined Mr L's claim. So, AWP should reconsider Mr L's claim further, in line with the remaining terms and conditions of the policy. It is of course open to them to make any other further enquiries they feel are necessary, but I don't think it's reasonable for them to use the reasons they have to justify their decision to decline the claim. AWP should also pay Mr L £100 compensation for the confusion and frustration caused.

### **My final decision**

My final decision is that I uphold the complaint. AWP P&C SA must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 November 2023.

Paviter Dhaddy  
**Ombudsman**