

The complaint

Mr F complains about Assurant General Insurance Limited's, trading as Assurant, settlement of his mobile phone insurance claim. My references to Assurant include its agents.

What happened

Mr F has mobile phone insurance through his bank account. The insurer is Assurant. In April 2023 Mr F called Assurant to make a claim for his damaged mobile phone as the back casing was cracked. Assurant accepted the claim and told Mr F to send it the phone for repair by its approved repairer.

Mr F was unhappy as he wanted to take his phone to the phone manufacturer's local shop for repair and claim back the costs from Assurant.

Mr F spoke to a representative in Assurant's complaints team who told him it was possible for Assurant to arrange a walk in repair with the phone manufacturer's shop but eligibility depended on the phone damage, parts required and customer location. Damage to the back of a phone wasn't eligible damage so Mr F needed to send the phone to Assurant for repair. The representative also said it was likely that the phone manufacturer would replace the phone, not repair it, and charge Mr F for a replacement phone.

Mr F took his damaged phone to the phone manufacturer's local shop and it charged Mr F £369 to do the repair. Assurant wouldn't refund the cost to Mr F.

Mr F complained to us. He said:

- Assurant should pay him the cost of the repair by the phone manufacturer because he wanted his phone repaired before his trip, which was four days later. And his main concern with his phone being sent to Assurant's approved repairer was that during a call Assurant told him there was no guarantee that the phone manufacturer's parts would be used in the repair. Also if the phone was classed as beyond economic repair Assurant couldn't guarantee that the replacement phone would be exactly the same.
- In one of Assurant's final response letters it said his phone had water damage, which was wrong. He then spoke to another Assurant representative who accepted he'd been told wrong information about the phone manufacturer probably replacing, not repairing, the phone but she only offered an apology.
- In another of Assurant's final response letters it upheld his complaint but wouldn't pay his claim or compensation for his inconvenience and upset due to the whole situation. He'd had the insurance policy for about 10 years and never used it so he shouldn't have to pay for the repair. He said he hadn't been taken seriously or received a genuine apology from Assurant.

Assurant said as its representative wrongly told Mr F the phone manufacturer wouldn't repair his phone it had upheld that part of his complaint. But it had correctly told Mr F that the

damage to his phone didn't meet its criteria for having the phone repaired by the phone manufacturer. And it had correctly told Mr F he needed to return the phone to it to repair, as set out in the policy terms.

Our investigator said Assurant had acted fairly in not paying Mr F the phone manufacturer's repair costs he'd paid.

Mr F disagreed and wanted an ombudsman's decision. In summary he added:

- He'd never received a copy of the policy from the bank or Assurant. So Assurant couldn't rely on a policy term that he'd never seen and he's never entered into an insurance agreement with Assurant on those policy terms.
- He sent us a work authorisation form (WAF) from the phone manufacturer which he said showed it could and did repair his phone, contrary to what he'd been told by Assurant.
- He didn't feel safe travelling abroad without a mobile phone. Assurant offered to repair the phone on his return home but he was concerned that the damage to the phone would get worse or the phone may stop working as a result of delaying the repair. So his decision to have the repair done by the phone manufacturer could be mitigation to avoid potentially inflated claim costs or the claim being invalidated.
- If he'd returned the phone to Assurant it would have had to pay to get the phone repaired though its repairers, so it should at least pay him that cost.

What I provisionally decided – and why

I explained why I was intending to partly uphold the complaint. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably.

I've considered all the points Mr F has made but in my findings I won't address all the points or answer all the questions he's asked. I'll focus on the reasons why I've made my decision and the key points which I think are relevant to the outcome of this complaint.

I'm intending to partly uphold the complaint. I think Assurant acted fairly in not paying Mr F the phone manufacturer's costs to repair his phone and not paying him compensation. But I think Assurant should pay Mr F the costs it would have paid to have the phone repaired by its approved repairer. I'll explain why.

The policy says:

'If your mobile phone is damaged or breaks down we will either:

1. repair the mobile phone (where possible) or

2. replace it with a mobile phone of the same make and model. If we cannot do this you will be given a choice of models with an equivalent specification'.

The policy gives details about how to return the phone to Assurant for repair. I'm satisfied that Assurant acted in line with the policy terms in telling Mr F that he needed to return the phone for repair.

Mr F says that as he didn't receive the policy document he didn't enter into a policy with Assurant on those terms. But if Mr F didn't enter into the insurance contract then there is no cover for his phone at all. Mr F did consider that his phone was covered by the policy as he called Assurant to make a claim for his damaged phone.

The policy requirement that a phone is returned to the insurer for repair, where possible, or replacement is a very common term in this type of policy. Even if Mr F didn't get the policy document I don't think he was disadvantaged as he was unlikely to get such a policy that said anything different on that matter. So I think Assurant fairly relied on the policy term to require Mr F to return the phone to it for repair.

I've also considered what's fair and reasonable in the circumstances. Assurant has told us it could agree a walk in repair with the phone manufacturer but only if certain eligibility was met. That's based on its agreement with the phone manufacturer that the phone manufacturer only repairs screen damage and only for certain phone models at the agreed costs.

As the damage to Mr F's phone was multiple cracks across the rear glass, which the phone manufacturer's WAF confirms, his phone didn't meet the eligibility for a walk in repair with the phone manufacturer. So I think it was fair and reasonable for Assurant to tell Mr F that his only option was to return the phone to Assurant to repair.

I note that in one of Assurant's final response letters it wrongly referred to Mr F's phone being water damaged. But I'm satisfied from the evidence I've seen that Assurant used the correct damage to decide whether Mr F's phone was eligible for a walk in repair with the phone manufacturer.

Assurant apologised as one of its representatives shouldn't have told Mr F that if he went to phone manufacturer for the repair it was likely he'd be given a replacement phone instead. Assurant upheld Mr F's complaint on that specific matter. But that doesn't affect that Assurant gave Mr F correct information that his phone damage wasn't eligible for a walk in repair by the phone manufacturer.

I understand why Mr F wanted to get his phone repaired before he went on his trip. But Assurant still acted within the policy terms and fairly and reasonably in telling Mr F he needed to return the phone to it for repair. I'm not persuaded by Mr F's suggestion that he potentially mitigated the situation by paying the phone manufacturer for the repair. Assurant gave no indication that if there was further damage to the phone while he was away that would invalidate the claim it had already accepted. And I don't make decisions based on what damage might have happened.

Mr F says he also didn't want Assurant to have his phone to repair because it told him the phone wouldn't be repaired with the phone manufacturer's original parts and if it had to replace the phone it couldn't guarantee a like for like replacement.

The policy says:

'Replacements

- 1. This is not 'new for old' insurance, and replacement device will come from fully refurbished stock (not brand new). Before we send any device to settle a claim, we carry out a comprehensive checking process to make sure they are in full working order. All devices will come with a 1-year warranty.*
- 2. We will attempt to replace your phone with one of the same colour but we can't guarantee to do this or replace any limited or special edition mobile phones'.*

And

'Repairs may be made using readily available parts, or we may provide refurbished products which may contain parts, which are of similar or equivalent specification, and which may include unbranded parts. This policy is provided in addition to any manufacturer's warranty that applies to your mobile phone ("applicable manufacturer's warranty"). Nothing in this policy is intended to affect your rights under the applicable manufacturer's warranty or your statutory rights...'

So Assurant gave Mr F correct information about what the policy covered. The above are very common terms in this type of policy.

Overall Assurant acted fairly and reasonably in telling Mr F he needed to return the phone to it for repair. It doesn't need to pay Mr F the cost he paid to phone manufacturer to have the phone repaired.

But Assurant did accept the claim and I agree with Mr F's point that Assurant would have had to pay its approved repairer for the repair if he had returned the phone.

I'm intending to decide that Assurant should pay Mr F the amount it would have paid to have the phone repaired if he had returned the phone to it for repair. In response to this provisional decision Assurant should tell me the amount it would have paid for the repair and give supporting evidence. Mr F will need to pay any applicable excess for the claim if he hasn't already done so. Assurant should add interest as I've detailed below.

I think Assurant acted fairly and reasonably in not paying Mr F compensation. He was stressed by the situation but Assurant acted reasonably in telling him that it wouldn't pay for the repair by the phone manufacturer and it gave an appropriate apology for the wrong information Mr F was told'.

Responses to my provisional decision

Assurant said its engineers gave the repair cost for Mr F's phone at £274.20 including VAT. We sent that information to Mr F as he'd asked.

Mr F said he wanted Assurant to waive his policy excess, or pay the same in compensation, before deciding whether he would agree. He also wanted to know the full amount payable inclusive of interest.

Assurant wouldn't agree to waive the excess fee for the claim. It said it was fulfilling the claim as if Mr F had sent it the phone for repair so the excess would be deducted. We informed Mr F who said he was surprised by Assurant's refusal given its poor service. And he was even more frustrated that its repair cost was only £94.80 less than what he paid for the repair when he had a lot of stress and inconvenience in complaining.

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 still intending to partly uphold the complaint. I accept the repair cost amount that Assurant gave me from its engineers without any further evidence as I'm satisfied that's a reasonable cost.

I think Assurant has fairly said it won't waive the excess. I accept what Mr F says about having to complain to get to this point but I think Assurant had reasonably and clearly told him from the start of his claim that he needed to send the phone to it for repair. And if Mr F had done so then the repair cost to Assurant would have been £274.20 and he would have paid the excess. Under the policy Assurant only needs to pay the costs of a repair it's instigated.

But I've explained in my provisional findings why in these circumstances it's fair and reasonable for Assurant to pay Mr F the amount it would have paid to have the phone repaired, plus interest. Assurant hasn't disagreed.

I still don't think I can fairly award Mr F compensation. In addition to the reasons I've given in my provisional findings, I wouldn't generally award compensation only because a consumer had the stress and inconvenience of complaining and there's no reason for me to do so in this case.

For the reasons I've given in my provisional findings and these findings Assurant must put things right as follows. It's for Assurant to calculate the exact sum that it will pay Mr F.

Putting things right

Assurant must pay Mr F the amount it would have paid to have the phone repaired if he had returned the phone to it for repair, £274.20, less the excess, plus interest as detailed below.

My final decision

I partly uphold this complaint.

I require Assurant General Insurance Limited to pay Mr F the £274.20 it would have paid for the repair of his phone if he had returned it to Assurant General Insurance Limited for repair, less any applicable unpaid excess. Interest* on the settlement amount should be added at 8% simple a year from the date of claim to the date of settlement.

*If Assurant General Insurance Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr F how much it's taken off. It should also give Mr F a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 October 2023.

Nicola Sisk

Ombudsman