

The complaint

Mr J is unhappy with the replacement device he's been given by Aviva Insurance Limited (Aviva) after making a claim under his mobile phone insurance policy.

Where I've referred to Aviva, this also includes any actions by agents acting on their behalf.

What happened

Mr J has mobile phone insurance, underwritten by Aviva, attached to his bank account. Mr J's phone developed a fault which caused it to keep crashing, so he contacted Aviva to make a claim and paid the relevant excess for repair.

An agent of Aviva inspected the phone and determined it was beyond repair, so Mr J paid the additional excess amount for a replacement device. On receipt of the replacement device, Mr J complained to Aviva about the condition of the battery as the maximum capacity was 87%.

Aviva said that it had provided a refurbished device, rather than new, which was in line with the policy terms. And they said the battery met the quality standards of the manufacturer. Mr J didn't agree and raised a complaint. He also complained about Aviva's handling of a telephone call he had with them.

Aviva apologised for the telephone call and paid £25 compensation. However, they maintained the replacement device they provided met the policy terms.

As Mr J remained unhappy, he approached this service.

One of our investigators looked into things but he didn't uphold the complaint. He said that the policy terms didn't require a specific percentage battery capacity on a replacement device, and he thought it met the manufacturer standards. Therefore, he said Aviva had settled Mr J's claim in line with the policy terms, so he didn't recommend they do anything further.

Mr J didn't agree and asked for a final decision from an ombudsman.

I reached a different outcome to our investigator. So, I issued a provisional decision, to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“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 reached a different outcome to our investigator. So, I’m issuing a provisional decision, to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Firstly, I understand Mr J was unhappy with how a call was handled by Aviva, and he accepted their offer of £25 compensation for this. As this point no longer appears in dispute, I won’t comment on it any further. Instead, I’ll focus on the claim settlement which remains in dispute.

Mr J complains that the replacement device he has received isn’t fit for purpose and he says his claim hasn’t been settled in line with the terms of his policy. This is because, whilst cosmetically in excellent condition, the battery on the replacement device showed a maximum capacity of 87%. He also had the battery checked by the manufacturer, who confirmed the battery had already been charged 495 times.

Our investigator said that the terms and conditions of the policy don’t stipulate what battery capacity percentage a replacement device would come with. He also said the manufacturer says that the phone will operate at peak performance, and the battery would only be changed, if it dropped below 80%.

I agree that the policy terms don’t outline a minimum battery capacity percentage. But having looked at the manufacturer website, I don’t agree that this demonstrates the phone will work at peak performance until 80% battery capacity, or the manufacturer won’t replace the battery before then. Instead, the website says:

“A normal battery is designed to retain up to 80% of its original capacity at 500 complete charging cycles when operating under normal conditions.”

So, this says what the battery is designed to hold up to 500 charges, rather than saying the device will operate at peak performance until it is below then. And the manufacturer also says they will replace the battery at less than 80% at no additional cost under their extended (paid for) warranty, rather than it’s not necessary before then. It also says they will change a ‘defective’ battery in the first year of standard manufacturer warranty but doesn’t detail specifically what they consider a ‘defective battery’. The fact that it says what percentage the battery is designed to hold at 500 charges, leads me to think that it is at this point it should be replaced, rather than solely based on a percentage alone. And Mr J’s replacement device was within five charges of that already.

Aviva says they have settled the claim in line with the terms of the policy which say they will provide a refurbished phone. And they say that it is in Grade A condition, with a battery above 85%, so meets their requirements as a suitable replacement. They also said that the replacement device comes with a 12-month warranty so if there were any further issues, they could consider things further at that stage.

The policy terms do say:

“Our replacement phones are refurbished models which come with a warranty.”

Whilst they don’t refer to providing a ‘Grade A’ replacement specifically, if the terms only referred to providing a refurbished device as above, then I may have been persuaded Aviva had done this, even with the battery at 87% on delivery. However, as argued by Mr J, his policy terms also say:

“All refurbished stock will be in an ‘as new’ condition.”

So, whilst the phone provided is refurbished as outlined in the terms, the terms also say it will be in an ‘as new’ condition. Cosmetically, from my understanding, the phone is in an ‘as new’ condition with no reported issues, so I think that meets the policy requirement cosmetically.

However, I don’t think a battery which has been charged 495 times, with a maximum capacity of 87% would be considered ‘as new’. Given the amount of charge cycles is 495, this would likely mean the battery age is at least 18 months old, allowing for approximately one charge per day. And I don’t consider that to be ‘as new’.

Mr J has also said that since receiving the device, the battery capacity percentage has dropped to around 83% in the two months since receiving it, further demonstrating the battery is in a considerably deteriorated condition, rather than ‘as new’, which the policy terms require. So, with this in mind, unless anything changes as a result of the responses to my provisional decision, I’m not minded to conclude that Aviva’s replacement device fulfils the requirements under Mr J’s policy terms, therefore I think Aviva needs to do more to put things right.

Mr J has asked for a cash settlement to be able to buy a new device from a high street retailer, he says the price the high street retailer sells it for is the current ‘market price’. However, I don’t think it would be fair or reasonable to direct Aviva to pay this. I say this because firstly, the original device wasn’t brand new, and the policy doesn’t provide for a brand-new device either. And the market price for a new device would be different to the market price of a second-hand device. So, settling the claim in this way would be above and beyond the cover the policy provides.

The terms also say that a cash settlement (or voucher) would only be provided where a suitable replacement can’t be provided. But at this stage, I don’t think it has been shown that’s the case. So, I’m not minded to direct Aviva to pay a cash (or voucher) equivalent of market value at this stage.

Instead, unless anything changes as a result of the responses to my provisional decision, in the first instance I’ll be directing Aviva to provide a replacement device in line with the policy terms and conditions. That is, a refurbished device, in an ‘as new’ condition. But that doesn’t mean the battery capacity would need to be 100%, I say this because the manufacturer website says:

“Depending upon the length of time between when the (brand name) was made and when it is activated, your battery capacity may show as slightly less than 100%.”

So, it does seem like a device which was new, or in line with the terms 'as new', could have a battery maximum capacity of less than 100%. But I'd expect at least 95% to be the equivalent of an 'as new' condition battery on a replacement device under the terms. But if Aviva is unable to fulfil the terms of the policy with a replacement, it would then need to consider the remainder of the policy terms for how claims are settled, which includes cash or voucher.

Therefore, unless anything changes as a result of the responses to my provisional decision, I'll be directing Aviva to settle Mr J's claim in line with the terms of the policy, taking into account what I've said above about the battery.

In addition to this, I'm also intending to direct Aviva to pay Mr J a further £50 compensation for the inconvenience caused by providing a device which doesn't meet the terms of his policy."

So, I was minded to uphold the complaint and to direct Aviva to settle Mr J's claim in line with the terms of the policy and pay Mr J £50 compensation.

Developments since my provisional decision was issued

Since I issued my provisional decision, Aviva let this service know that it had been in direct contact with Mr J. They said the complaint and device claim had now been resolved.

Aviva said they'd initially offered to replace the device, but Mr J was unhappy with what was being offered. So, Aviva had offered £469, which was the equivalent amount of a refurbished device from the manufacturer's website, along with £50 compensation. And they said Mr J was happy with this.

Following this update from Aviva, I spoke to Mr J. He confirmed that he had now received the settlement outlined above from Aviva, he was satisfied with this and that this had resolved things.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As the complaint has now been resolved by Aviva settling things to Mr J's satisfaction (which was broadly in line with my provisional decision), I have no reason to revisit things or to direct Aviva to do anything different to put things right.

My final decision

It's my final decision that I uphold this complaint against Aviva Insurance Limited.

Since issuing my provisional decision, Aviva has already settled the complaint by paying £469 in settlement of the claim and £50 compensation which Mr J is satisfied with. And I think this is fair in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 21 February 2024.

Callum Milne
Ombudsman