

The complaint

Mr A is unhappy Bastion Insurance Company Limited turned down a claim he made on his mobile phone insurance policy.

What happened

In June 2023 Mr A lost his mobile phone while abroad; he says he left the device on the table in a café and when he returned it wasn't there and the manager said it hadn't been handed in. So he claimed on his policy. Bastion initially accepted the claim and offered a cash settlement. Mr A disputed the valuation and provided evidence in support of his position.

Having reviewed matters Bastion advised the following month it wouldn't be paying the claim at all because it said the policy excluded claims where the gadget had been left unattended which it thought was the case here. It said it would refund the excess Mr A had paid.

Our investigator thought Mr A had left his phone unattended as defined in the policy. And he thought that exclusion had been fairly applied in this case. But he didn't think Bastion had evidenced the excess had been refunded to Mr A. So he said that should be done and Bastion should pay interest at 8% simple on that amount from 28 July 2023 (when payment should have been made) until the date it actually was.

Bastion agreed with his outcome. Mr A didn't agree. He continued to dispute the basis on which Bastion had arrived at its valuation of his phone. He queried why Bastion had initially accepted the claim and then decided to reject it. He thought Bastion had only decided to do so once it realised a higher settlement would need to be paid. And he thought the wording of the policy meant to claim for accidental loss a gadget must still be within the policyholder's possession. He queried how a claim could ever succeed if that was the case.

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.

The relevant rules and industry guidelines say Bastion has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've looked first at the terms and conditions of Mr A's policy. This does provide cover for accidental loss. But it doesn't cover *"any Loss or Theft where the Gadget has been left Unattended when it is away from Your home or where all available precautions have not been taken to prevent Theft"*. And the policy defines 'Unattended' as *"not within your pocket, sight and Your arms-length reach"*.

It's also a condition of cover that *"you must keep Your Gadget within Your possession being on or about Your person, control and proximity at all times, whilst away from Your Home. You must take reasonable Precautions to protect Your Gadget at all times"*. And the policy defines 'Precautions' as *"all measures that it would be reasonable to expect a person to take in the circumstances to prevent Accidental Loss, Accidental Damage or Theft of Your Gadget"*

In this case I don't think it's in dispute Mr A did leave his phone unattended as defined in the policy. His recollection is that he left it on a table in a cafe. As a result I think Bastion has done enough to show, on balance, the exclusion would apply. I also think Mr A is likely in breach of the policy condition relation to keeping the gadget within his control and proximity. So I think the onus would therefore be on him to evidence why that exclusion or condition didn't apply.

Mr A hasn't provided anything further in relation to that. He hasn't given any more information about the circumstances of the loss or shown that while the device was unattended he nevertheless took reasonable precautions to protect it (for example by ensuring that a trusted person had custody of it). Given that I don't think Bastion acted unfairly in turning down the claim he made.

Mr A has also questioned in what circumstances an accidental loss claim could be covered given the exclusion in relation to leaving a phone unattended. I note our investigator has already provided an example of when that might be the case. And in any complaint made to us we'd always consider whether an insurer had acted fairly in applying the terms taking into account the particular circumstances. In this case I've explained why I think Bastion has. As a result I don't need to consider the further points he's made about how his phone was valued as these aren't relevant to the outcome I'm reaching.

I recognise Mr A is also unhappy Bastion initially accepted the claim and then subsequently turned it down. From the evidence I've seen that was because on a further review of the claim, following the additional evidence he provided, it found the exclusion it then quoted would apply to the claim. I think it was entitled to review matters but given the information Mr A provided hadn't changed I think it likely this issue could have been identified at the outset. I accept it will have been frustrating for Mr A that didn't happen but looking at the timeframes involved here I don't think the impact on him is something that would warrant a compensation payment.

However, it does appear Bastion hasn't been able to evidence payment of the policy excess to Mr A (and he's provided information which suggests he hasn't received it). So I agree with our investigator that Bastion will need to make that payment to him and will need to pay interest at 8% simple on that amount from the date the payment should have been made (28 July 2023) until the date it actually is

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

My final decision

I've decided to uphold this complaint (as it relates to payment of the policy excess) and direct Bastion Insurance Company Limited to pay that as set out in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 March 2024.

James Park
Ombudsman