

The complaint

Ms P has complained that Astrenska Insurance Limited ('Astrenska') unfairly declined her claim for loss of her phone under her mobile phone insurance policy.

What happened

Ms P purchased a mobile phone and took out the policy which she'd taken out with Astrenska in April 2023. Ms P said she lost her mobile phone in July 2023 and submitted her initial claim shortly afterwards. She said Astrenska had then asked for information regarding usage, and she said it said it took her network provider some time to provide this. She re-engaged with Astrenska regarding the claim in August 2023.

Astrenska considered that it had correctly applied a policy exclusion and maintained its decision to decline Ms P's claim. Ms P was unhappy about Astrenska's decision and referred her complaint to this service.

The relevant investigator didn't uphold Ms P's complaint. Whilst he originally found that Astrenska had declined Ms P's claim unfairly, he noted that under certain policy exclusions, there had been no satisfactory explanation for a change of status in one of the phone's functions following the incident. In the circumstances, he made no further recommendations. Ms P remains unhappy with the outcome of her complaint. The matter was therefore referred to me to make a final decision in my role as Ombudsman. I issued a provisional decision in early February 2024 and explained why I was minded to uphold Ms P's complaint as follows:-

'The key issue for me to determine is whether Astrenska applied the terms and conditions of its policy in a fair and reasonable manner in declining Ms P's claim. On a provisional basis, I consider that Astrenska didn't act in an entirely fair and reasonable manner, and I'll explain how I've reached this provisional conclusion.'

In reaching this provisional decision, I've also considered the parties' submissions as summarised below. Turning firstly to Ms P's submissions, she had concerns about the way in which Astrenska declined her claim. She said she'd lost the phone and had no chance of recovering it. She felt she'd lost over £1,000 which was the cost of the phone, even though she had an insurance policy to cover the loss. Ms P felt that she'd provided Astrenska with details of location, approximate window of time of the incident and the date.

Ms P didn't think it was fair that Astrenska declined her claim stating that she'd disabled her 'find my app' on her phone. She didn't recall having done so and wasn't informed of a requirement not to do so to make a valid claim. She thought Astrenska had relied on the vague and misleading phrase about using 'reasonable precautions.' She said Astrenska had asked her to sign in into her cloud account in August 2023 to activate 'lost mode'. She did so and received an email which indicated she'd done so successfully. She immediately received a message stating the location of her phone overseas. Three minutes later, she received notification that the feature had been disabled. She said she passed this to Astrenska at the time.

As to evidence of usage, she said the reason for a gap in information was that she'd changed network providers but was able to provide evidence of usage during her ownership and until the phone went missing. As to Astrenska's comment that the security feature could only be disabled using Ms P's e-mail and password, she'd researched the matter and found that a phone could be unlocked with reasonable ease. Ms P said she'd also repeatedly called her network provider, asking them to block her phone however nothing was done until mid-August. She said that her personal information had been exposed to a stranger and 'this is scary.'

In conclusion, Ms P she said she'd complied with all the requirements known to her at the time, and she'd been co-operating and giving information to the best of her knowledge. Other matters were outside of her control. She said she understood the importance of security features and their role but felt that Astrenska had acted in an unfair manner. She was unhappy that she'd bought cover to provide security and peace of mind, but Astrenska hadn't fulfilled its part of the agreement. She'd paid for and adhered to the policy to the best of her knowledge.

I now turn to Astrenska's response to Ms P's complaint. It referred to the relevant terms and conditions of the policy. It also said that it was a member of a particular fraud forum to validate all phone losses against monitoring systems and various claims validation platforms. It said that the policy didn't cover circumstances where all reasonable precautions hadn't been taken, and this included ensuring that the 'find my phone app' was activated. It also didn't cover any claim where the circumstances of loss couldn't be clearly identified.

Astrenska considered the relevant app to be a standard security measure. Astrenska initially said that it thought the function had never been activated. It then stated that Ms P's device was removed from the 'find my phone app' before the loss event, when it had previously been active. As to Ms P's evidence that the function was still active towards the end of August 2023, Astrenska wasn't satisfied that this related to the lost device. It also said that the only way the feature could have been deactivated would have been by using the password which only Ms P should know to log into the 'cloud'. In conclusion, it said that the circumstances of its removal weren't clear and said that Ms P hadn't informed it at the relevant time that the device had been located overseas. It added that there was no supporting evidence to confirm the date the device went missing.

The starting point for complaints of this nature will be the specific wording of the relevant policy which forms the basis of the contractual agreement between the parties. I note that the policy provides cover in principle in the event of loss or theft of a device. Under the heading: 'What is not covered', it includes firstly 'any claim where all reasonable precautions have not been taken or where your gadget(s) has not been used in accordance with the manufacturers instructions' and secondly 'any claim where the circumstances cannot be clearly identified i.e. where you are unable to confirm the date and time of the occurrence.'

I note that 'reasonable precautions' is defined as follows in the policy booklet; 'shall mean all measures that would be deemed appropriate to expect a person to take in the circumstances to prevent loss, accidental damage or theft of your gadget(s), for example: having your gadget(s) in a suitable case, ensuring all standard security measures including PIN and Passwords are utilised and are set to a number other than default or sequential/multiple characters; having your gadget(s) with you whilst playing sport or near open water.'

Whilst the definition doesn't specifically refer to the 'find my phone app', this is a standard security feature for the type of phone owned by Ms P, and I consider it reasonable to expect a customer to ensure that it is activated to assist recovery. It is an appropriate measure to prevent loss. However, the evidence from Astrenska has been confused and contradictory as to whether and indeed when Ms P was alleged to have disabled this function.

Ms P's evidence has also been somewhat confused and initially said that she didn't know whether she'd disabled it and referred to a health issue to explain this. However, on the balance of probabilities, and from the available evidence, I consider that the function remained active until August 2023 when Ms P followed Astrenska's instructions to sign in into her cloud account to activate 'lost mode'. This was well after the initial notification of claim, which I'm persuaded on the balance of probabilities, occurred soon after the loss incident in July 2023.

As to the function being disabled shortly after Ms P's activation of 'lost mode', I'm persuaded that on balance, this related to Ms P's lost device. I note Ms P's evidence that there may be ways of disabling the 'find my phone' feature by persons other than herself and other than through her account and password. However, as this occurred swiftly after Ms P's activation of 'lost mode' and the notification of the overseas location, I consider that the most likely explanation for this event, was that Ms P disabled the 'find my phone app' herself, probably by accident or mistake. I have no reason to doubt Ms P's comments that she sent the information about the phone being disabled to Astrenska at the time. There is however a legitimate question as to why details of the phone's location weren't pursued by the parties until towards the end of August 2023. This question isn't however relevant to this decision.

In summary, I provisionally conclude that Astrenska acted unfairly and unreasonably in declining Ms P's claim on the basis that a security function had been removed before the loss event in July 2023. This wasn't the case, and the function remained active throughout July and early August 2023. It follows that I don't consider that it was fair or reasonable for Astrenska to have declined Ms P's claim under the exclusion 'any claim where all reasonable precautions have not been taken'. I consider that the reasonable precaution of an active 'find my phone app' was in place prior to the loss and for a significant period following this when Astrenska had been made aware of the loss.

I note that Astrenska's final response letter briefly refers to the second exclusion being, 'any claim where the circumstances cannot be clearly identified i.e. where you are unable to confirm the date and time of the occurrence.' I consider that this exclusion relates to the circumstances of the loss itself. If this amounted to a second reason for decline of Ms P's claim, then this wasn't clearly articulated, and insufficient evidence has been provided to support Astrenska's position. I consider it likely that Astrenska was informed of the date and broad circumstances of loss and that it had access to details of phone use on that date. No evidence has been supplied however as to its thorough consideration of these matters. It's also unclear whether it sought further details of reports of loss made by Ms P on the relevant date to the Police and/or relevant authorities.

In all the circumstances, I provisionally conclude that Astrenka unfairly and unreasonably declined Ms P's claim under the policy exclusion 'any claim where all reasonable precautions have not been taken.' I'm therefore minded to require Astrenska to fully and properly re-consider Ms P's claim against the remaining terms and conditions. I'm also minded to require it to settle the claim as appropriate and re-instate the policy, unless any other policy exclusion or provision is fairly and reasonably applied to decline the claim.'

In my provisional decision, I asked both Astrenska and Ms P if they had any further comments or evidence they would like me to consider before I made a 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.

Astrenska confirmed that it would go ahead to re-consider the claim and it therefore agreed the provisional decision. Ms P also agreed with the decision and said that if needed, she could supply all the evidence to show that she had let Astrenska know about everything, including screen-shoots and e-mails. Ms P explained that Astrenska didn't ask her to file a police report because she considered it to be a loss at the time. However Astrenska had asked her to report the loss to a particular organisation, and she did so accordingly.

Subject to the points noted and accepted as above, in all the circumstances, I've concluded that the provisional decision provides a fair and reasonable outcome to the matter and I uphold Ms P's complaint as follows.

My final decision

For the reasons given above, I uphold Ms P's complaint and require Astrenska Insurance Limited to do the following:

- to re-consider Ms P's claim fully and properly, against the remaining terms and conditions of the policy.
- to settle the claim as appropriate and re-instate the policy unless any other policy exclusion or provision is fairly and reasonably applied to decline the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 21 March 2024.

Claire Jones
Ombudsman