

## **The complaint**

Ms E is unhappy that Assurant General Insurance Limited (AGI) returned her phone with a chipped screen after she made a fault claim under her gadget insurance.

## **What happened**

The background to this complaint is well-known to both parties. So I've set out a summary of what I think are the key events.

AGI carried out a repair to Ms E's mobile phone after she claimed under her policy for a fault. When AGI returned the phone to her, Ms E noticed a chip on the screen that hadn't been there when she sent it for repair.

Ms E contacted AGI about the chipped screen. AGI checked the photos it took of the phone when Ms E first sent it and compared them with the photo of the phone just before it was sent back. AGI agreed there was evidence of a chip which appeared to have been caused while it had the phone.

To put matters right, AGI offered:

- a doorstep exchange, meaning it would replace the phone at the same time as collecting the damaged one, or
- for Ms E to send her phone back to it for repair.

Ms E declined both options because AGI couldn't guarantee a same-colour replacement or return of her original phone. AGI said the options were in line with its terms and conditions, which stated it couldn't guarantee same-colour replacements. But Ms E was unhappy with the offers and complained that she shouldn't be held to the terms of the policy when AGI had caused the damage.

AGI issued a final response repeating its offers, along with an offer of £25 compensation if Ms E preferred to keep the phone as it was with the chipped screen. But Ms E remained unhappy, so she brought her complaint to us.

One of our investigators looked into the complaint and thought it was one we should uphold. She said AGI had accepted liability for the damage when Ms E's phone was in its possession, so it was unreasonable to handle the matter as if it were a claim under the terms of the policy. Our investigator said AGI should put Ms E back in the position she'd been in before her phone was damaged while in its possession. To do that, our investigator thought the most reasonable option was for AGI to repair the phone or allow Ms E to arrange the repair and reimburse her costs. Further to this, our investigator didn't think £25 compensation fairly represented the distress and inconvenience caused, so she recommended increasing the compensation to £100.

Ms E accepted and she asked for AGI to reimburse the cost of the manufacturer's doorstep repair service.

AGI didn't agree. It said when Ms E sent her phone in to begin with, she did so accepting the risk that AGI might not be able to replace it with a phone of the same colour. Therefore, AGI considered its repair offers reasonable in the circumstances.

I issued a provisional decision in May 2024 explaining that I was intending to uphold Ms E's complaint. Here's what I said:

### ***provisional findings***

*The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. The regulator's principles say that firms must act in the best interests of their customers and treat them fairly. My role is to decide whether AGI treated Ms E fairly in the circumstances.*

*The policy sets out the detail of the contract between Ms E and AGI, and it's the terms and conditions of the policy that AGI relied upon to explain why it couldn't guarantee the colour of a replacement phone.*

*I agree that the policy terms don't guarantee a same colour replacement when repairing the phone as part of a claim. But I haven't seen anything in the policy to say how AGI should handle repairs in circumstances where it is responsible for the damage. AGI should be repairing damage it caused, so I don't think it was reasonable to rely on the terms and conditions as if it were a claim. That said, I wouldn't expect Ms E to get back anything more than she lost. So, I wouldn't expect AGI to replace on a new for old basis.*

*AGI hasn't disputed its responsibility for the chipped screen. The disagreement is about how AGI should put matters right. AGI offered to replace the phone or repair it, and, on the face of it, I think they're fair offers. Putting colour to one side, I don't think Ms E necessarily disagrees.*

*So, to me, the complaint appears to be about the colour of the phone, rather than AGI's offers. Ms E declined AGI's offers because it couldn't guarantee the colour. I must stress that AGI said it couldn't guarantee a replacement of the same colour, and it might've been able to repair the screen with no need to replace the phone. That would've limited Ms E's inconvenience to additional time without her phone.*

*While I can understand Ms E would've been disappointed if AGI needed to replace her phone with another colour, I can't fairly say it would've caused inconvenience. If Ms E had accepted AGI's offer to repair or replace, she would've had a working phone. I think that would've been a reasonable outcome in respect of AGI correcting its mistake.*

*The colour, then, is a matter of enjoyment. If AGI couldn't replace the phone with one of the same colour, then Ms E would've lost enjoyment of the appearance of her phone through its mistake. But there's nothing to suggest the phone would lack equivalent functionality.*

*AGI offered Ms E £25 compensation if she wanted to simply keep her phone with the chipped screen. That wasn't something she was willing to accept, and I think that's understandable given her comments regarding the phone's integrity. Our investigator thought a total of £100 compensation was fairer for the distress and inconvenience caused. I can't disregard the fact that Ms E didn't give AGI the chance to correct its mistake because of the matter regarding the colour. But, if AGI hadn't damaged the screen, Ms E would not have suffered the inconvenience in the first place of returning the phone for repair or arranging a repair herself.*

*In light of this, I think it's reasonable for AGI to pay an additional £75 compensation to Ms E.*

*Our investigator proposed that AGI pays Ms E's cost of repair should she choose to make those arrangements. I think that's a fair option, providing the cost is reasonable and comparable with what it would cost AGI to complete the repair itself, and the cost is agreed before the work is completed. Ms E has said she can arrange a repair for around £250 using the manufacturer's service.*

*AGI offered to repair or replace Ms E's phone, so those options are already available to her. To put matters right, I think AGI should also pay compensation for causing the damage and, if Ms E chooses to arrange the repair herself, reimburse any reasonable costs, comparable with its own repair costs.*

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

## **Responses**

Ms E responded to say she had nothing further to add, although she again expressed her preference to have the screen repaired using the manufacturer's doorstep service.

AGI didn't provide any further comment.

## **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.

In the absence of further comment from AGI, and in light of Ms E's confirmation of her repair preference, I've looked at the evidence again. Having done so, I've decided to uphold Ms E's complaint for the same reasons I gave in my provisional decision. That said, I'll clarify what I'd expect from AGI at this point and why.

AGI offered to repair or replace Ms E's phone. It hasn't withdrawn those offers, so I'm satisfied that they're still available to Ms E. Should she decide to accept one of those offers, it would be on the understanding that AGI might not be able to repair the screen or replace the phone with one of the same colour.

AGI should pay a total of £100 compensation by way of apology for damaging Ms E's phone screen while in its possession, and for the subsequent inconvenience caused. That's an additional £75 to that already offered.

Understandably, Ms E wants the option to arrange the repair herself, and she said she wants the manufacturer to repair her phone using its doorstep service. Given that AGI damaged the phone, I think it's reasonable that Ms E should decide how AGI puts matters right. But I don't think it's fair to expect AGI to pay significantly more than it would to repair or replace using its own suppliers if Ms E chooses the manufacturer's service. Therefore, I'm satisfied that the option set out in my provisional decision remains fair and reasonable in the circumstances.

Ms E said the manufacturer's doorstep service costs £250. It's a matter for AGI to discuss the reasonable repair cost directly with Ms E should she choose that option.

## **My final decision**

For the reasons I've explained above, and in my provisional decision, my final decision is that I uphold Ms E's complaint. In addition to the offers it already made to repair or replace

the phone, Accredited General Insurance Limited must:

- reimburse Ms E's reasonable repair costs should she choose to make the arrangements herself rather than accepting its repair or replacement offer, and
- pay a further £75 compensation to Ms E for damaging her phone while in its care.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 10 July 2024.

Debra Vaughan  
**Ombudsman**