

## **The complaint**

Ms M complains about Aviva Insurance Limited's settlement of her mobile phone insurance claim and about its customer service. My references to Aviva include its agents.

## **What happened**

Ms M has mobile phone insurance through a bank account. Aviva is the insurer.

On 22 December 2022 Ms M made a claim on her mobile phone insurance policy about her stolen phone. Aviva accepted the claim and sent Ms M a replacement phone the following day which came with a 12 month warranty.

Ms M says the phone's manufacturer told her, through the phone's settings feature, that her replacement phone had a non-genuine manufacturer part (which I'll call an unbranded part) and to book a diagnostic test. She booked a test appointment for 16 February 2024 at the phone's manufacturer's store. Ms M said the engineer from the phone manufacturer provided a report saying the camera was defective and she should get a replacement from the insurer.

On 19 February 2024 Ms M contacted Aviva to complain that her replacement phone had unbranded parts. She wanted another replacement phone. Aviva told Ms M the 12 months warranty had ended. Ms M complained that she hadn't been told about unbranded parts being used at the time of her claim. She was also unhappy about Aviva providing her with an incorrect email address and about the conduct of Aviva's claim handler she spoke with on 19 February.

Aviva said it used 'high-quality compatible parts' for all replacement phones and it gave a 12 month warranty. Its claim handlers didn't need to tell Ms M that unbranded parts are used in replacement phones as that's part of Aviva's refurbishment process. It said it did give Ms M the correct email address. But Aviva accepted that its claims handler didn't handle the call well and gave Ms M incorrect expectations that her email was received and she would be contacted, whereas her email hadn't been received at the time. Aviva offered Ms M £50 compensation for her inconvenience its service caused.

Ms M declined Aviva's offer and complained to us. She emphasised that the phone manufacturer's report said her phone was faulty and had to be replaced.

Our Investigator said Aviva had acted reasonably in processing Ms M's claim in line with the terms and conditions of her policy and in trying to resolve her complaint about its service with the £50 compensation offer it had already made.

Ms M said Aviva shouldn't have sent her a faulty phone whatever it said in the policy terms. She gave our Investigator more information about the faults. Ms M said the fault with the camera meant photos taken are stored on the hard drive but couldn't be uploaded to social media accounts. That issue arose after the notification from the phone's manufacturer. She said the phone's 'Face ID' worked only 50% of the time and had been an issue from the day she received the replacement phone.

Our Investigator said Aviva wasn't responsible for the camera fault on the phone as that arose after the 12 month warranty had ended. And as Ms M hadn't told Aviva about the fault with the 'Face ID' within the 12 month warranty period Aviva has no responsibility to fix that issue.

Ms M wants an Ombudsman's decision on her complaint. She said Aviva shouldn't have sent her a faulty replacement phone.

Later Aviva told us that it had got Ms M's replacement phone directly from the phone's manufacturer, so it wouldn't have contained any unbranded parts. Aviva also sent us the 12 month warranty information which was sent to Ms M with the replacement phone.

### **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.

I need to decide whether Aviva acted fairly and reasonably, and I think it did. I'll explain why.

Aviva now says it got the replacement phone it gave Ms M to settle her claim directly from the phone's manufacturer. Ms M says she was notified by the phone's manufacturer, through the phone's settings feature, that her replacement phone had an unbranded part, which was the camera.

The report that the phone's manufacturer provided when Ms M went to have the problem with the phone diagnosed said:

*'Issue: Customer reports that they have an alert on their device regarding camera and the flashlight does not work...*

*Steps to Reproduce:  
Verified issue.*

*MRI : camera failed...*

*Proposed Resolution: Informed customer about the camera issue the camera is defective and under UK consumer law warranty customer is eligible for replacement of the product with reseller or insurance provider, information was acknowledged'.*

The phone's manufacturer's report says there's a fault with the phone's camera. But it doesn't say that unbranded parts have been used in the replacement phone.

I don't think it makes a difference to my decision whether or not the replacement phone Aviva gave Ms M to settle her claim had unbranded parts.

The policy is clear that the replacement phones Aviva provides to settle a claim are refurbished models in 'as new' condition but the replacement phones are not brand new. The policy is also clear that although Aviva will try to provide the same make or model of phone, it's possible that alternatives of at least equivalent technical specification, but possibly different make or model, may be provided.

The policy says:

*'Our replacement phones are refurbished models which come with a warranty. The warranty will match either the period of time you had left on your original phone's manufacturer's warranty or 12 months, whichever is greater'.*

Whether or not Ms M's replacement phone had unbranded parts the phone came with a 12 month warranty.

So the key issue is whether Aviva is responsible for the fault with Ms M's phone's camera and/or the 'Face ID' not working properly.

Ms M says the fault with the camera happened after the notification from the phone's manufacturer that the phone had an unbranded part. From what Ms M has said that happened in February 2024. As the 12 month warranty was from 23 December 2022 to 23 December 2023 the camera fault started about two months after the warranty ended. So, whether or not the replacement phone did have unbranded parts, Aviva isn't responsible for the fault with the camera.

Ms M says there's been a problem with the 'Face ID' from the day she received the replacement phone, 23 December 2022. If Ms M had told Aviva about the problem within the 12 month warranty period Aviva may have been able to help Ms M with that issue under the warranty. But I've seen no evidence that Ms M told Aviva about the 'Face ID' problem within the 12 month warranty. There's no other evidence to support that the problem did happen within the 12 month warranty period. So I can't fairly say Aviva is responsible for fixing the problem with the 'Face ID'.

The phone manufacturer's report says that under '*UK consumer law warranty customer is eligible for replacement of the product with reseller or insurance provider*'. But the relevant law doesn't say that a replacement has to be given by an insurer no matter when a fault with the product happens. Aviva gave Ms M clear information that the warranty for the replacement phone was for 12 months. I've explained why I don't think Aviva has to provide a replacement phone under the warranty. Overall there's no basis for me to say that Aviva should fairly and reasonably repair or replace the replacement phone it supplied to Ms M to settle her claim.

As to customer service, Aviva accepts its claims handler didn't handle the 19 February 2024 call with Ms M in the manner it would expect and set incorrect expectations around receiving her email. I wouldn't have awarded any more than the £50 compensation that Aviva has already offered Ms M for her distress and inconvenience about its customer service.

Aviva hasn't said it's withdrawn its £50 compensation offer for Ms M's distress and inconvenience. So if Ms M now wishes to accept that offer she should contact Aviva direct.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 26 September 2024.

Nicola Sisk  
**Ombudsman**