

## **The complaint**

Mr A has complained about the rejection of a claim made for a stolen phone under his mobile phone insurance with Assurant General Insurance Limited.

Assurant is the underwriter of this policy, i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Assurant has accepted it is accountable for the actions of the agent, in my decision, any reference to Assurant includes the actions of the agents.

## **What happened**

In April 2024, Mr A contacted Assurant to make a claim under his policy for a stolen mobile phone. He says the phone was in the car glovebox when his car was hit while parked on 28 March 2024. The car was badly damaged and was taken to a storage facility. When he retrieved the car on 21 April 2024, Mr A says he realised the phone was missing. He thinks it may have been taken just after the accident or from the storage facility. Mr A says he asked to view the camera footage from the storage facility and no one was seen taking the phone.

Mr A told Assurant the phone was brand new and still in the unopened box and had not therefore been used, and had no SIM card in it, when it was stolen. Mr A said he had got the phone under a new contract in January/February 2024 planning to give it to his son as a surprise gift the evening of the car crash.

Assurant considered the matter but said it had evidence that the phone had been activated in February 2024. Assurant says the phone is shown as having been linked to a cloud account and being used with a SIM on the same network Mr A had the contract with. Assurant therefore said the phone could not have been sealed in the box as Mr A had said and that, as Mr A has given misleading and false information, it would not proceed with the claim.

Mr A was very unhappy with this and said he did not understand the questions asked of him over the phone by Assurant's representative. He says there was a language barrier during the conversations with its representatives and he got the words "seal" and "ceiling" mixed up. He says his young daughter and wife had opened the phone and turned it on but had then turned it straight off again and it had not been used or activated.

Mr A brought his complaint to us.

One of our Investigators looked into the matter. He agreed that Mr A had provided contradictory information about the phone but couldn't say if this was a deliberate attempt to mislead Assurant. The Investigator said it was possible there was a language barrier but accepted that Mr A had been asked several times if the phone had been used and sealed.

However, the Investigator recommended the policy be upheld as he did not think the false information Mr A had given (about whether the phone had been activated) was material to the circumstances of the loss. He said in line with the leading case law on fraud, if the phone was still stolen, so there is a valid claim under the policy, it doesn't make a difference if Mr A said the phone had not been used when it had been used.

The Investigator therefore recommended that Assurant proceed to consider the claim further, subject to the remaining terms of the policy, and to pay Mr A £100 compensation.

Assurant did not accept the Investigator's assessment. It told us it has again checked the IMEI number of the device and it is still currently showing that the location finder is activated, which means it is linked to a personal account and in use; and that the device has never been blacklisted or barred. Assurant says it therefore believes that Mr A, or someone close to him, is still in possession of the phone.

Assurant says Mr A never raised any difficulty in understanding what was being asked of him in the call with its representative. Mr A had repeated that he was adamant the phone had been sealed in the box and unused and he only put it in the glove box in the car the evening of the crash. Assurant also said it had not said Mr A had committed fraud but the information provided by Mr A is misleading and false, so it is entitled to rely on the policy terms to reject the claim.

As the Investigator was unable to resolve the complaint, it was passed to me.

I issued a provision decision on this matter in July 2024. I did not agree with the Investigator's recommendation. I determined that Mr A had not done enough to establish a valid claim under the policy, so did not think Assurant needed to do anything further. I have set out my provisional findings below:

"Mr A's policy provides cover for accidental loss, damage or theft of the phone. That cover is subject to various terms and conditions, including the following:

*"If false or inaccurate information is provided and fraud is identified then we may:*

- Reject the claim and we may cancel your policy."*

I do not consider that this is inherently unfair or unreasonable. However, any policy term has to be applied reasonably and an insurer cannot unfairly reject a claim.

It is for a policyholder to establish their claim, which means that Mr A has to establish it is more likely than not that he owned the phone and that it was stolen lost in the way claimed.

I have listened to the recording of the call made about this claim. Mr A was asked about the phone. Mr A said the phone was in the box and the box was still sealed. Mr A said several times that this was the case. Mr A also confirmed that the phone had never been switched on or activated, that he had never put a SIM card in the phone and it was never linked to a cloud account. Again, Mr A repeated this several times.

During the call, Assurant told Mr A that the claim would not be met because it had evidence that the phone had been activated on 16 February 2024. So it could not have been in a sealed box, the SIM card must have been put in and the phone was used. After Assurant's representative told Mr A this, he said "*I promise you it has never been used*". And repeated several more times it had not been used.

Mr A then said he remembered that his wife and his daughter had opened the box and switched the phone on and then it was switched off and put back in the box. Mr A however, again said the phone had not been activated and had not been used.

Mr A said [later] that when the representative asked whether the phone was sealed, he didn't understand the question and thought he meant was it in the box. Mr A has also said in his complaint that there was a language barrier during the call.

Having listened to the recordings, I do not consider there was a lack of understanding on Mr A's part. He seems to understand the questions asked of him and is clear in his responses. I note he also corrected the representative about some details (such as when he put the phone in the car) and restated his answers several times.

In any event, even if Mr A got the words "seal" and "ceiling" mixed up (which I do not consider is the case having listened to the calls and Mr A did not question why Assurant was asking about a ceiling in the context of the phone still being unused in the box) he repeats several times that the phone was not used, it had not had a SIM put in, and had not been activated with his cloud account. There is nothing in the way the conversation went that would suggest to me that Mr A was not clear about this part of his account. And Mr A has not said he misunderstood this. [And] it seems to me it is the fact the phone was activated that is the crux of the matter, rather than if the box was still sealed with plastic.

Mr A provided a copy of a letter from his network provider which confirmed the phone IMEI number and that it was provided to him on 4 February 2024 (having been ordered two days before).

Assurant has provided a report from an IMEI checker which shows the phone was activated and registered on 16 February 2024 to a cloud account and location finder; the manufacturer's warranty was also registered to start with effect from 16 February 2024.

Mr A has not provided any explanation as to why the phone was used and activated, when he said it had not been. Indeed, he maintains still that it was not used.

Having considered the evidence provided, I am satisfied that the phone was activated in February 2024 and that this activation would have required the SIM card to be inserted and the phone linked to a cloud account. As this was before the date Mr A says the phone was stolen, it would have to have been activated by him or someone he had given possession of the phone to. The evidence also shows the phone is still linked to a cloud account and active.

The Investigator said this was irrelevant to the circumstances of the loss. I agree that the relevant case law provides that where a 'lie' (or fraudulent device) is used only to advance a valid claim and not in order to obtain a benefit the policyholder is not entitled to, then it does not necessarily forfeit the claim. So I also agree that if Mr A gave false or misleading information that does not impact whether the claim is valid or the value of the claim, then it might not be reasonable to rely on it to turn down the claim. However, having considered everything very carefully, I do not agree with the Investigator that it is irrelevant to the validity of the claim.

Where an insurer is being asked to take a policyholder's word for how a loss happened with no other independent supporting evidence (such as witness statements or CCTV) then it is important that there is nothing to cast doubt on the credibility of their word. So while the incorrect information does not appear to be around the circumstances of how the loss happened, it is relevant information for Assurant's consideration of the claim and whether Mr A has established a valid claim.

I do think this misleading and incorrect information does cast doubt on the validity of the claim. The phone was in Mr A's possession when it was activated and linked to a cloud account. It is still showing as active on the network that Mr A obtained it from. As it was apparently activated and therefore being used, this is not consistent with the loss he is claiming for and does cast doubt on the circumstances as described by Mr A.

Having considered everything carefully, I do not consider that Mr A has established a valid claim under the policy, so I do not intend to require Assurant to consider the claim any further."

### **Position since my provisional decision**

I invited both parties to respond to my provisional decision with any further information or evidence they want considered.

Assurant has not responded.

Mr A contacted us in response to the provisional decision asking that I call him. The Investigator told Mr A that I would not be able to call him and told him he could email any questions or further evidence he had for my consideration. Mr A has not provided anything further.

Deciding ombudsmen don't routinely talk to either party to the complaint, as fairness would usually require that both parties be involved in any discussion at the same time. We may however decide it is necessary to do so, if there is information that is unclear or a dispute about the facts of the case that we consider can only be clarified by discussing it with the parties.

Mr A has made his case clearly in writing to Assurant and to the Investigator throughout the complaint. The evidence and positions of both parties is sufficiently clear and so I don't consider it is necessary to discuss this case with the parties before issuing my final decision on the matter.

### **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.

As neither party has provided any further information or evidence about this matter, I see no reason to change my provisional findings. I remain of the opinion that Mr A has not established he has a valid claim under the policy and so I do not intend to require Assurant to consider the claim any further.

### **My final decision**

I do not to uphold this complaint.

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

Harriet McCarthy  
**Ombudsman**