

## The complaint

Mr F has complained that Assurant General Insurance Limited declined a claim he made under his mobile phone insurance policy.

## My provisional decision

I recently issued a provisional decision in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our investigator didn't think Assurant had acted fairly. I agree, and for broadly the same reasons, so I don't think there's a benefit for me to go over everything again in detail. Instead, I'll summarise the main points and then move on to the redress.

- Mr F got in touch with Assurant to make a claim for his mobile phone. He said he was at the dentist and wanted to use the bathroom. He asked the receptionist to look after his phone whilst he did so. He knew them well, trusted them, and they had looked after his phone and wallet in similar circumstances before – without any problem.
- During the time he was away, somebody stole the phone. I understand the phone was within the receptionist's line of sight and arm's reach. The thief distracted the receptionist and, whilst their back was turned, took the phone and left. Mr F didn't think he'd acted carelessly and, as a result, his claim should be accepted.
- Assurant declined the claim by relying on a policy term which says:

*If you don't take care of your mobile phone then we may not pay your claim. Taking care of your mobile phone means:*

- *Not knowingly leaving your phone somewhere it is likely to be lost, stolen or damaged, just think would you leave your wallet or purse there?*
  - *If you need to leave your mobile phone somewhere we expect you to lock it away out of sight if at all possible.*
  - *If you cannot lock it away then you must leave it with someone you trust or concealed out of sight in a safe place.*
- Assurant said Mr F had knowingly left his phone in a position where it could be taken, so he'd taken a risk and hadn't acted in line with the policy term. Whilst there was a door entry system, Assurant didn't think this was akin to locking the phone away as anyone could be buzzed in. Assurant also noted the phone wasn't concealed from view and the receptionist was working, so they may not have been able to watch it at all times. It apologised for not speaking to Mr F before giving its complaint response.
  - The policy covers a mobile phone against theft. Assurant has accepted the phone was stolen. And it hasn't disputed the circumstances described by Mr F. So the key question for me is whether it was fair for Assurant to decline the claim by relying on

the policy term I set out above. I'll look at each bullet point in turn.

- I'm not persuaded Mr F left his phone somewhere it was likely to be stolen. He'd left his phone, and wallet, with the receptionist before and there had been no problem. This doesn't suggest he should have thought his phone would likely be stolen when left with the receptionist. Also, I think there's a crucial difference between leaving the phone with the receptionist of a dentist or similar and leaving the phone in a more open public space. Most people, if not all, at the dentist are likely to be patients or staff, which means they will have given details like their name and address to the dental practice. Generally, I consider it much less likely somebody would steal a phone in these circumstances than if they could do so anonymously.
- I don't think it was possible for Mr F to lock his phone away out of sight. It may have been preferable for Mr F to ask the receptionist to lock his phone away out of sight. But I don't think it was unreasonable for him to consider that the phone being within the line of sight and arm's reach of the receptionist provided a similar degree of risk mitigation and made it highly unlikely anyone would steal it.
- The third bullet gives Mr F the option to leave the phone with someone he trusted or conceal it out of sight. He did the former.
- In my view, this was a situation in which Mr F took reasonable steps to minimise the risk of theft and comply with the policy terms. But he was unlucky and a theft can happen, even in unlikely circumstances. That's what the policy is there to cover.
- Overall, this means I'm satisfied Mr F complied with the three bullets and it wouldn't be fair and reasonable to decline his claim. As a result, Assurant should now accept the claim. Ordinarily, I would leave Assurant to go on and settle the claim with Mr F. But in this case, a dispute has already arisen about how Assurant should do that, so I think it would be helpful for me to consider and resolve that point too.
- After the claim was declined, Mr F bought a replacement phone. He's shown he bought the same one as a replacement. And, as his stolen phone was only around two months old at the time of the theft, the replacement cost the same as the original phone. This means he replaced the same specification phone at the same cost. It also means the only appropriate settlement option for the claim is for Assurant to pay Mr F cash. I understand he'd like the full cost of his replacement to be paid.
- However, Assurant has pointed out that the policy doesn't cover this cost in full. When a phone is stolen, the policy says it will provide a replacement of the same make, model and memory size. And, if that's not possible, it will provide a choice of equivalent specification models. Replacements will always be refurbished, not brand new, and the policy doesn't provide 'new for old' cover. Assurant hasn't said what that means for Mr F's claim – so I don't know what replacement it would have offered or what the corresponding cost of it would have been.
- Looking online, there are a range of prices for refurbished versions of Mr F's phone. £850 is an approximate low to mid range value, and I think that's likely the range Assurant would have settled the claim for. It may have been able to obtain a discount from a supplier but, even if so, I don't think that would be fair to take into account in this case because Assurant declined the claim and left Mr F to replace his phone on the open market – which doesn't benefit from such a discount.
- Mr F has been without the settlement for a number of months, so I'd usually expect

Assurant to pay interest on the settlement at 8% simple per year. Here that's likely to be £25-£50. I also take into account there's a policy excess of £100 for him to pay.

- Part of Mr F's complaint is about the service he received, including the handling of his complaint. The way an insurer handles a complaint isn't, in isolation, something I can consider. But I can consider the way an insurer handles a claim. In this case, the claim was impacted by the complaint handling, as the outcome of the claim was influenced by the information Assurant gathered or failed to gather during the complaint. So I can consider the elements of the complaint handling that impacted the claim. Having done so, I think it's clear Assurant didn't take the time to fully and accurately understand Mr F's point of view – and that caused him avoidable distress and inconvenience. As a result, I'm satisfied Assurant should pay compensation. I consider a figure of £50-£75 would be fair and reasonable.
- Overall, taking into account the policy terms, the approximate refurbished phone value, interest, the excess, and compensation, I consider Assurant should pay a total of £850 to settle this complaint. It's an estimated figure, but I'm satisfied that's the pragmatic and fair way to promptly bring things to a reasonable resolution.

### **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.

- Assurant didn't respond to my provisional decision, so I assume it agrees with what I said and has no challenge or comment to make.
- Mr F responded to say he was mostly in agreement with what I said but asked me to consider two points about the figures I'd used. I'll take each in turn.
- Firstly, the cost to replace the phone. The policy covers replacement, on a like-for-like refurbished basis, of the stolen phone. And, generally, an insurer is likely to settle at, or close to, the lowest available cost of a phone that fulfils these criteria – not an average of all costs. Whilst I note the information Mr F has provided, some of it doesn't fulfil the criteria. And I've seen other websites that sell the same phone, in the same condition, for around £850. So I remain satisfied that's a reasonable estimate of the likely amount Assurant would settle the claim for.
- Secondly, he's correct that I took an average of the compensation and interest so that together they came to £100, effectively cancelling out the excess.
- In these circumstances, I consider £850 is a fair and reasonable amount to settle the claim and complaint.

### **My final decision**

I uphold this complaint.

I require Assurant General Insurance Limited to pay a total of £850.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Miss M to accept or reject my decision before 21 October 2024.

James Neville  
**Ombudsman**