

## **The complaint**

Miss E complains that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. has declined a claim under her mobile phone insurance policy.

Where I refer to Telefonica, this includes the actions of its agents and claims handlers for which it takes responsibility.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In March 2024, Miss E made a claim under her mobile phone insurance policy for accidental damage to her handset. Telefonica accepted the claim and arranged for a courier to collect it so that it could be repaired.

When Miss E didn't hear anything from Telefonica, she called them several times for an update. She was told she'd receive a call back, but this didn't happen.

After three weeks, Telefonica told Miss E that they wouldn't be repairing her phone or providing a replacement under the policy because they hadn't received the handset. They said they'd only received an empty envelope.

Miss E raised a complaint, which she brought to our Service. In summary, she's told us:

- she put her handset in the envelope provided and handed it to the courier, and she has a collection card to support this. So if it wasn't in the envelope when it reached Telefonica, then it must have been lost or stolen in transit.
- she's paying for a phone that she doesn't have and she should be provided a replacement under her policy.
- she's received poor service from Telefonica who didn't provide updates on her claim, failed to return calls, and gave incorrect timescales.
- she's been charged a policy excess despite her claim being declined.

Telefonica has told us that the data shows Miss E's handset was used in May 2024, after Miss E says she'd sent it to them.

Our Investigator was satisfied that Telefonica could fairly decline the claim on the basis that they hadn't received the handset for repair and the data shows the handset is still in use. But she didn't think it was fair for them to charge a policy excess when they weren't paying the claim. She said Telefonica should refund the excess plus 8% simple interest.

Telefonica accepted this outcome, but Miss E didn't. She says she was asked to take the phone back to factory settings, which removed all security features, so someone could have taken the phone and used it.

The complaint has been passed to me to decide.

### **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'd like to reassure Miss E that whilst I may have condensed what she's told us in far less detail and in my own words, I've read and considered all her submissions. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail she'd like, in order to reach my decision. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

Miss E's policy covers her for accidental damage. Telefonica accepted the claim and opted to settle it by way of a repair. But as they didn't receive the handset, they haven't been able to do so.

I appreciate Miss E says she sent the handset to Telefonica via their courier. And it's not disputed that the courier collected an envelope from her. But what's in dispute is whether the handset was in the envelope, as it wasn't when it was received by Telefonica.

Telefonica has provided data which shows the handset with Miss E's IMEI number in conjunction with the SIM card with Miss E's phone number was used in May 2024 - after the date their courier collected the envelope from Miss E. The location of when it was last used was picked up by a cellular tower less than a mile walk from Miss E's home address.

Telefonica has also provided usage data which shows what telephone numbers have been called in May 2024 compared to March 2024, prior to the claim. The same numbers appear on both months.

This data indicates that, on the balance of probabilities, it's more likely than not the handset was being used by Miss E in May 2024. I say this because, if the handset had been lost or stolen in transit after being collected by the courier and used by someone else, the data would show a different phone number to Miss E's. And it seems too coincidental that the person who had found or stolen the phone, would live in such close proximity to Miss E.

Overall, I'm not persuaded Telefonica received Miss E's handset as it appears it is still in use. So I can't fairly say they should provide a replacement under the policy terms.

However, as there is no claim to be settled under the policy, I don't agree Telefonica are entitled to charge a policy excess. So this should be reimbursed to Miss E plus interest.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. to return the policy excess to Miss E plus 8% simple interest per annum from the date she paid it until the date she's reimbursed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 13 December 2024.

Sheryl Sibley  
**Ombudsman**