

## The complaint

Mr S's complaint is about the handling of a claim made under his mobile phone insurance policy with Assurant General Insurance Limited.

## What happened

In October 2023, Mr S contacted Assurant to make a claim under the policy, as the screen on his phone was broken.

Assurant agreed to repair the phone. Mr S paid the £100 excess under the policy and he sent the phone for repair. The phone was received by Assurant on 19 October 2023. However, Mr S says he didn't hear anything further from Assurant for some time and was not updated about the progress of the repair.

After Mr S chased Assurant, it told him it could not repair the phone after all, as it had been deemed as uneconomical to repair. Assurant offered Mr S £100 to replace the phone (later increased to £140).

Mr S asked for the phone to be returned to him, so he could get it repaired himself, however, Assurant said it had already disposed of it. Mr S initially accepted Assurant's offer of £140 but subsequently complained, as he was very unhappy with Assurant's handling of the matter. Mr S says he was without his phone for around a month, which was extremely inconvenient, and he lost a lot of work. He also had to buy a new phone on a contract for £50 per month. Mr S says he was essentially offered a refund of his excess and £40 to buy a new phone.

Assurant does not accept it has done anything wrong. It says that as the phone was beyond economic repair, it disposed of it for recycling. Assurant says its repair engineers are all approved and authorised and a decision that the device was deemed beyond repair would not have been made lightly. Assurant says this could have been due to the damage the engineers found when the phone was opened; or, as it is not a common phone, they were unable to obtain the parts to fix it. Assurant says the policy terms are clear that if it cannot fix a device, it will be replaced.

Assurant also says that once a repair has been started and the device has been dismantled and found to be unrepairable, it is highly unlikely or viable that it would then be able to send the phone back to the customer in this condition.

Mr S remains unhappy with Assurant's handling of the claim and service provided. He says Assurant's representatives were rude and unhelpful and he was shouted at. He also says that Assurant knew the make and model of his phone, so should not have said it could repair it if it could not get the parts.

One of our Investigators looked into the matter. He recommended the complaint be upheld, as he did not think Assurant had acted fairly or reasonably or in line with the policy terms in disposing of the phone before giving Mr S the choice about how to proceed with claim, once it had determined it could not repair the phone. The Investigator also said there was any

evidence to support the decision that the phone was beyond economic repair.

The Investigator also didn't think Assurant had sufficiently proven that the £140 offered was reasonable to allow Mr S to replace his phone. Having considered evidence of the value of the phone provided by Mr S, he recommended Assurant pay a further £50 towards this. He also recommended that Assurant pay £100 compensation for the poor customer service provided, including delays.

Assurant did not accept the Investigator's assessment. It says it has provided evidence from several sites that the phone could have been purchased for less than the £140 it offered Mr S; and he accepted that offer in November 2023. Assurant also says that the policy terms are clear that if it cannot repair a device, it will be replaced. So there is always the possibility that a device cannot be repaired. It does not therefore consider that any further payment to Mr S is warranted.

As the Investigator was unable to resolve the complaint, it was passed to me. I issued a provisional decision on the matter in October 2024. I have copied my provisional findings below:

#### Claim-handling

Mr S's phone was sent in for repair and Mr S was therefore expecting his phone to be returned to him with a repaired screen. Mr S's phone was received by Assurant on 19 October 2023. It says that on 24 October 2023, it was deemed to be beyond economic repair and disposed of the phone. Assurant says it was ...entitled to dispose of it. Assurant told Mr S this on 25 October 2023 and offered him a cash settlement of £100.

Mr S emailed in response to the notification that it was going to pay him £100 cash settlement, rather than repair the phone, and asked for the phone to be returned to him immediately. However, it had already been disposed of.

While the policy provides that Assurant will either repair or replace a damaged device, nothing in the policy states that if it deems the phone irreparable for any reason, then it will immediately be disposed of. Having considered the circumstances, I think it is fair and reasonable to expect an insurer to contact the policyholder if the repair agreed between the parties cannot in fact be carried out and ask how the policyholder wants to proceed. The phone belonged to Mr S and it was for him to decide if he wanted it replaced or returned to him so he could seek to have it repaired himself. At the stage of disposal, it did not belong to Assurant as the agreed indemnity (*i.e.* the repair) had not been provided, so it had no right in my opinion to dispose of it without Mr S's consent.

Assurant says the phone may have been dismantled and therefore could not have been returned but ... there is no convincing evidence of what was done by the engineers, or why they deemed it beyond economic repair. The only information provided is that the engineers were awaiting parts and then that it was subsequently deemed to be beyond economic repair. As the evidence suggests the only defect was the screen, it seems to me likely it could have been returned to Mr S with old screen still in place. In any case, Mr S should still in my opinion have been given the option of how he wanted to proceed.

Mr S asked for his phone back, so I am satisfied that if Assurant had not disposed of it, Mr S would have opted to have the phone back and not proceed with the claim. Given the value of the claim versus the excess fee, this would be logical. But he

didn't have the opportunity to make a choice. So Assurant needs to replace his phone or provide a cash settlement to allow him to do so, not as part of the insurance claim but because it disposed of his property without his permission.

### Cash settlement

Assurant needs, as far as reasonably possible, to put Mr S back in the position he would have been in, if it had not disposed of his phone.

I note Mr S says he has had to buy another phone on contract. But I don't think Assurant needs to reimburse Mr S for the cost of a brand-new phone. As Mr S's original phone was not brand-new, I think it would be reasonable for Assurant to provide him with a refurbished phone, or a cash settlement to buy a refurbished phone of the same make and model, as his original phone.

Assurant says this can be done for £140 and indeed for less than that.

Mr S has provided evidence that it would cost him just under £180 for an equivalent phone. I have considered the evidence provided and also looked at adverts myself. The same make and model phone seems to be available, in different conditions, for between £99 and £199. While £180 is at the higher end of this range, I do not think it is unreasonable. I therefore agree with the Investigator that Assurant should pay £180 for the value of Mr S's phone.

The Investigator also suggested that Assurant pay another £10 to allow for inflation. I don't think this is warranted. But Assurant should pay interest on the additional £40 from the date of the claim to the date of payment, at our usual rate.

### Excess

Mr S says he wanted the phone back to repair it himself and this would mean the excess should be refunded.

I note that in a telephone note on Assurant's file it records that it told Mr S the excess was an administration fee: "*advised excess is administration fee*" and so it was not refundable.

A policy excess is the first uninsured part of a claim, it is not an administration fee to be charged in the event of a claim by the insurer. So it was wrong for Assurant to take and keep the excess, if it does not provide the cover under the policy. This is also reflected in the policy terms:

- "Your cover does not include:*
- Your excess of £100, payable on all successful claims."*

Mr S says his claim was not successful, so he has asked for the excess to be refunded to him. Assurant says it was successful because it attempted the repair and has paid a settlement amount for a replacement device. I acknowledge that Assurant was intending to provide indemnity under the policy. However, it is my opinion that the phone had to be replaced because Assurant disposed of it, without Mr S's permission. I do not therefore consider that the excess is properly payable. I therefore think Assurant should refund the excess of £100, together with interest at our usual rate.

### Lost data

Mr S has said there was data on his phone, which was lost when Assurant disposed of it. I have not been given any specific information of what may have been lost.

Assurant says the policy does not cover loss of data but given the circumstances here, I do not think the policy cover is relevant. The exclusion of cover for loss of data in the policy is in relation to claims for a phone that was lost or stolen. In this case, the data has been lost because Assurant disposed of Mr S's phone without his consent or prior knowledge.

Assurant says Mr S would have been advised to back up any data before sending the phone in. I note that Mr S was expecting the phone to be returned to him but I also bear in mind that most data would likely be backed up automatically and it is not unreasonable to expect a customer to back up data in such circumstances.

I do not therefore intend to make any award of compensation for the loss of data. Either party can provide further information about this if they wish in response to my provisional decision.

### Compensation

Assurant had the phone for six days before telling Mr S it could not repair it. I do not think this was a reasonable time frame for a straightforward screen repair. And, as Mr S has said, Assurant should have known in advance if it had the parts for his make and model phone.

Mr S says that he was shouted at and Assurant's representatives were unhelpful. I can see there were difficulties but I have not been provided with call recordings of all the calls between Mr S and Assurant. I have only been provided with one internal call recording, which does not assist my consideration of this point.

However, I can see that Mr S was put to trouble in resolving this issue and had to buy a replacement phone, which should not have been necessary and was without his phone for longer than should have been necessary. Having considered everything carefully, I think overall the sum of £150 is appropriate compensation for the delays, disposing of his phone, and the way the claim was handled."

### **Responses to my provisional decision**

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

Assurant has not responded to my provisional decision.

Mr S has responded and confirmed that he agrees with my findings. However, he has stressed the impact on his financial situation and mental health of not having his phone returned to him repaired as he expected. Mr S says he was without a phone for around month. He has two children, he works freelance and relies on his phone. The financial and mental impact of this was significant. Mr S also says he could not back-up the data on the phone before sending it in for repair because the screen was broken.

### **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.

Having done so, and in the absence of any further evidence from Assurant, I remain of the opinion that Assurant should not have disposed of Mr S's phone without discussing how he wanted to proceed with the claim once it was aware it could not repair the phone. I also remain of the opinion that it should make a cash settlement of a further £40 towards the cost of a replacement like-for-like phone and refund the excess, for the reasons set out in my provisional decision.

Mr S has stressed the impact of this matter on him both financially and mentally. I set out in my provisional decision that Assurant had his phone for six days before telling him it would not repair his phone. I still consider this was longer than reasonable for a straightforward fault. However, it also means that I do not think I can reasonably hold Assurant responsible if it took Mr S up to a month to get a new phone himself.

I have considered again the impact on Mr S of being without a phone for this time and I have taken into account Mr S's comments in response to my provisional decision about the difficulties this had on his ability to communicate about work and family life, as well as the financial burden of replacing the phone. We all rely on our mobile phones and there are undoubtedly difficulties when we cannot use them. However, I have not seen any evidence that there were specific lost work opportunities solely due to the additional few days Assurant had the phone before telling Mr S it could not repair it. Having considered all the evidence again, I remain of the opinion that the sum of £150 is appropriate and in line with our awards of compensation.

With regard to the data, while I can appreciate Mr S may not have been able to do a full data back-up because of the damaged screen, just before sending the phone to Assurant for repair, it still seems to me that most data would have likely been automatically backed-up to cloud storage. Mr S has not stated otherwise. Mr S has also not provided any evidence of data lost that he has not been able to retrieve either from automatic back up to a cloud or other sources. Having considered this issue again, and taken account of Mr S's comments, I remain of the opinion that I cannot fairly make an award of compensation for loss of data.

### **My final decision**

I uphold this complaint against Assurant General Insurance Limited and require it to do the following:

1. pay Mr S £40 (in addition to the £140 already paid) in order that he be able to replace his phone. It should add interest to this payment, at 8% simple per annum from the date of the claim to the date of payment.
2. Refund the £100 excess, together with interest at 8% simple per annum, from the date of the claim to the date of reimbursement.
2. Pay Mr S the sum of £150 compensation for the distress and inconvenience Caused by its handling of the claim and wrongful disposal of his phone.

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

Harriet McCarthy  
**Ombudsman**