

The complaint

Mr S complains that Aviva Insurance Limited is responsible for mishandling his claim on a mobile phone insurance policy.

What happened

Mr S had insurance that covered a mobile phone that his young adult daughter used. Aviva was the insurance company that was responsible for dealing with any claim.

Much of the complaint is about acts or omissions of claims-handlers on behalf of Aviva. Insofar as I hold Aviva responsible for such acts or omissions, I may refer to them as acts or omissions of Aviva.

Unfortunately, Mr S's daughter was injured in a serious road traffic accident and taken to hospital. The accident also damaged the phone.

On 30 January 2024, Mr S called Aviva to make a claim on the policy. Aviva provided a replacement phone the next day.

On 10 February 2024 Mr S complained to Aviva that the replacement phone was faulty and had parts made by a company other than the phone manufacturer.

On 12 February 2024 Aviva authorised a replacement phone, but failed to tell Mr S.

On 21 February 2024, the first replacement phone stopped working and Mr S called Aviva.

On 22 February 2024, a team manager called Mr S to confirm the order of another replacement phone.

By a final response dated 23 February 2024 Aviva said it would send Mr S £200.00 by bank transfer as compensation.

Mr S brought his complaint to us on 26 February 2024. He asked us to direct Aviva to provide a like-for-like replacement phone and to increase the compensation to £300.00.

Our investigator didn't recommend that the complaint should be upheld. He thought that the £200.00 compensation fairly and reasonably compensated for the shortfall in service.

Mr S disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint. He says, in summary, that:

- The argument is framed around the reasonable expectations of the insured, the implied duty of care, and consumer protection laws. These would require the insurer to use genuine parts in order to meet the standard of performance, quality, and longevity.

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've taken into account the relevant law, regulation and good practice. Above all I have to decide what's fair and reasonable.

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules.

One such rule is that, before we can investigate a complaint, the consumer must first have made that complaint to the regulated firm and waited for up to eight weeks for a final response. Where a consumer makes further complaints after the final response, we have to treat that as a separate complaint.

Also we operate a two-stage process under which an investigator gives an opinion and, if necessary, an ombudsman gives a final decision.

Where we uphold a consumer's complaint about an unfair act or omission, we look at its impact on the complainant. We assess compensation by reference to that impact. We don't assess compensation at a level intended to punish or deter unfair acts or omissions.

Mr S complained to Aviva between 10 and 22 February 2024. The investigator didn't offer an opinion on events after the final response on 23 February 2024. Under the rules, I don't consider that I can include in this decision any complaints arising after 22 February 2024.

Aviva wasn't a manufacturer repairing or replacing a phone under a warranty.

Aviva was an insurer providing a replacement phone under a policy. The policy included the following:

"Replacement phones

We'll always try to provide you with the same make and model of phone, although it might be a different colour. In the event that we don't have your phone in stock, we'll offer you an alternative phone. This will be of at least equivalent technical specification but may be a different make, model or operating system or have different features and functions...

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....

All refurbished stock will be in an 'as new' condition. This means that replacement phones are not brand new."

Aviva didn't say that it might supply a phone refurbished with parts not made by the phone's manufacturer.

I'm satisfied that on 1 February 2024, Aviva provided Mr S with a refurbished phone of the same make, model and technical specification. It also provided a 12-month warranty.

However, I accept that the replacement phone was faulty, so I don't consider that it was in "as new" condition or even of satisfactory quality. Also, I accept that the phone displayed a message that it contained parts (such as the battery and the display) that had not been made by the phone's manufacturer.

I don't find it relevant to establish whether those parts caused the fault with the phone. That is because, after the replacement failed, Aviva replaced it.

I'm satisfied that Aviva took into account that Mr S's daughter was in hospital with the replacement phone. It took steps to work around the usual requirements such as disabling security features and troubleshooting the phone.

Nevertheless, I've noted some shortcomings in Aviva's actions and communication. In particular, Aviva didn't follow up after 12 February 2024. The impact of that on Mr S included that he didn't know when to expect a further replacement phone through which to keep in touch with his injured daughter.

Also on 21 February 2024, Aviva didn't respond positively to Mr S's request for contact with its customer relations department. The impact of that on Mr S was to further compound his frustration at an already difficult time.

I don't under-estimate the distress and inconvenience Mr S suffered through his daughter being in hospital. And I don't under-estimate the extra distress and inconvenience Aviva's shortcomings caused him.

However, on 23 February 2024 Aviva responded promptly to try to put things right. It sent a final response that included compensation. Moreover, Aviva provided a further replacement phone.

Overall, looking at Aviva's shortcomings and the resulting distress and inconvenience caused to Mr S, I conclude that £200.00 is fair and reasonable compensation. I consider that this is in line with our published guidelines for what I would've directed Aviva to pay if it hadn't already done so.

So I don't find it fair and reasonable to direct Aviva to do any more in response to this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Aviva Insurance Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 January 2025.

Christopher Gilbert

Ombudsman