

The complaint

Miss D has complained that Assurant General Insurance Limited (Assurant) has declined a claim she made following the loss of a mobile phone.

What happened

Miss D has said that on 11 August 2024 she took possession of a new mobile phone which was given to her as a gift. She had insurance for her phone with Assurant through her bank. She didn't unpack it at the time but took it with her the next day on a holiday in the UK, still in its box and unactivated.

On 13 August she went with a group of family and friends to a beach with an amusement park nearby. She took her new phone with her as she wanted to show it to her family and friends. Her son then went missing. This prompted a frantic search that lasted about 45 minutes. She says the phone, along with some snacks, make up and earbuds, was in an unzipped beach bag which she put in the bottom of a pushchair which she took with her while she searched for her son. After her son was found, she noticed that some of the contents of the beach bag, including her new phone and her earbuds, were missing. She presumed that they had fallen out of the bag while she was running around looking for her son, pushing the pushchair, and stressed. She made a claim for the phone on 15 August 2024.

Assurant's Claims Investigation Unit rejected Miss D's claim on the ground that she hadn't taken care of her phone. It said that it wasn't necessary for her to have taken her new phone to the beach. As it hadn't been activated, there was no way of recovering it and it had therefore been placed at risk. It said that the phone could've been left at home where there was no risk of the phone going missing. There was no benefit to her in having the phone with her at that time as it couldn't be used for any purpose whilst unactivated. It referred to the following policy term:

"We will always take into account where you are and what you are doing when we assess whether you have taken care of your phone. If we believe you have not taken care of your mobile phone, and have knowingly taken a risk with it, we may decline your claim".

Miss D maintains that the phone was in her possession at all times and was never left unattended. It was in her bag, and she had her bag with her the entire time. The loss occurred because she was urgently searching for her son, not due to neglect or carelessness. She says that her policy makes no mention of not covering phones outside the home unless they are activated.

Miss D wasn't satisfied with Assurant's rejection of her claim and brought her complaint to this service. Our investigator's view was that Miss D wasn't in breach of any of the terms and conditions of her policy and that she hadn't acted in a way that was reckless. Her recommendation was that Assurant should re-assess Miss D's claim and pay her £150 compensation for the trouble and upset caused.

Assurant doesn't agree with our investigator's view. It reiterated that as the phone had not yet been activated, it couldn't be used for anything so there was no genuine reason for Miss

D to have taken it out to the beach at this point. All this had done was to put the phone at a higher risk than if it had been left at home or in her locked car. It maintains that Miss D had not taken reasonable care in line with the policy terms and conditions.

Assurant has asked that the matter be referred to an ombudsman. I am therefore providing a final response from this service.

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, I'm upholding Miss D's complaint and I'll explain why.

I have to consider whether Assurant has acted fairly and reasonably in rejecting Miss D's claim. It does so in reliance on the terms and conditions of her policy, so I've considered these.

The policy includes the following exclusion:

"Theft, loss, damage or breakdown where you have knowingly put your mobile phone at risk or you have not taken care of it may not be covered. Examples are provided in the 'What you are NOT covered for' section of the Policy Document."

In the Mobile Phone Insurance section of the policy, the 'What you are NOT covered for' section reads as follows:

"What you are NOT covered for:

Loss, theft, damage or breakdown as a result of not taking care of your mobile phone. We know how important your mobile phone is to you and we expect that you will take care of your mobile phone.

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 mobile 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 then 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.*
- Making reasonable enquiries to find your phone if you think you have lost it.*

If you knowingly leave your mobile phone where others can see it but you cannot and your mobile phone is then lost or stolen we may not pay your claim.

We will always take into account where you are and what you are doing when we assess whether you have taken care of your phone. If we believe you have not taken care of your mobile phone, and have knowingly taken a risk with it, we may decline your claim.

If you knowingly leave your mobile phone somewhere you can't see it but others can, we may decline your claim for not taking care of your mobile phone – for example:

- in a cafe or pub you leave your mobile phone on the table when you go to the bar to pick up your drink instead of taking it with you*
- leaving your mobile phone on display in your car*
- leaving your mobile phone in the care of someone you don't know well*

- *if you are at the gym and you leave your mobile phone on a bench in the changing rooms rather than taking it with you or locking it in a locker*
- *intentionally damaging your phone.*

All of these examples increase the risk of it being lost, stolen or damaged and may result in your claim being declined. The examples are to help you understand what's covered, and are not the only reasons a claim could be rejected."

The above examples of how to take care of a phone (although stated to be non-exhaustive) all involve leaving a phone somewhere, increasing the risk of it being lost, stolen or damaged.

Miss D didn't leave her phone anywhere. It was in her bag which she had with her at all times. In my view, it is reasonable to say that the phone was within her possession and control at all times until, owing to the circumstances at the time, some contents from her beach bag fell out, including the phone.

I consider these were exceptional and unforeseeable circumstances when the possibility of something falling out of her bag might not have been immediately noticed. The loss occurred because she was urgently searching for her son. I don't consider that in these circumstances Miss D can reasonably be said to have not taken care of her phone or that she was neglectful or careless. The policy wording I've included above does state "*We will always take into account where you are and what you are doing when we assess whether you have taken care of your phone*". I don't consider that Assurant has taken sufficient account of this.

I'm also satisfied that there is no policy term that restricts cover only to phones that have been activated and can therefore be traced.

My conclusion is that in the circumstances in which Miss D says her phone was lost, she had not failed to take care of it. I don't consider it was unreasonable for her to have taken it to show to her family and friends – the policy just requires care to be taken. She hadn't left it where it was vulnerable and it was within her possession and control at all times until it fell from her bag in very exceptional and stressful circumstances.

I don't consider that Miss D is in breach of any policy term or that Assurant has acted fairly and reasonably in assessing her claim.

My final decision

For the reasons I've given above, I'm upholding Miss D's complaint.

I require Assurant General Insurance Limited to re-assess Miss D's claim in accordance with the other terms and conditions of her policy.

I also require it to pay Miss D £150 compensation for the trouble and upset caused by the initial rejection of her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 6 March 2025.

Nigel Bremner
Ombudsman