

The complaint

Mr H has complained that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. declined his claim for a broken phone.

What happened

Mr H dropped his phone from three stories up on a building site and his phone was smashed into pieces. He collected his sim card and a piece of glass but the rest of it wasn't salvageable, and so he left it there.

He made a claim under his policy for a replacement, but Telefonica declined the claim as he wasn't able to send the broken phone to them for a damage claim, and he couldn't make an accidental loss claim he had left the damaged phone on the building site deliberately.

Mr H complained but Telefonica didn't uphold his complaint and so he brought it to us.

One of our investigators has looked into Mr H's complaint but he thought Telefonica had fairly declined the claim.

Mr H disagreed with our investigators view, and so the case has come to me to review.

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 have to consider whether Telefonica have fairly declined the claim in line with the terms and conditions of the policy.

Having done so I'm not upholding this complaint and I'll explain why.

At page six, the policy booklet covers physical damage to equipment that is "caused by an unintended incident and/or impact".

I'm satisfied that when the phone fell from Mr H's pocket high up on scaffolding at the building site, this was an "unintended incident".

Page seven of the policy booklet then confirms that in the case of damage, Telefonica will repair or replace the equipment, and gives some detail about how a replacement will be provided.

However, there are claim conditions in respect of damage claims about providing the broken equipment for inspection. It says:

"Your right to claim under this policy is subject to the following conditions:

Damaged equipment, damaged accessories and faulty replacement equipment must be returned to Us and must include IMEI and serial number panel. If You fail to return

Equipment We will charge You for the cost of any replacement Equipment We provide”

There is no dispute that the phone hasn't been sent to Telefonica for examination, but I've thought about whether it was reasonable for Mr H to do so. Mr H has admitted that after he dropped the phone, he was able to recover it, albeit in pieces, and he has provided us with one blurry photo which shows one corner of the phone being cracked. Given that he was able to recover it, I don't see any reason why he couldn't have sent it into Telefonica to comply with the conditions of claim and obtain a replacement.

And so, I can't fairly say that Telefonica are acting unreasonably in declining the claim under this term.

I can see that following Mr H making contact with Telefonica and telling them that he had left the phone on the building site, they treated it as a claim for Accidental Loss, and then also declined it under that part of the policy.

The Accidental Loss section requires that the equipment is lost in the following specific circumstances:

- *“You have unintentionally left your Equipment in any location, and it has then disappeared.*
- *Your equipment is in a known location, but you are not reasonably able to retrieve it.*
- *Your equipment has disappeared, and you are not sure how.”*

Mr H has said that he didn't see much point in retrieving the phone given that it was so badly broken, and so he left it there. So, it appears that it was in a known location, and was able to be retrieved to remove the sim, but then was intentionally left behind. In view of that I can't fairly say that it can be considered as “Accidentally lost” under the terms of the policy above.

Mr H has also complained that Telefonica originally accepted his claim, and he received an e mail which said, “Good news, your O2 Insure claim has been approved”.

However, in the attached FAQ's it says that the damaged device needs to be returned to the courier for the courier to release the replacement, and the terms of the policy explain that if it isn't returned, the customer will be charged for the cost of any replacement. This is in line with the terms and conditions of the policy that Mr H was sent at inception.

And so, I don't consider that Telefonica have acted unfairly here either.

I appreciate that Mr H will be disappointed by my decision, and that he is upset by the loss of his relatively new phone, but in view of the terms of the policy, Telefonica don't need to do anything further here.

My final decision

My decision is that I'm not upholding Mr H's complaint about Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U..

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 April 2025.

Joanne Ward

Ombudsman