

The complaint

Mr C has complained that Assurant General Insurance Limited trading as Protectyourbubble.com by Assurant unreasonably declined to pay his claim under his mobile phone insurance policy when he lost his phone.

What happened

Mr C lost his phone out of his trousers' pocket when he was cycling with his friend in December 2024. He retraced his steps but unfortunately couldn't find it, so he made a claim to Assurant.

Assurant decided that because Mr C's other phone was clipped into his jacket pocket and was not lost as this one was, Mr C consequently didn't take proper care of his phone as required under the policy conditions. So, it declined to pay his claim. Mr C complained but Assurant wouldn't change its stance, so Mr C brought his complaint to us.

The investigator thought it should be upheld with Assurant paying the claim and paying Mr C compensation in the sum of £100. He was of the view that Assurant needed to show Mr C had acted recklessly as in he recognised the risk of putting his phone in his pocket but decided to do it anyway. And the investigator didn't think Assurant had done this. He didn't think Mr C made any conscious decision to keep one phone in his jacket and this phone in his trousers' pocket. This was because Mr C was using the phone just before he set off on his bike journey. His friend said they had to leave so Mr C simply put his phone in his pocket and left on his bicycle. This is normally where he kept his phone so there was no thought of any risk by Mr C. Therefore, it can't be said that Mr C recognised the risk and took it anyway.

Assurant didn't agree and referred to another investigator's view on a similar case where the complaint wasn't upheld.

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 this complaint along the same lines as the investigator. I'll now explain why.

First, Assurant should know that we decide all cases based on their own facts which then means we don't create a precedent since the precise facts are different in all cases. And further, the case it mentioned was settled by the investigator's view, so didn't require an ombudsman's decision so it's not binding on the parties. We do however have varying stances on varying issues which we publicise on our website where we can provide more detail but again since our remit is to consider what's fair and reasonable in each case, it's the fact of the individual complaint which will always drive the outcome.

The facts here are also different to the case Assurant mentioned. Mr C had two phones. At the time he wasn't using the phone which was clipped into his jacket. Immediately before setting off on his bicycle, Mr C was using the phone that was subsequently lost. When his friend told him they must go, Mr C simply put his phone in his trousers' pocket and rode his bicycle away. Like the investigator, I don't consider Mr C thought there was any risk with this, he simply put his phone in his pocket, like he normally does, and went on his way.

The policy terms at issue here says the following:

"We will always consider where you were and what you were doing when we assess whether you have taken care of your device. If we believe you have not taken care of your device, and have deliberately taken a risk with it, we may reject your claim."

There is no evidence that Mr C did something he normally wouldn't do with his phone. There is also no evidence that he considered there was any risk but took the risk anyway. Mr C simply put his phone that he was using, into the pocket on his trousers, like he normally does. I don't consider that equates to Mr C not taking care of his phone.

It also doesn't equate to the test discussed in the case of Sofi -v-Prudential Assurance (1990). In this case it must be shown that the insured appreciated the risk but simply didn't care or ignored that risk. Then and only then will the insured be considered reckless.

The facts of Mr C's case don't show this level of recklessness in my view. Mr C did what he normally did with his phone in putting it into the pocket of his trousers. He wasn't using the phone clipped into his jacket pocket, he was using this phone which subsequently got lost.

The policy provides cover for loss, Mr C clearly lost his phone and therefore I consider the policy should respond to his claim, in the absence of any recklessness being committed by Mr C, by paying his claim with interest. Interest of 8% simple per year should be added from one month following the loss to the date it pays Mr C's claim. The one month time period is simply to allow Assurant to investigate the claim.

I do think Assurant caused Mr C some distress and upset by refusing his claim so I consider it should pay him some compensation. I consider the amount suggested by the investigator of £100 to be fair and reasonable here. It's also in line with our approach to compensation which is more fully detailed on our website.

My final decision

So, for these reasons, it's my final decision that I uphold this complaint.

I now require Assurant General Insurance Limited trading as Protectyourbubble.com by Assurant to do the following:

- Reconsider Mr C's claim subject to the remaining terms and conditions with a view to paying it. Adding interest of 8% simple per year from one month from the loss date to the date it refunds Mr C. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr C for HMRC purposes.
- Pay Mr C £100 compensation for the distress and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 May 2025.

Rona Doyle
Ombudsman