

## **The complaint**

Mrs C has complained about the way her mobile phone insurer, Aviva Insurance Limited ('Aviva'), dealt with a claim she made on her policy after her phone was stolen.

Aviva is the underwriter of this policy i.e., the insurer. During the claim Mrs C also dealt with other businesses who act as Aviva's agents. As Aviva has accepted it is accountable for the actions of its agents, in my decision, any reference to Aviva includes the actions of the agents.

## **What happened**

In June 2024, Mrs C made a claim on her mobile phone policy after her phone was stolen. Aviva arranged for a replacement phone to be sent a few days later but due to a system error it wasn't delivered. There were further failed delivery attempts including one where the envelope was delivered empty. When the phone was eventually delivered, the courier was late and Mrs C was asked to hand in her old phone, which she didn't have as it had been stolen, so she handed in another device she owned so the courier could hand over the new phone.

Mrs C complained to Aviva about its service and a number of other issues including the fact that the phone did not have genuine parts and that the phone colour wasn't guaranteed. Aviva offered to return Mrs C's other device, but she didn't accept as it took Aviva ten days to do so and said she wasn't sure the phone had been looked after in the meantime.

Aviva upheld Mrs C's complaint and offered her £150 compensation. It said it wasn't able to offer her compensation for the device it had in its possession and would need to return this. It also didn't uphold the complaint about the non-genuine parts or the colour of the replacement device.

Mrs C didn't accept Aviva's offer and said on one occasion when she spoke to one of Aviva's advisers, they told her that her £75 excess would be waived but this wasn't the case. So, the compensation she was being offered was only £75. Aviva responded and offered Mrs C £50 compensation and accepted that she had been mis-informed regarding her excess.

Mrs C then brought her complaint to our organisation. One of our investigators reviewed the complaint and thought that the overall compensation offered by Aviva which came to £200 was fair and reasonable as was its offer to return the old device to Mrs C.

Mrs C didn't agree this was adequate compensation for the distress and inconvenience she suffered and asked for an ombudsman's decision. She also said she wanted her other phone back.

While the complaint was with our organisation, Aviva informed us that Mrs C's old device had been disposed of and that it had offered her compensation of £178 which she accepted.

As the matter wasn't fully resolved it was passed to me to decide.

### **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.

The policy includes cover for theft, subject to a £75 excess. It states that the replacement phones it provides are refurbished models and come with a warranty. Also, Aviva will always try to provide the same make and model phone, but it might be in a different colour. The replacement phone will be "as new" but not brand new.

I'll firstly deal with Mrs C's complaint regarding the device. Mrs C was unhappy that the phone had refurbished parts but, as I mentioned above, this was in line with the terms and conditions of the policy so I don't think Aviva needs to do anything further regarding this point. Mrs C was also unhappy about the colour but, again, the terms and conditions say this isn't guaranteed. I note that during one of her calls with Aviva Mrs C was offered a swap after she had received her new phone, but she said by that point it was too late because she had already started using it. I think Aviva's offer was fair and reasonable.

I've also listened to various calls between Mrs C and Aviva and particularly the one where Mrs C says Aviva offered to waive the £75 excess. Aviva accepts that Mrs C was mis-advised during this call and I agree. Whilst the adviser was saying they would log a new claim as a warranty claim after the first order was stuck in the system, so that a further excess would not be payable, Mrs C thought that the entire excess would be waived. And the adviser didn't clarify that it was only a second excess which wouldn't be paid. Aviva has offered Mrs C £50 for this misunderstanding as well as for the fact that it delayed sending out policy documents she had asked for in order to bring her complaint to our service. Overall I think this offer is fair and reasonable. I say this because the delay in sending the policy documents was only by a matter of days. And Aviva is entitled under the terms and conditions to charge the £75 excess.

Aviva also accepts that its service was poor and that there were several delays which meant that Mrs C didn't receive her new phone for ten days. And when she did, she had to hand an old phone over because Aviva marked this as a "swap" rather than a "handover".

Mrs C made her claim on 5 June 2024. The first delivery was arranged for 7 June 2024 but didn't take place due to a system error which meant the phone hadn't been sent out. Mrs C called Aviva who arranged for a replacement phone to be sent the following day by 12 pm. Mrs C said the delivery was after 1 pm and the envelope was empty. She reported this to Aviva who said it wouldn't take longer than six days to review. When Mrs C called to chase, she said the adviser told her it "wouldn't take forever" which she wasn't happy about. Delivery was eventually arranged for 15 June 2024 but again did not take place by 12 pm as agreed. When the courier arrived, they wanted a phone to be given to them. As Mrs C's phone had been stolen she gave the courier an old device.

Aviva has offered Mrs C £150 for the distress and inconvenience the above caused her and I think, in the circumstances, this was fair and reasonable. As I said the delay was ten days and though I appreciate phones can be an essential part of daily life I think the £150 offered is in line with awards we would make in similar circumstances.

Aviva offered Mrs C £178 for the value of the phone she had handed over to the courier. Aviva said it based the value on the newer model of the same phone as Mrs C's old phone is no longer produced. I thought this was fair and reasonable and note Mrs C has accepted this offer.

### **My final decision**

For the reasons above, I have decided to uphold this complaint. Aviva Insurance Limited must pay Mrs C £178, if it hasn't already, for the device she gave to the courier.

Aviva Insurance Limited must also pay Mrs C £200 compensation in total for the distress and inconvenience it caused her if it hasn't paid this already. If it has only paid part of this, it must now pay the balance. It must pay the compensation within 28 days of the date on which we tell it Mrs C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Aviva Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 12 May 2025.

Anastasia Serdari  
**Ombudsman**