

## **The complaint**

Mr V has complained about the service that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. trading as Telefonica Insurance UK Branch provided when he made a claim for damage to his mobile phone under his mobile phone insurance policy.

## **What happened**

Mr V made a claim to his mobile phone provider who in turned passed it on to Telefonica in September 2024 because his mobile phone was damaged. Telefonica sent him a replacement phone, but it was the wrong brand.

Mr V then made arrangements with Telefonica, to send his own damaged phone and this replacement phone back to Telefonica via a courier service. This courier service was organised by Telefonica. However, both phones got lost. This led to delays in Telefonica dealing with Mr V's claim, so he complained. Telefonica upheld much of his complaint and offered to pay Mr V £300 compensation. It also sent him a second replacement phone of the correct brand.

Mr V said thew second replacement phone was faulty and didn't work properly. He also didn't think Telefonica's offer of £300 compensation was sufficient. So, he brought his complaint to us.

He said he had explained his medical vulnerability to Telefonica, but it had ignored it which caused him further distress. He was also missing medical appointments, and his medical practitioners couldn't contact him concerning upcoming appointments. This added further to his distress. And he still had no working phone. He felt Telefonica should upgrade his replacement phone to the latest model and pay him £3,000 or £4,500 compensation.

The investigator was of the view that as Mr V hadn't sent the non-working replacement phone back to Telefonica, it couldn't assess why it wasn't working. Also, that meant Telefonica couldn't be responsible for Mr V not having a working phone from November 2024. So, on that basis he thought Telefonica's offer of £300 compensation was reasonable.

Mr V remained very dissatisfied, so his complaint has been 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.

First, I need to explain to Mr V that as a deciding ombudsman I am not permitted to discuss the service provided to Mr V by the investigator or indeed his managers. That level of service complaint falls outside the rules under which we deciding ombudsmen operate. It is of course dealt with internally by other members of our service, but it can't form part of my

decision here. So, I will not discuss any issues Mr V has raised about the accountability of the investigator or his manager in this decision.

Secondly, I have taken note of Mr V's medical conditions, and I can appreciate the further difficulties these caused him throughout his claim, complaint, and the referral of this complaint to our service. I have also considered the law surrounding such issues and the expectations of any party dealing with Mr V's complaint.

Thirdly, I can't consider anything that Mr V's mobile phone provider did or didn't do as I can only consider the actions of Telefonica. This is because it is the regulated business under the Financial Conduct Authority's regulations in providing the insurance policy to Mr V and indeed dealing with damaged and/or faulty phones.

I'm only authorised to deal with businesses which are regulated under the Financial Conduct Authority. As Mr V's mobile phone provider isn't the insurer, I'm not permitted to make any findings against them. If Mr V wants to also complain about his mobile phone provider and the billing issues that he said he had, then he needs to complain first to his mobile phone provider.

My role is to simply assess and decide what if anything Telefonica did wrong. I need to consider the terms and conditions of the mobile phone insurance policy Mr V bought with his mobile phone. And then consider what happened when he made his claim for damage to his mobile phone in September 2024.

To reassure Mr V, everything both he and Telefonica has sent in has been read by me. I may not discuss every single point made by either party and no disrespect is intended by that. I will however concentrate on what I consider to be the crucial elements of Mr V's complaint about Telefonica. Mr V remains free to not accept my decision if he wishes which means it has no legal binding on him or Telefonica.

#### *What the policy provides*

So as the service Telefonica has to deliver is based on the terms and conditions of the policy between Mr V and Telefonica, I shall now detail the important terms of it.

The policy provides cover if the insured equipment is accidentally damaged during the term of the policy. Like almost all mobile phone policies this policy lasts for five years only.

#### ***'4. Details of Your cover***

##### ***Section A – Cover for Accidental Damage***

*If Your Equipment is Accidentally Damaged anywhere in the world during the Term of Cover, We will at Our discretion either:*

*(a) Repair Your Equipment; or*

*(b) Replace Your Equipment with a product of the same or a similar specification, as determined by Us. Replacement Equipment might be a different colour or model from a different manufacturer. It may be new, re-furbished, re-manufactured or re-packaged by a repair centre approved by Us; or*

*(c) In the case of Damage We may give You the option to pay a higher Excess for the Exchange Service on the same terms as (b) above. Details of the higher Excess can be found at section 11.*

## **Section B – Accessory Cover**

*If You have a valid Claim under section 4A and We repair or replace Your Equipment, We will also repair or replace any accessories which were Accidentally Lost, Stolen or Damaged in the same incident, provided:*

- *they were originally purchased from O2 and You have proof of purchase; and*
- *their total retail value does not exceed £300; and*
- *You make Your Claim in respect of Your accessories at the same time as Your Claim in respect of Your Equipment.*

*We will replace Your accessories with a product of the same or a similar specification, as determined by Us. This might be a different colour or model from a different manufacturer. It may be new, re-furbished, re-manufactured or re-packaged by a repair centre approved by Us.*

## **Section C – Additional Cover for Faulty Replacement Equipment**

*If Your Replacement Equipment has been re-manufactured or re-furbished and proves to be faulty within the period for which Your Equipment would have been covered by the manufacturer's warranty We will, at Our discretion either:*

- (a) *Repair Your Replacement Equipment; or*
- (b) *Replace Your Replacement Equipment with a product of the same or a similar specification, as determined by Us. This might be a different colour or model from a different manufacturer. It may be new, re-furbished, re-manufactured or re-packaged by a repair centre approved by Us.*

*The Additional Cover under this section C will last for a minimum period of 90 days and a maximum period which is equivalent to the remainder of Your Equipment's original warranty, up to 24 months from the date We send Your Replacement Equipment to You.*

...

## **9. How We will deal with Your Claim**

*When We are notified of Your Claim We may decide to require You to complete a Claim Form in order to provide Us with all the detail We need to assess Your Claim. We will send this to You and You will need to complete it and send it back to Us within 30 days from the day on which You received it. We will be entitled to request any further evidence reasonably required by Us to validate the information You provide to Us.*

*In certain circumstances We may arrange to collect Your Equipment at a time convenient for You in order to inspect the device and determine whether You have a valid Claim.*

*When We are satisfied You have a valid Claim We will contact You, via the preferred method of contact You provided Us with when notifying Your Claim, to arrange repair or replacement.*

*In circumstances where We have decided to repair Your Equipment (and, where relevant, accessories).*

*We will arrange for Your Equipment and accessories to be collected at an agreed time unless they have previously been collected.*

*The Equipment (and, where relevant, accessories) will be repaired by Us and returned to You.*

*We will be responsible for collection, repair and delivery costs only.*

*You may incur a delivery and administration charge if You are not able to take delivery at the arranged time and place You agreed.*

*In circumstances where We have decided to replace Your Equipment (and, where relevant, accessories)*

*We will arrange to:*

- send Replacement Equipment and accessories to You; and*
- where the Claim is for Damage or faulty Replacement Equipment, collect the Damaged Equipment and accessories or faulty Replacement Equipment from You unless they have previously been collected.*

*You may incur a delivery and administration charge if You are not able to take delivery at the arranged time and place You agreed.*

*...*

### **11. Excess**

*In the event of a successful Claim We will not cover the Excess which must be paid by You.'*

So, for any claim, an excess is always payable by the policyholder. This is standard across almost every type of insurance policy.

### ***What went wrong***

There is no dispute that Telefonica initially sent out the wrong brand of phone to Mr V as his replacement phone, so that it could deal with Mr V's damaged phone. There is also no doubt that the return of the first replacement phone plus Mr V's original phone via the courier service went missing.

The missing phones delayed Telefonica dealing with Mr V's claim which caused Mr V further trouble and upset in trying to make a successful claim. Therefore, it's clear to me that things went wrong here, so, it was right that Telefonica acknowledged this and apologised. I will deal with the compensation element later below.

### ***The second replacement phone***

However, in line with the policy terms above, Telefonica then sent out a second replacement phone to Mr V on 15 November 2024. Mr V said this phone was faulty and couldn't be used which meant he was left without a working phone. He said he told this to Telefonica via email, and I can see Telefonica replied that same day asking Mr V to contact it so they could look into it.

Mr V told us that he then phoned Telefonica on the number indicated in Telefonica's email, but the call handler was rude and ended the call abruptly. Mr V said this meant he was reluctant to contact Telefonica again.

However, Telefonica can't find any record of this call in any of its systems. I am satisfied that it has searched diligently for this call, and I can see from its system records no one entered anything in Mr V's file for that time period regarding any contact from Mr V. The last contact showing any phone calls on Mr V's file in Telefonica's system is 8 October 2024.

So, without evidence showing Mr V made this call, I don't consider it's fair or reasonable to hold Telefonica responsible for being rude to Mr V in this instance. However more importantly, as Mr V says this phone is faulty, Telefonica must be given the chance to confirm the phone is faulty, as Mr V says it is.

Again, it's not reasonable that Telefonica can be held liable for providing any faulty phone to Mr V or indeed leaving Mr V without a working phone, unless it can actually examine this phone and either fix it or replace it. I consider that Telefonica could only have been responsible for this faulty phone and the lack of any working phone if Mr V had sent the phone back in to Telefonica, so it had the chance to either fix this phone or supply him with another working replacement.

### *The outcome*

As it's very clear this didn't happen, I don't consider Telefonica is then responsible from 15 November 2024 for Mr V having a faulty phone and no working phone thereafter. I do understand and appreciate Mr V will be very disappointed with this outcome. Notwithstanding his health issues, it's not correct on a fair and reasonable basis, and indeed having regard to the law on such matters, to hold Telefonica responsible without first allowing it any chance to fix or replace the phone.

### *Compensation issues*

During September, October and November, Mr V said he had medical appointments and communications which were missed or delayed as a result of not having any working phone. I can see that on some occasions Mr V was able to borrow a mobile phone for some of his communications. Mr V has shown us a letter dated 1 October 2024 from a medical consultant who said he couldn't contact Mr V on two telephone numbers. However, the letter doesn't say that the appointment was missed solely due to the fact Mr V didn't have a working phone at that time.

Regardless of this, up to the 15 November 2024 when Telefonica sent out the latest phone to Mr V, I do consider it was very inconvenient for Mr V in not having a working mobile phone. Telefonica acknowledged this and made an offer to Mr V of £300 compensation which remains open for Mr V to accept.

Mr V was of the view this wasn't enough and that instead he wanted at least £3,000 and later £4,500. Our approach to compensation is more fully detailed on our website however for around two months or a little more time where a consumer didn't have a working phone would not equate to compensation levels in the thousands, as Mr V suggests, in the particular circumstances of this case.

Compensation payments aren't a punishment against the business, to attempt to teach them a lesson. It's a compensatory award for the consumer's level of distress, trouble and upset. Given Mr V's health issues, I can see that he would be more adversely affected too, therefore I consider Telefonica's offer of £300 was about right for the time period involved.

While I don't wish to diminish the impact on Mr V, this amount is higher than I would have awarded had Telefonica offered Mr V nothing. Therefore, I consider it's a fair and reasonable amount taking all the circumstances into account.

When a consumer faces hardship of this nature like a non-working mobile phone, the law says the consumer must also try to mitigate his losses too. This could have involved purchasing a substitute cheap or borrowed working phone for the meantime. I can see Mr V borrowed someone else's phone occasionally, so I don't think Telefonica is completely responsible for Mr V not obtaining some other substitute phone until this was all sorted out. The policy is clear that there is no duty on Telefonica to upgrade Mr V's phone simply because he made a claim and had a cause to complain either. So, I don't consider Mr V's thoughts that he should be given the updated model of his phone is reasonable either.

### *Conclusion*

I think things did go wrong for Mr V with Telefonica up to the 15 November 2024. I consider that as the replacement phone received on 15 November 2024 has not been sent back to Telefonica it's not reasonable that it's responsible for the consequences for Mr V after that date.

I consider its payment of £300 compensation is fair and reasonable also. I consider this takes account of the distress and inconvenience Mr V suffered to include it being heightened in severity given his ill health too. Therefore, I don't consider it has to do anything more. It remains for Mr V to decide if he wants to accept this £300 compensation payment.

### **My final decision**

I do understand and appreciate Mr V will be very disappointed with my decision but for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 20 June 2025.

Rona Doyle  
**Ombudsman**