

The complaint

Mr B has complained that Assurant General Insurance Limited trading as Protect Your Bubble unreasonably refused his claim under his mobile phone insurance policy when he lost his phone.

What happened

On 2 April 2025, Mr B said he was in the park jogging, something he does routinely with his daughter. His phone was in his trouser pocket. And then he discovered he had lost his phone. So he made a claim to Assurant the following day.

Assurant said as Mr B wasn't taking enough care of his phone as required by the policy wording it declined to accept his claim.

Mr B appealed but Assurant wouldn't change its stance. So he brought his complaint to us.

The investigator thought it should be upheld and that Assurant should pay Mr B's claim less the excess with interest. And pay Mr B £50 compensation.

Assurant didn't agree so Mr B's 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.

Having done so, I'm upholding this complaint along the same lines as the investigator. I'll now explain why.

Assurant said that by jogging with his phone in his trouser pocket, Mr B wasn't taking proper care of his phone as the policy required him to do.

The policy says the following in relation to this:

'Taking care of your device means:

- *Not deliberately leaving your device 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 device somewhere then we expect you to lock it away out of sight if 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 enquiries to find your device if you think you have lost it.*

We may not pay your claim if you deliberately leave your device where others can see it, but you can't, and it's then lost or stolen.

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.

The following are recent examples of incidents where we have rejected a claim for not taking care:

- *leaving your device somewhere you can't see it, but others can.*
- *leaving your device on display in your car.*
- *leaving your device in the care of someone you don't know well.*
- *If you're at the gym and you leave your device on a bench in the changing rooms, rather than taking it with you or locking it in a locker.*
- *If you're in a café or pub, and you leave your device on the table when you go to the bar instead of taking it with you.*
- *intentionally damaging your device.*

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

None of these examples cover having your mobile phone in your trouser pocket or indeed any type of pocket whether or not it was capable of being closed. And many people do carry their mobile phone in a pocket of their clothing.

As the investigator explained, there is case law on the idea of taking care of possessions and taking risk, which I have detailed to Assurant previously too, namely the case of *Sofi -v- Prudential* (1993) 2 Lloyd's Rep. 559 which covers things rather like Assurant's policy does here as it concerned a policy which required the policyholder to take all reasonable steps to safeguard the property insured.

Here what was insured, was some jewellery which the policyholder decided to take with him on holiday to France as his house had previously been burgled. He put the jewellery into a soft leather case and locked it in his car in the glove compartment. When he arrived at Dover he had some time to spare so he decided to visit Dover Castle. He parked his car and had a discussion with his companions as to what to do with the jewellery and some cash and travellers cheques they had with them. He decided to take the cash and travellers cheques with him but to leave the jewellery in the locked glove compartment which was out of sight. And they locked the car and went off to look at the castle.

On their return only about 15 minutes later, the car had been broken into, and the jewellery was stolen along with all their other belongings and suitcases. The insurer refused to pay their claim for the jewellery specifically because they felt the policyholder hadn't taken all reasonable steps to protect his property. The evidence was that they had discussed what to do with the jewellery and as it wouldn't fit into any pocket or handbag any of them were carrying, they felt it was slightly more dangerous carrying it than leaving it out of sight in the locked car and glove compartment.

The burden of proof was held to be on the insurer to show its policyholder hadn't taken all reasonable care to safeguard the jewellery. And the test was, did the policyholder recognise there was a risk and was then reckless as in not caring if it was going to be stolen? The judge decided that this policyholder did act with reasonable care in assessing the risk, so he

wasn't reckless or uncaring as to whether the jewellery got stolen or not. Therefore, the insurer hadn't shown the policyholder had not taken sufficient care and should now pay his claim.

Mr B didn't leave his phone in the park on a bench or anywhere else. He kept it in his trouser pocket as that's where he had always kept it and until now it had always been safe. There was nothing to show Mr B consequently there was any risk in this. Therefore I consider Mr B wasn't aware there was any risk in playing and jogging in the park with his daughter with his phone in his trouser pocket as he had done this many times before. So under this case above if the insurer can't show that Mr B took a risk then he can't be held to have not taken reasonable care. I consider here, Mr B was completely unaware he was taking any risk at the time.

Further I don't consider the duty of care demanded by the policy includes simply not using the phone depending on activities either, as otherwise those types of instances and activities should be specified in the policy. Instead, what is detailed in the policy is where the policyholder 'leaves' the phone in places where he can't see it or care for it. So, I consider there has to be a reasonable balance on this type of issue rather than a type of blanket ban on using the phone in certain situations.

So, I consider Assurant hasn't discharged its burden of proof to show Mr B was careless or reckless with his phone, and the policy wording itself doesn't tell Mr B not to keep his phone in his trouser pocket.

Mr B's schedule shows he has paid extra for the loss benefit under this policy. And the policy says in that case *'we will replace devices that are lost or stolen with a device of the same make model and memory size. If we cannot do this, you will be given a choice of models with an equivalent specification.'*

Therefore I consider Assurant should now replace Mr B's phone as above provided Mr B pays the relevant excess.

On the basis the policy requires Assurant to replace the phone that means there is no payment of any interest as the investigator suggested. There are other clauses where Mr B might be entitled to a monetary refund for example network charges for up to 24 hours after the loss or theft of the phone. If Assurant pays anything under this sort of clause then I would expect Assurant to pay interest at 8% simple per year from the date Mr B was charged these costs by his network provider to the date it refunds him.

This obviously caused Mr B some trouble and upset if not confusion as to why he couldn't keep his phone in his trouser pocket as he and so many other people do. Therefore I agree with the investigator's suggestion that compensation is payable. I consider the amount suggested of £50 is in line with our approach which is more fully detailed on our website and is therefore fair and reasonable.

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 Protect Your Bubble to do the following:

- Provide the replacement of Mr B's phone under the remaining terms and conditions of the policy, which means Mr B needs to pay the excess if he hasn't already done so.

- If Assurant refunds any financial loss under any other term of the policy, it should add interest of 8% simple per year from the date Mr B incurred the financial loss to the date it refunds him. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr B for HMRC purposes.
- Pay Mr B the sum of £50 compensation for the trouble and upset it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 January 2026.

Rona Doyle
Ombudsman