

The complaint

Mr P has complained that Assurant General Insurance Limited declined a claim under his mobile phone insurance policy.

What happened

Mr P has mobile phone insurance cover through his bank account. He made a claim having lost his phone whilst cycling home from work. His phone was in his jeans pocket. Assurant declined the claim. It said that Mr P had failed to take reasonable care.

Unhappy Mr P referred his complaint to our Service.

The investigator recommended that it be upheld. They didn't find that Mr P had knowingly left the phone where it was likely to be lost. They found that Mr P put his phone safely in his jeans pocket when he cycled from work as usual. As Mr P had been without a phone the investigator also recommended that Assurant pay compensation in the sum of £200.

Mr P accepted the recommendations, but Assurant didn't. In summary it made the following points:

- Any type of trouser pocket is susceptible to opening and movement particularly during physical activity such as cycling. The pocket wasn't secure enough to reasonable protect the device.
- Alternative safe storage was available in Mr P's zipped backpack.
- Behavioural norms – the carrying of mobile phones in pockets – do not override the duty of care outlined in the policy.
- In other views investigators at this Service have said that a consumer failed to take reasonable care in circumstances similar to these.

As no agreement has been reached the complaint has been passed to me to determine.

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 relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the contract terms; regulatory rules; good industry practice; and the available evidence, to decide whether I think Assurant treated Mr P fairly.

I've firstly considered the policy terms and conditions, as these form the basis of Mr P's contract with Assurant. Mr P's policy covers him for loss, theft, damage or breakdown. The policy specifically excludes cover where the loss has occurred as a result of a failure to take reasonable care. It says:

We expect you to take care of your mobile phone. If you don't take care of your mobile phone then we may not accept your claim.

Taking care of your mobile phone means:

- *Not knowingly leaving your mobile phone 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 mobile phone somewhere then we expect you to lock it away out of sight if at all 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 reasonable enquiries to find your phone if you think you have lost it. We will always take into account where you are and what you are doing when we assess whether you have taken care of your phone.*

The policy explains that Assurant will always take into account where the policyholder is and what they are doing when it assesses whether reasonable care has been taken. It then goes on to give recent examples of incidents here it has declined a claim for not taking care.

These are:

- *in a cafe or pub you leave your mobile phone on the table when you go to pick up your drink instead of taking it with you*
- *leaving your mobile phone on display in your car*
- *leaving your mobile phone somewhere you can't see it but others can*
- *leaving your mobile phone in the care of someone you don't know well*
- *if you are at the gym and you leave your mobile phone on a bench in the changing room rather than taking it with you or locking it in a locker*
- *intentionally damaging your phone*

The policy explains that these examples given are not the only reasons a claim could be declined, and I agree that Assurant is not limited to declining a claim for these reasons only. But I don't find that there is any analogy between these examples and what happened here. Likewise I find that Assurance has made a fair point when it says that behavioural norms – the carrying of mobile phones in pockets – do not override the duty of care outlined in the policy. But I'm not persuaded that Mr P failed to take care in the present circumstances. I will explain why below.

I must also take account of the law – here the test set out in the case of Sofi-v-Prudential Assurance (1990). In this case it was held that to be considered reckless it must be shown that the insured appreciated the risk but simply didn't care or ignored it. I'm not satisfied that Assurant has shown that Mr P – who regularly cycles to work – appreciated a risk.

Ultimately I will determine a case by reference to what is, in my opinion, fair and reasonable in all the circumstances. Different circumstances could well lead to a different conclusion – this is why each case is determined on its own facts. But having carefully considered the circumstances leading to the loss of Mr P's phone together with the policy exclusion and the law I'm not satisfied that it was fair for Assurant to decline Mr P's claim. His phone was in his jeans pocket – there is nothing to suggest it didn't fit there snugly or was susceptible to opening or movement. There is also nothing to suggest that Mr P knowingly placed his phone somewhere it was likely to be lost – it was on his person. I accept that he could have placed his phone in his backpack – but I don't find that not putting his phone in his backpack is evidence that Mr P failed to take care of it. It follows that I find that Assurant should now reassess the claim.

I find too that Mr P would have been substantially inconvenienced by not having his claim declined. It has also caused him trouble and has had financial consequences in that he needed to purchase another phone with borrowed money. I find that compensation is merited and agree that £200 is fair.

My final decision

My final decision is that I uphold this complaint about Assurant General Insurance Limited. I require it to:

- Reassess Mr P's claim without reliance on the reasonable care condition but subject to the remaining policy terms
- Pay Mr P £200 in compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 December 2025.

Lindsey Woloski
Ombudsman