

## **The complaint**

Mr M has complained that Assurant General Insurance Limited unreasonably and unfairly refused his claim under his mobile phone insurance policy when he lost his mobile phone.

## **What happened**

Mr M went to buy a couple of things on his moped. He had put his shopping along with the chain and lock for his moped in the under seat storage area. He said he didn't put his phone in there as it would have been loose in the box like structure and therefore likely damaged by the other contents in there. So he put his phone in his trouser pocket which didn't have a button or zip for the ride home. Unfortunately, the phone fell out and was lost.

Assurant refused his claim because it felt it was clear Mr M hadn't taken proper care of his phone as the policy terms demanded he did. Mr M complained but as Assurant wouldn't change its stance, he brought his complaint to us.

The investigator was of the view that it should be upheld, more so because of the test of 'recklessness' as detailed in the court case of *Sofi v Prudential* (1993). Assurant didn't agree quoting a case resolved by another investigator so without the need of a final decision, which said otherwise.

On that basis, Mr M'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. I'll now explain why.

As Assurant are aware, we are charged to investigate all cases on their own merits independently of any sort of precedent either party may decide on the basis of other final decisions published by this service. Furthermore investigators' views on complaints are not published so aren't available to the general public in the same way final decisions are, they are only available to the parties to the complaint. As Assurant is also aware, we often detail our approach to varying issues on our website from time to time to help either party to a complaint too, however we tend not to have a rigid precedent set, since every set of circumstances is different and how we approach specific issues is often within our fair and reasonable remit also. So references to previous cases resolved either by an investigator's view or a final decision don't set the type of firm precedent Assurant is implying here, in any event.

Like most mobile phone policies Assurant's policy has the following terms:

***'Who is this cover designed for?'***

## **Summary**

*It is important to note that gadget insurance is offered on the understanding that you will take care of your gadget.*

## **Description**

*Having insurance does not mean that you can take risks with your gadget which you would not take if your gadget was not insured as doing so may result in your claim being declined. Further details can be found in the section What you are NOT covered for.*

...

*Your registered gadget is covered for.*

*Loss (where you have chosen to pay an additional premium for this cover) occurring anywhere in the world.*

## **What you are NOT covered for**

*We know how important your gadget is to you and we expect that you will take care of your gadget. If you don't take care of your gadget then we may not pay your claim. Taking care of your gadget means not knowingly leaving your gadget somewhere it is likely to be lost, stolen or damaged, just think would you leave your wallet or purse there?'*

And I don't find this unusual or significant either. Had Mr M left his phone, for example, on his moped when he went into the shop, I would say he hadn't taken proper care of his phone as this policy demands he should do. This policy does cover loss however, unless it's very clear that the policyholder failed to take reasonable care.

As Assurant is aware, the case of *Sofi v Prudential* (1993) is clear that in order to show a failure to take reasonable care, the insurer needs to show that the policyholder recognised there was a risk and was then reckless, as in not caring if it was going to be stolen, or as in this case, lost.

Mr M certainly recognised there was a great risk of the phone being damaged if he put it in the under seat storage box given the other items in there which would have caused a damage claim under this policy in any event. Like the investigator, I don't consider Mr M simply acknowledged it would have been safer if he had put the phone in the under seat storage box, as Assurant believes. By doing that, he was clear, he rightly thought there was a risk of his phone getting damaged given the other contents in his under seat storage area. So he then quite rationally thought in my view, that it would be safer to put it in his trouser pocket.

In the case of *Sofi*, the evidence was that that policyholder also recognised the risk of leaving the jewellery bag in the car or taking it with him, so he locked the bag in the glove compartment out of sight instead. Nevertheless it got stolen along with all their luggage in around 15 minutes. The judge decided that the policyholder did act with reasonable care in assessing the risk, so he was not reckless or uncaring as to whether the jewellery got stolen. So the benefit of hindsight that Assurant keeps asserting should be important, has no part to play in the recognition of the risk which has been taken. It's always easy for anyone after an event to see the path chosen might not have been that sensible given the consequences which then occurred. But Mr M has shown he was cognisant of the risk and for him he made

what he considered to be the least risky option. That is all he has to show in my view to show he took reasonable care in line with the case of Sofi.

I consider the fact Mr M has one previous claim and the policy permits two claims for loss in any 12 month period, does not then mean the second claim should never be paid either. It means instead that a third claim in any 12 month period for a phone lost or stolen, simply is not covered under this policy. For the avoidance of any doubt I also consider that's a reasonable term too. But this isn't Mr M's third claim in a 12 month period, it's his second claim so the policy covers this second loss. So I consider that Mr M has shown he has suffered a loss which is covered by this policy and therefore his complaint should be upheld accordingly.

I also consider this caused Mr M some trouble and upset. I can see that the excess Mr M has to pay is £150 when a phone is lost or stolen. The investigator suggested Assurant to waive the payment of the excess for the purposes of paying Mr M some compensation for his trouble and upset given his claim was wrongly not accepted by Assurant. Given our approach to compensation more fully detailed on our website, I consider the sum of £150 compensation is in keeping with the level of trouble and upset Mr M suffered. Therefore it seems sensible that Assurant waive this excess as the investigator suggested in order to compensate Mr M for the trouble and upset it caused.

### **My final decision**

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

I now require Assurant General Insurance Limited to do the following:

- Accept Mr M's claim and provide him his replacement phone as detailed in the policy.
- Waive the necessity of Mr M paying his excess of £150 as the means of compensating him for the trouble and upset it caused him

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 February 2026.

Rona Doyle  
**Ombudsman**