

## The complaint

Mr J has complained that Assurant General Insurance Limited unfairly and unreasonably refused to consider his claim under his mobile phone insurance.

## What happened

Mr J was cycling to a train station on 20 March 2025 and needed to use his phone along the way. So, he put it in his back pocket of his trousers. He was wearing a backpack also but felt it would be too awkward to have to keep stopping to get his phone out plus that that would draw attention to him using his phone. When he reached the train station he found his phone was gone. He retraced his journey but couldn't find it.

So, he made a claim to Assurant. Assurant decided Mr J didn't take enough care of his phone which was a condition of the policy. So, it wouldn't accept his claim.

Mr J complained but Assurant wouldn't change its stance. So, Mr J brought his complaint to us. The investigator was of the view that Assurant hadn't done anything wrong. Mr J didn't agree so his complaint was passed to me to decide.

I issued a provisional decision on 27 October, and I said the following:

'Having done so I'm intending to uphold this complaint. I'll now explain why.

Like many other mobile phone policies, Assurant's policy has a term about taking care of your device. This term in Mr J's policy says the following:

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

*Having insurance does not mean that you can take risks with your Device which you would not take if your Device 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.'*

Under the section 'What you are NOT covered for' the policy says the following:

***'Loss, theft, damage or breakdown as a result of not taking care of your Device.'***

*Taking Care of your Device means:*

- *Not knowingly 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 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 Device if you think you have lost it,*

*If you knowingly leave your Device where others can see it, but you cannot and your Device is then lost or stolen we may not pay your claim.*

*We will always take into account where you are and what you are 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 knowingly taken a risk with it, we may decline your claim.*

*If you knowingly leave your Device somewhere you can't see it, but others can, we may decline your claim for not taking care of your Device for example:*

- *In a cafe or pub you leave your Device on the table when you go to the bar to pick up your drink instead of taking it with you.*
- *Leaving your Device on display in your car or leaving your Device in the care of someone you don't know well.*
- *If you are at the gym and you leave your Device on a bench in the changing rooms rather than taking it with you or storing it in a locker,*
- *Intentionally damaging your Device.*

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

So, the question is whether Mr J could be seen to be taking care of his device which he put in his back pocket as he needed to use it when riding his bicycle on his way to the station. Assurant obviously believes he wasn't taking care.

There is some case law on this from the Courts which explains about what can be perceived as a risk, and whether the policyholder then assessed that risk and consequently was deemed to take appropriate care. It's a case called *Sofi -v- Prudential* (1993) 2 Lloyd's Rep. 559. Very like in Assurant's policy, this case 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.

I consider in Mr J's case given that he needed or wanted to use his phone on his cycle ride to the station that he had to balance his requirement to use his phone along with taking care of it. He felt there was a greater risk of stopping and taking it out of his backpack several times as he felt that heightened the risk of his phone being stolen, hence he decided keeping it in his back pocket of his trousers was safer. Since he said he was using it, I'm persuaded that it's unlikely that he had any intention not to 'care' about its safety as well.

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 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. Further I consider it's far more likely Mr J's phone fell out of his pocket instead of being stolen.

Given Mr J's account of using his phone and what then happened, I don't consider Assurant has discharged its burden of proof in showing Mr J was careless or reckless with regards to taking care of his phone. Obviously with the benefit of hindsight everyone could have done things differently as in the policyholder in Sofi et al would have brought his jewellery case with him or left someone behind in the car, or Mr J would have worn a jacket with an inside pocket for example. Just because with the benefit of hindsight the thought process about what to do wasn't that good at the end of the day, doesn't then mean there was a lack of care in my view. This policy demands that the policyholder thought about the risk and recognised there was a risk and took steps to minimise that risk. Given Mr J's testimony over his backpack I consider he both thought about the risk and took steps to try and minimise that risk too.

So, for these reasons I consider Assurant should reassess Mr J's claim under the remaining terms of the policy with a view to accepting his claim and providing him with the relevant policy benefit for a lost phone.

I also consider Assurant's stance on this matter caused Mr J some considerable trouble and upset. Therefore, I consider it should pay Mr J the sum of £200 compensation for this trouble and upset. This is in line with our approach to compensation, which is more fully detailed on our website, therefore I consider this is fair and reasonable in Mr J's circumstances.'

Assurant agreed with my provisional decision. Mr J did too but he thought the compensation award was too low. He said he had to pay off his lost phone and then pay to get a new

phone. He also explained that it wasn't just this sort of financial hit which was the problem but also Assurant's declination of his claim took a serious toll on his mental well-being. So he didn't think the compensation reflected everything he went through.

### **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 again, I remain of the view that the compensation award I decided in my provisional decision is fair and reasonable, so I'm sorry to disappoint Mr J.

Compensation can't be a punishment or a fine on a business for getting something wrong. Instead it's compensation for the distress, trouble and upset the business' mistake caused. Our website details our approach to compensation more fully but for something that took a reasonable effort to sort out as this did for Mr J, an award of up to £300 is appropriate.

As I have no evidence of the effect of Assurant's stance on Mr J's well-being, I remain of the view that compensation of £200 in these circumstances is fair and appropriate here to compensate him for Assurant not accepting his claim for his lost phone. Having to make any insurance claim is always upsetting and distressing and very inconvenient. However it must be remembered that the insurer was never involved in the circumstances which led to the loss in the first place.

### **My final decision**

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

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

- Reassess Mr J's claim under the remaining terms and conditions of the policy with a view to accepting his claim and providing him with the policy benefit.
- Pay Mr J the sum of £200 compensation for the trouble and upset it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 3 December 2025.

Rona Doyle  
**Ombudsman**