

## **complaint**

Mr Z is complaining that his mobile phone insurance claim was unfairly declined by Homecare Insurance Limited ("Homecare").

## **background**

Mr Z was travelling back to the UK and realised he had lost his Apple iPhone 4 at the airport. During the course of his claim he advised the business that there was no SIM card in the handset at the time of the loss as he often used different SIM cards when away from the UK. Homecare requested Mr Z provide it with proof of blacklisting, however, Mr Z has said he attempted to get information from the network provider to show that he had tried to do this but the network provider was unable to block the handset as it was not registered.

Homecare declined Mr Z's claim because he had not complied with the policy terms and conditions which require all losses that occur when abroad to be reported to the network provider within 48 hours and for the handset to be blacklisted or proof he had attempted to do this provided. Mr Z disagreed with this assessment and the complaint was brought to the Financial Ombudsman Service.

Our adjudicator believed that the claim had been unreasonably declined as he felt the business had not shown any prejudice material to the loss as a result of the breach of the policy condition. Homecare disagreed with this assessment so the complaint has been referred to me for a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I am in agreement with the adjudicator that this complaint should be upheld.

I have looked at the policy terms and conditions provided by the business and noted the table on page five of the '*mobile phone insurance*' section which outlines the reporting requirements for claims. I accept that it outlines loss or theft claims must be reported to the airline provider within 48 hours of return to the UK.

The rules of the Financial Conduct Authority (formerly the Financial Services Authority) regarding insurance claims handling says, however, that an insurer should not decline a claim unreasonably by relying on technical breaches of a condition which are not materially connected with the circumstances of the claim. This means, in practice, an insurer must show prejudice which is a direct result of the breach in order to decline a claim. In addition, this breach must be material to the loss and not other considerations such as commercial interests.

From the evidence I have viewed, Homecare has not provided anything to suggest that it has been materially prejudiced by Mr Z's claim and by him not reporting the loss to his network provider. While I appreciate there is a discrepancy over whether or not Mr Z contacted the network provider, I do not believe this has any bearing on the validity of the claim.

Mr Z has indicated that he did not use any specific SIM card in the mobile phone and in addition; he did not have one in the phone at the time of loss. I do not believe that Mr Z

would have reasonably believed he needed to report his handset for blacklisting as his phone was not registered and he was not claiming for any unauthorised calls. Also, there is certainly no suggestion of fraud so I am not persuaded that the business is entitled to refuse to deal with the claim because Mr Z did not comply with the policy conditions.

For the reasons set out above I do not consider it fair and reasonable, based on the circumstances of this complaint, for Homecare to have declined Mr Z's claim. It therefore remains for me to assess what needs to be done to put Mr Z back in the position he would have been in, had the claim been properly dealt with.

Having listened to the call recordings provided by the business, I have noted that the network provider has no registration record of the handset being claimed for. In my assessment, this supports Mr Z's statements that his phone was not connected to any specific network and could not, therefore, be blacklisted. There is also nothing to contradict this argument so I have no reason to doubt Mr Z's testimony.

In its recent submission to us the business has indicated that Mr Z has not provided any proof of purchase. In my view, I believe it is unfair for the business to rely on a new reason, which has not been communicated with Mr Z, at this late stage for my consideration. However, I accept that it is not an unreasonable request for the proof of purchase to be submitted for the claim to be reassessed if it has not yet been provided.

#### **my final decision**

My final decision is that Mr Z's complaint should be upheld. Homecare Insurance Limited should proceed to reassess the claim, subject to the other terms of the policy.

I make no other award against the business.

Christopher Tilson  
**ombudsman**