

complaint

Mr S has complained that London General Insurance Company Limited (LGI) has turned down a claim on his mobile phone insurance.

background

Mr S advertised his phone for sale online. A prospective buyer came to see it and asked to show it to his friend in the car outside. Mr S took it outside to show the man in the car. They agreed the sale and the buyer handed over cash before quickly driving away. But the cash was fake and although Mr S gave police the car registration they haven't found the people concerned.

Mr S claimed for the theft of his phone. LGI refuse to pay because it said that Mr S hadn't taken care of his phone.

Mr S brought his complaint to us. The adjudicator thought that LGI should pay Mr S's claim. LGI didn't agree and asked for an ombudsman's decision.

my findings

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 going to uphold it.

Mr S's policy says that he must take care of the phone. The policy gives examples of what that means, including things like not leaving the phone somewhere where it's likely to be stolen or leaving it unattended. It also says that if it thinks Mr S had knowingly taken a risk with the phone it might refuse the claim.

LGI say that Mr S didn't take care for the phone because he handed it to the potential buyer. It said that the phone was advertised as in a sealed box so that all a potential buyer would have to do is examine the box and the seal. It also said that Mr S is experienced at selling items via the website he advertised it on and so should be aware of potential "*scammers and fraudsters*".

Where insurers use a general condition that can be referred to as "reasonable care". This service often refers to the case of *Sofi v Prudential Assurance Company Limited* which says that for an insurer to rely upon a reasonable care condition, it would need to show that the policyholder acted "*recklessly*". To demonstrate "*recklessness*", the policyholder must recognise that a risk exists, but either do nothing or take measures which he or she knows aren't good enough to avoid that risk.

But I don't think Mr S did act recklessly. Any prospective buyer of a mobile phone is going to want to examine it carefully, even if it's in a sealed box. Buyers would be keen to examine the sealed box closely to ensure that they themselves weren't being sold something that wasn't exactly as advertised. So I don't think Mr S took an unreasonable risk by handing it to the potential buyer.

While events took a slightly unusual turn when the buyer suggested showing the phone to his friend outside, Mr S still didn't take unreasonable care. He went out to the car to show the phone and he still had the phone in sight until the last minute when the thieves drove off.

And he'd taken receipt of cash . And clearly Mr S didn't appreciate what was about to happen.

LGI also said that Mr S didn't take reasonable care because he didn't check the money was genuine before parting with the phone. But, as he'd already handed the phone over for inspection, he didn't get it back before the thieves gave him the fake notes. So I don't think he had time to look at the money before the theft. And I think it was an unusual situation and not one that Mr S could have been prepared for.

It follows that I don't think that it was fair for LGI to decline his claim because he didn't take reasonable care. So it should settle his claim subject to the limits and excesses of his policy.

my final decision

For the reasons set out above I uphold this complaint.

I require London General Insurance Company Limited to settle Mr S's claim subject to the excesses and limits of his policy. If it chooses to pay a cash settlement, rather than replacing the handset, then it should add simple interest at 8% a year from the date Mr S made his claim to the date it makes payment¹.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 September 2016.

Joe Scott
ombudsman

¹ If LGI considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.