

The complaint

Mr K is unhappy with what Assurant General Insurance Limited did after he made a claim on his mobile phone insurance policy.

What happened

In August 2023 Mr K contacted Assurant to make a claim for a lost phone used by his wife. During his calls he confirmed he'd only ever used a SIM card from a business (E) in the phone. However, Assurant said from April to June a SIM card from a different business (V) was used in the phone. It said where false and inaccurate information was provided, and fraud was identified, the policy allowed it to reject a claim and cancel a policy. It thought that was the case here and so turned down the claim (and cancelled the policy).

In her most recent view our investigator said Assurant hadn't shown Mr K had provided inaccurate information in order to better his position. She thought he'd become confused about what he was being asked because of a language barrier. And he'd subsequently provided a reasonable explanation as to why there had been different SIM cards in the device (his wife was using data from different cards). She thought Assurant should reinstate the policy and remove any markers from Mr K's file. And it should accept the claim and pay it in line with the remaining policy terms.

Assurant didn't agree. It thought the information Mr K provided could have been to better his position and it was common for insurers to decline claims where a consumer had provided false information. It thought the claim had been correctly declined in line with the policy terms. So I need to reach a final decision.

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 rules and industry guidelines say Assurant has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr K's policy. This does cover loss of the registered mobile device but as Assurant has highlighted the terms say:

"It is important that when applying for insurance, or submitting a claim you or anyone acting on your behalf must take reasonable care to answer all questions honestly and to the best of your knowledge. Failure to do so may affect the validity of your policy or the fulfilment of your claim."

If false or inaccurate information is provided and fraud is identified then we may:

- *Reject the claim and we may cancel your policy. If an excess has been paid this will be returned..."*

Assurant has relied on that term when turning down the claim Mr K made. And I don't think it's in dispute he did provide inaccurate information when speaking to Assurant about the claim. In particular during his second call with it he did confirm only a SIM card from E had been used in the phone he was claiming for. Assurant has evidenced that wasn't correct as from April to June a SIM card from V was used in that phone.

However, the terms of Mr K's policy don't entitle Assurant to reject a claim and cancel a policy simply because inaccurate information has been provided. They also say fraud needs to be identified. For that to be the case I think Assurant would need to show this was either a false or an exaggerated claim. I don't think it has.

During his first call with Assurant Mr K said only a SIM from E had been used in the phone he was claiming for. But that was in response to the adviser asking about the previous three month period. And in any event it was later established the claim hadn't been logged against the device Mr K was claiming for. So the questions the adviser was asking were understandably confusing to Mr K as it wasn't based on usage information for the correct phone.

I appreciate when the adviser called Mr K back the following day he did confirm the device he was claiming for had only ever been used with a SIM card from E. And that led Assurant to confirm the decline of the claim as that wasn't correct. But I'm mindful of the fact Mr K's wife was the main user of the phone. And when she then spoke to Assurant (I appreciate after the claim decline decision had been given) she did acknowledge that a SIM from V had previously been used in the lost device.

I've also taken into account that there do appear to have been difficulties in both Mr K and his wife understanding some of the questions Assurant was asking. I think that's an issue Assurant also recognised as the adviser asked at one point whether Mr K needed a translator. I appreciate he was happy to proceed without one. But it nevertheless seems to me that at points both he and his wife were confused about what they were being asked. I'm not persuaded they did always fully understand the points Assurant was making. Taking all of that into account I'm not satisfied that Mr K did deliberately provide false or misleading information during his call with Assurant.

But even if I'm wrong about that, case law (*Versloot Dredging v HDI Gerling Industrie Versicherung AG*) has established that a claim isn't dishonest if a lie is told with the aim of improving the policyholder's position but in fact doesn't. In this case Assurant has suggested the inaccurate information Mr and Mrs K provided could have been to better their position *"for example, if the device was never lost in the first place, or lost in a different way than described, then they could be attempting to gain from the insurance"*.

If Mr and Mrs K were claiming for a device that hadn't in fact been lost that would be the case. But Assurant hasn't provided any further evidence in support of that. What it's relying on is that Mr (and Mrs K) provided inaccurate information about what SIM the phone had contained in the past.

However, it hasn't provided anything to show how that changed the situation in relation to the claim Mr K then made. And it's not obvious to me how the issue of what SIM the phone had in it three months prior to any loss taking place would impact the position in relation to their subsequent claim.

As Assurant is seeking to rely on a condition in the policy not being met the onus is on it to show that applies. To do so it needs to show not only that inaccurate information was provided but that fraud has been identified. For the reasons I've explained I don't think it's done so in this case. And Assurant hasn't shown Mr K's claim didn't meet any of the other conditions of his policy or that an exclusion would apply.

Putting things right

Assurant will need to reinstate Mr K's policy (for the remainder of his policy term) and remove any information it recorded about the cancellation from its records. And it will need to accept and pay Mr K's claim subject to relevant policy limits and any excess.

My final decision

I've decided to uphold this complaint. Assurant General Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 February 2024.

James Park
Ombudsman