

The complaint

Miss S complains that Assurant General Insurance Limited unfairly refused to repair her phone under warranty, instead advising that she must make a claim under her mobile phone insurance policy and pay the excess.

Where I refer to Assurant, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

Miss S benefits from mobile phone insurance through her bank account. In October 2023, she made a claim for damage to her phone.

Assurant accepted the claim and allowed Miss S to take it to a store for repair.

Several weeks later, Miss S' phone hadn't been returned. So, in November 2023, Assurant agreed to provide a replacement handset under the policy which came with a 12-month warranty.

In March 2024, Miss S contacted Assurant advising that Apps weren't working on her phone. Assurant agreed to repair it under the warranty, but when the handset was received it was damaged; there was a small chip and crack to the bottom of the device.

Assurant says the warranty only covers mechanical and electrical faults. And whilst the phone is experiencing some technical problems, it doesn't know if this occurred as a result of the physical damage to the phone as it appeared to be working correctly for four months. As such, it said Miss S needed to make a claim under her mobile phone insurance policy for accidental damage and pay the excess.

Miss S didn't think this was fair. She raised a complaint, which she brought to our Service.

Our Investigator upheld it. He didn't think Assurant had satisfactorily shown that a condition or exclusion within the warranty applied. He said the damage to the phone was minor and Assurant hadn't demonstrated this had caused the technical problems that Miss S was experiencing.

Assurant didn't agree, so the 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.

When making a claim under an insurance policy, the onus is on the policyholder to prove they have a valid claim. If they do, the insurer should cover the claim unless it can prove that a policy condition or exclusion applies.

Miss S has shown that her phone is experiencing a technical fault as her apps aren't working. This is something which is covered under her 12-month warranty. So, on the face of it, she's demonstrated that she has a valid claim.

If Assurant wish to decline the claim based on a policy condition or exclusion, it needs to demonstrate, on balance, that it applies.

The warranty says:

"We provide your replacement phone with a full 12 month warranty from the date of despatch, which covers it for any mechanical and electrical faults or defects.

The warranty will not be valid if the defect is caused by misuse, neglect or tampering, or if any alterations and/or repairs are carried out by someone other than us or our approved repairers."

Assurant hasn't shown that Miss S has misused, neglected, or tampered with the device nor that she's had someone else alter or repair it. In fact, it doesn't seem to be alleging this. Rather, it says it doesn't know what happened to the phone in the four months Miss S had use of it and that any type of damage can cause mechanical faults.

But the warranty doesn't exclude mechanical and electrical faults or defects arising from damage, only if it's been misused, neglected, or tampered with. And even if it did, there is no evidence to suggest the small chip and crack to the bottom of the phone has caused the technical problems with the Apps. Assurant acknowledge this as it says it can't tell if the fault was there before the damage or if it was caused by the damage.

Based on the information provided, I'm not satisfied Assurant has demonstrated that, on balance, a condition or exclusion applies to Miss S' claim. So it follows that I don't consider it was fair for Assurant to decline cover under the warranty.

My final decision

For the reasons I've explained, I uphold this complaint and direct Assurant General Insurance Limited to:

- arrange for Miss S' phone to be fully repaired or replaced under the warranty. (If Miss S has already paid for the repairs herself, Assurant should reimburse the cost plus 8% simple interest per annum from the date she paid this until the date she is reimbursed).
- pay £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 2 October 2024.

Sheryl Sibley
Ombudsman