

## **The complaint**

Mr D has complained about the replacement phone Assurant General Insurance Limited ('Assurant') sent him, to settle a claim he made under his gadget insurance policy.

## **What happened**

Mr D took out a gadget insurance policy with Assurant and first made an accidental damage claim under the policy in July 2021, which was accepted in August 2021 resulting in his phone being repaired. Two weeks later, Mr D informed Assurant that the phone had been damaged, and he was sent a replacement phone. Assurant also provided a 12-month warranty covering any mechanical or electrical defects that might arise with the replacement phone.

In July 2022, Mr D reported his phone was faulty, but after checking the phone, in August 2022, Assurant said no faults could be found. In October 2022, Mr D reported further faults with his phone and Assurant sent him a replacement phone (in error, as the claim had been made outside the 12-month warranty). Then, in July 2023, Mr D contacted Assurant to say he was having issues with using some applications ('apps') on the replacement phone.

Mr D said that when he attempted to connect his smart watch to his phone he received a message from the app saying the phone won't allow him to use the app because it wasn't issued in a country that's authorised for use with the app. Mr D said he'd expected to receive a 'like for like' product with the same functionality as the phone he claimed for, as if it had been purchased in the UK.

Assurant declined Mr D's claim on the basis that he'd made a claim outside of the 12-month warranty period and also on the basis that his policy doesn't provide cover for issues related to applications or software. Mr D said that as the claim wasn't in relation to a fault with the phone, then it wasn't made outside of the warranty. He believes that as the issue has to do with loss of functionality, that implies there is a fault within the phone. So, Mr D complained to Assurant about its claim decision.

On 24 July 2023, Assurant issued its final response not upholding the complaint. It said that the warranty had expired on 22 August 2022, so when Mr D made a further claim in July 2023, there was no cover in place. And, even if the claim had been made within the warranty term, Assurant pointed to an exclusion in the policy that says the contents of the phone aren't covered, including software downloads and apps.

Unhappy with the way Assurant responded to his complaint, Mr D referred it to this service.

One of our investigators looked into what had happened and issued a view in September 2023, not upholding the complaint. He explained that the issue Mr D was claiming for wasn't covered by the policy terms as it only occurred once Mr D tried to connect his smart watch to the phone.

Mr D didn't agree with our investigator's view. He said the issue he's unhappy about is the compatibility of the phone with hardware designed to be used with the phone. He added that

the manufacturer of the smart watch has specifically blocked functionality in phones not designed for use in the UK. Mr D says that Assurant never said that his UK designated original phone would be replaced by cheaply sourced foreign phone. He believes the replacement phone should be 'like for like'.

Our investigator responded to Mr D's further points by saying that issues with hardware designed to be used with the phone aren't covered by the policy. He also said that as the issue was raised on 13 July 2023, it was outside of the warranty period which expired on 22 August 2022. Our investigator remained of the view that Assurant hadn't unfairly declined the claim. As Mr D still didn't agree, the complaint was passed to me for a decision to be made.

### **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, I've come to the same conclusion as our investigator. I will explain why, first by making reference to the policy terms and conditions.

Page 3 of the policy terms set out the risks that are covered by the policy, which include breakdown including faults.

The terms say:

*'If your gadget is damaged or breaks down we will either:*

- 1) repair the gadget (where possible), or*
- 2) replace it with a gadget of the same make, model and memory size. If we cannot do this you will be given a choice of models with an equivalent specification'.*

Further down on the same page it says:

*'Replacements*

- 1) where we replace the mobile device the replacement will be a refurbished or remanufactured (not brand new) device'.*

On page 7 of the policy terms, it sets out some of the policy exclusions which include:

*'Contents of your gadget. We only cover the gadget, we don't cover the contents. This means that any pictures, software, downloads, apps, music or any other content is not covered by this policy, so make sure you back it up regularly'.*

Assurant explained that in-line with normal insurance practice they may send devices that originated from outside of the UK or EU, but they will ensure the devices are compatible for use within the UK. It also said that the problem Mr D had described, of the phone not connecting correctly with his smart watch app, was likely to be a software issue rather than a problem with the device itself.

Having considered the policy terms and Assurant's comments on those terms, I've concluded that problems with a phone connecting with an app, would not be covered by the policy. Rather, it is only faults with the actual device that would be covered.

Assurant also explained that when a replacement phone is provided under the policy, a 12-

month warranty is provided with the phone. The warranty covers the replacement device against mechanical faults or breakdowns that may occur within the 12-month period. Assurant provided a copy of the warranty leaflet that is sent with the phone, which 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 failures as a result of any manufacturing faults or defect'.*

So, considering the terms of the warranty it's clear that it also only provides cover for faults with the actual device, arising from mechanical or electrical faults. The warranty therefore also wouldn't cover issues in relation to compatibility with specific apps. Taking everything into account, I agree that the issue claimed for by Mr D was not something that the policy or subsequent warranty offered cover for.

While this provides sufficient reason for Mr D's complaint to not be upheld, it might help Mr D if I also explain why his complaint was made outside of the warranty period. Assurant have explained that while the first replacement device is returned to the customer with a 12-month warranty, the sending of a further replacement device, as happened in August 2022, doesn't trigger another 12-month warranty period – so the warranty expired in August 2022.

The warranty provided by Assurant, with the replacement phone is separate to the gadget policy that Mr D original claimed under. The warranty was a 12-month warranty and was only given in relation to the first replacement phone that Mr D was sent. As it had expired by the time Mr D made his July 2023 claim, the claim wasn't valid because it was made outside the period of cover offered by the warranty.

Having carefully considered all of the available evidence, I think Assurant has fairly declined Mr D's July 2023 claim in relation to his phone's incompatibility with the app for his smart watch. I therefore don't uphold this complaint.

### **My final decision**

For the reasons given in this decision my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 November 2023.

Carolyn Harwood  
**Ombudsman**