

The complaint

Mr D complains that Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U. (trading as Telefonica Insurance UK Branch) unfairly declined a claim he made under his mobile phone insurance policy.

Mr D's mother, Ms S is representing him in this complaint. For ease, I'll refer to anything said by Ms S as being said by Mr D.

Telefonica is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As Telefonica has accepted it is accountable for the actions of the agents, in my decision, any reference to Telefonica includes the actions of the agents.

What happened

In May 2023, Mr D made a claim under his mobile phone insurance policy with Telefonica. He said his iPhone 14 had been stolen while he was on holiday abroad.

Telefonica declined Mr D's claim, referring to a condition in the policy relating to fraudulent claims. Mr D raised a complaint, but Telefonica maintained its position. So, Mr D asked our service to consider the matter.

Our investigator didn't think Mr D's complaint should be upheld. She thought it was fair for Telefonica to decline the claim and it had done so in line with the policy's terms and conditions.

Mr D disagreed with our investigator's outcome. 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.

Having done so, I've decided not to uphold Mr D's complaint. I'll explain why.

In declining Mr D's claim, Telefonica has referred to the following policy condition:

"If You make a fraudulent Claim or we reasonably suspect fraud, We will not be liable to pay the Claim, We will be entitled to recover any sums paid to You in respect of the Claim and We may by giving You notice treat this policy as having been terminated with effect from the time of the fraudulent act."

It's important to explain that it isn't for me to decide whether Mr D acted fraudulently. Instead, I've needed to consider if Telefonica's decision to invoke the fraud condition in this case was reasonable.

In order for an insurer to fairly invoke the fraud condition in an insurance policy, the insurer needs to show it is more likely than not that the condition was breached.

Telefonica's records show that Mr D's cover was for an iPhone 14, with a start date of 9 February 2023. Mr D claimed for the loss of the iPhone 14 on 4 May 2023. He said it had been stolen the previous day, along with his bag.

Telefonica says it declined Mr D's claim because it was unable to verify that the iPhone 14 covered by the policy was in Mr D's possession at the time of loss. It says the evidence suggests that another phone owned by Mr D (an iPhone 11) was lost.

Telefonica has provided a screenshot showing Mr D's device and SIM card usage. According to this, Mr D was using an iPhone 11 (with the IMEI ending in 77) and a SIM serial number ending 04 from April 2021 to February 2023. In February 2023, he started using the iPhone 14 which is covered by the policy. On the same date he started using a new SIM (ending 27). This SIM is showing as being used in both the iPhone 14 and the iPhone 11 from 9 February 2023. The "*last used*" date is showing as 28 April 2023 for the iPhone 14 and 3 May 2023 for the iPhone 11.

I've listened to a call where Telefonica questioned Mr D about his claim. Mr D said that his SIM hadn't been in any devices other than the iPhone 14 which was stolen. He confirmed he'd previously had an iPhone 11, but he said he'd sold it.

Mr D has told us he arrived at his holiday destination on 28 April, which is the same date Telefonica's records show his iPhone 14 was last used. The iPhone 11 was last used on 3 May, which is the date Mr D says his phone was stolen.

Mr D has provided screenshots of messages and emails from around the time he says his phone was stolen. These appear to support him having had a phone and other items stolen on 3 May 2023, but there's nothing to show which phone was stolen from him.

Mr D's representative says she's tried to locate evidence to show that Mr D sold his iPhone 11 via social media. She told us she couldn't provide this because the information doesn't go back as far as February last year. However, the information I've seen suggests Mr D purchased the iPhone 14 in February *this* year, and Mr D was using the iPhone 11 with a different SIM up to that date. In any event, I haven't seen evidence to show that Mr D was no longer in possession of his iPhone 11 in early May 2023.

Based on what I've seen, I think it's likely that a phone was stolen from Mr D when he was on holiday. However, all of the evidence points to it being the iPhone 11 that was stolen rather than the iPhone 14. So, it looks like Mr D tried to claim for a more expensive phone than was actually stolen from him. As, Mr D appears to have claimed for something more than he's entitled to, I don't think it was unreasonable for Telefonica to have applied the fraud condition and declined Mr D's claim.

I know my answer will be disappointing for Mr D. But, having reviewed the information provided in this case, I'm satisfied Telefonica conducted a fair and reasonable review of the claim and didn't act unreasonably in saying the fraud condition was breached – in light of the evidence it received.

My final decision

For the reasons I've explained, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or

reject my decision before 16 October 2023.

Anne Muscroft
Ombudsman