

The complaint

Miss T is unhappy with the settlement she's been offered by Bastion Insurance Company Limited (Bastion) following a claim under her mobile phone insurance policy.

What happened

Miss T's mobile phone was stolen, so she made a claim to Bastion, the provider of her mobile phone insurance policy.

Bastion initially declined the claim on the basis the phone wasn't in Miss T's possession at the time of the theft. Miss T brought a complaint to this service. In the interim, Bastion re-reviewed things and accepted the claim. They offered £294.99 as a cash settlement.

Miss T is unhappy with the amount being offered, so she asked this service to consider her complaint further.

One of our investigators looked into things and upheld the complaint. He said the cash settlement offered by Bastion wasn't fair. The investigator obtained adverts from other online retailers totalling £406.47 and £409.99 and he said Bastion should increase the settlement in line with these.

Bastion didn't agree and asked for a final decision from an ombudsman.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've reached a different outcome to our investigator, so I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Miss T's policy terms say that in the event of the theft of a mobile phone, Bastion will provide a replacement. Bastion haven't done this and have instead offered a cash settlement.

Whilst not in line with the terms and how theft claims are settled, Miss T appears to be happy with receiving a cash settlement, rather than a replacement device. Therefore, in principle, whilst outside the policy terms, I don't think Bastion is settling the claim unfairly by paying a cash settlement, rather than replacing the device. But

whilst this isn't unreasonable in principle, the cash settlement does need to be a sufficient amount for Miss T to be able to replace her device.

Bastion has referred to the following policy term when offering a settlement of £294.99 based on adverts they obtained from eBay:

"All customers have a general duty of mitigation, meaning that they must keep their losses to a minimum. We will source alternative quotes in order to value the economic damage to Your Gadget and will only offer you the lowest figure available. These may include items of equivalent age, model and wear & tear from sources such as Gumtree and/or eBay. Proof of the valuation will be provided, but the valuation submitted is at Our complete discretion."

Our investigator thought the term being referred to by Bastion was incorrect, this is because it references valuing damage to the device. He said the following term was applicable in Miss T's case, as her phone wasn't damaged and being repaired, and instead was stolen so would need replacing (if the terms were being strictly applied rather than a cash settlement):

"This policy does not provide a 'replacement as new' Gadget. If your Gadget cannot be replaced with an identical item of the same age and condition, We will replace it with one of comparable specification or the equivalent value, considering the age and condition of the original item. The replacement Gadget which We provide will be at Our sole discretion."

I agree with what our investigator said here in that the term referred to by Bastion refers to valuing damaged devices, rather than replacing devices (or offering a cash equivalent). But I don't think that changes things overall in any event, as both terms refer to settlement being based on an equivalent aged phone model, in the equivalent condition.

The policy terms also say similar elsewhere:

"Theft: stolen Gadgets, We will provide a replacement item of equivalent age and value."

Bastion provided three adverts of phones available on eBay in support of their settlement offer. These had values of:

- £285 to £302.47 (it's unclear why the advert has a spread of prices)*
- £299.99*
- £300*

And Bastion subsequently offered Miss T £294.99, around mid-way between the highest and lowest.

However, our investigator didn't think this amount was fair. He obtained adverts from a different online retailer for £406.47 and £409.99. He said using the online retailer he had used provided a more reliable valuation than relying on eBay, as Bastion had done.

I don't agree with what our investigator said here, I'll explain why.

Placing a valuation on a mobile phone, which isn't brand new from the manufacturer, isn't an exact science. A huge variety of devices are available for sale at varying

prices, via different retailers online and on the high street. Devices available are in a variety of different conditions, some could have parts replaced with both genuine and non-genuine parts, with varying levels of wear, both cosmetically and for example, battery capacity. And depending on the retailer, warranties or other buyer protection varies too. All of the variables will impact on the price. So, there isn't a straightforward way to determine the value.

As pointed out by Bastion, the online site our investigator obtained adverts from is also a re-selling site. So, it operates in a similar market to eBay. And having looked at the online site our investigator looked at, the same devices are now available at a lower amount than those adverts he provided previously, and in the range of £368-£388. Showing similar to eBay, prices can fluctuate. So, unlike our investigator, I'm not persuaded that the site he used is any more reliable than eBay for valuations, which also comes with added protection for buyers. So, I don't think Bastion using eBay to obtain a valuation in principle is unreasonable.

However, the adverts Bastion provided contained very limited information. One of the three adverts is also for a physically smaller sized model of the device, so isn't comparable. This leaves two adverts, one of which says £285 to £302.47 (although it's unclear why it offers a spread of prices) and the other at £299.99.

As the information about these devices i.e., condition, level of wear and any issues with the devices isn't clear from the adverts Bastion provided, I've carried out my own research on eBay where these adverts were obtained from. Due to the fast-moving sales market, unsurprisingly these specific adverts and devices are no longer available, so I've reviewed if similar devices to Miss T's are available on eBay in the range of £294.99 which is what Bastion has offered.

Having done so, I'm not persuaded Bastion's valuation is reasonable. The majority of phones at this price point, from frequent sellers/retailers with good ratings, have a wide range of issues. From first glance of these adverts, they only list the device name and no other details, but when going into the advert, further information on the condition is provided. And at this price point, from what I've seen, the majority of devices have issues ranging from cracked back casing, cracked or broken screens to broken cameras. I've not been provided with anything to support this is equivalent to the level of wear or issues with Miss T's phone at the time of theft – and the terms say that settlement would be based on an equivalent condition.

I've considered at what price point phones, with some general wear but not significant issues like the examples in the price range above have, are available for. And as a starting point, this is higher than the £294.99 offered by Bastion. However, it isn't as high as that outlined by our investigator (£406.47 and £409.99), and instead is in the range of the mid-point between the two. Having completed my own review of similar phones for sale, from experienced sellers/retailers with good ratings, these appear in the range of £350-£360 as a starting price point. Like I say, placing a valuation on a phone isn't an exact science, but I'm minded to conclude an amount in the range of these values would be a fair and reasonable cash settlement amount in the circumstances.

Therefore, unless anything changes as a result of the responses to my provisional decision, I'll be directing Bastion to increase the cash settlement to £355. Bastion's offer, whilst on the low side, wasn't hugely wide of what I'd consider a reasonable valuation. And it is difficult to determine an exact price due to the amount of variables. So, whilst I intend on directing Bastion to increase the cash settlement, unless anything changes as a result of my provisional decision, I don't intend to award interest or compensation on top of that."

So, I was minded to uphold the complaint in part and to direct Bastion to increase the cash settlement to £355.

The responses to my provisional decision

Miss T responded to the provisional decision and reiterated what happened in the early stages of the claim, in which it was initially declined and required her to obtain a police report before Bastion made an offer. She reiterated she wasn't able to find a replacement phone for the amount Bastion had offered her and they wouldn't send her links to those adverts which they'd based settlement on and gave her time sensitive settlement offers. She also said her phone was in excellent condition.

Miss T also said she's needed to use an old, borrowed smartphone to run the social media for her business.

Bastion responded and said they had nothing further to add.

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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, my final decision remains the same as my provisional decision.

I do note that Miss T's claim was initially made at the end of April 2023 and was later declined by Bastion before being accepted. And whilst I recognise that the overall timescale from when the claim was first made until now is a long period of time, the original offer of settlement was made in July 2023, so not a significant amount of time after the claim was made. And the settlement offer was made around ten days after Miss T had provided Bastion with the Police report which enabled them to consider the claim further, accept it, and make a settlement offer.

As outlined in my provisional decision, placing an exact value on a mobile phone isn't an exact science, and there are a large number of variables that can impact on the price. I carried out my own research and didn't agree the offer made by Bastion was fair based on the phones available at that price point as they all seemed to have some form of damage, which I understand isn't comparable to Miss T's phone.

Having said that though, I don't think Bastion's offer made in July 2023 was hugely wide of what I'd consider a reasonable valuation, and like I say, placing a valuation isn't an exact science because a large amount of variables can impact on this. So, my final decision remains that Bastion should increase the cash settlement to £355, but I won't be awarding interest or compensation on top of that.

My final decision

It's my final decision that I uphold this complaint in part and direct Bastion Insurance Company Limited to:

- Increase the cash settlement to £355

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 5 February 2024.

Callum Milne
Ombudsman