

The complaint

Mrs H is unhappy with what Telefonica Seguros y Reaseguros Compania Aseguradora S.A.U (Telefonica) did after she made a claim on her mobile phone insurance policy.

What happened

On Saturday 29 April 2023 Mrs H contacted Telefonica and said her mobile phone had been damaged and wasn't working. Telefonica accepted the claim but said it didn't have a replacement in stock. But this would be sent out when it was. Mrs H says her son was due to return to university two days later and a phone was required to link to his 'black box' car insurance. So she purchased an equivalent phone from a local stockist (with the intention of selling the replacement once this was received from Telefonica). She handed over the old phone to the stockist as part of that transaction.

Telefonica sent a replacement on 6 May. But, as Mrs H no longer had her old phone, it couldn't complete the switch. Mrs H thought Telefonica should refund the cost of the phone she'd bought as she'd only had to do that because it couldn't supply a replacement when she made her claim. Telefonica said it was Mrs H's decision to buy a new phone and give up her original device. However, it accepted it should have provided a replacement within a reasonable period and offered to pay £105 in recognition of the inconvenience it had caused.

Our investigator thought that was fair but Mrs H didn't agree. She said she had to get a new phone to enable her son to drive to university and she'd only needed to do that because Telefonica hadn't fulfilled its obligations under her contract of insurance. 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 Telefonica has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I can see from Mrs H's policy and online information that Telefonica does offer a next day exchange service (on payment of a higher excess) but that isn't available in her part of the country. It's timeframe for a standard exchange (which is the option that was available to her) is listed as 3-5 days.

However, in this case because her phone was out of stock it does appear it took longer for a replacement to be provided. And the evidence suggests Telefonica could have been clearer when the claim was initially made about how long that might take. I'm also unclear whether Telefonica considered any alternatives (such as offering a different model of phone) when it spoke to Mrs H.

But I don't think that means Telefonica needs to reimburse Mrs H for the cost of the phone she then bought. I appreciate she needed to do so because her son was returning to university and needed a phone to link to the 'black box' in his car. However, she says that

was two day after her phone was damaged. So even if Telefonica had been able to provide a replacement sooner I think it's unlikely it would have arrived prior to him leaving, given its published timeframes for an exchange. That means Mrs H would always have been in the position of needing to source a replacement so he could travel.

In fact it appears her intention was to sell the Telefonica replacement device to recoup the amount she'd spent on buying a new phone. The problem is, because she'd handed over the damaged phone when buying the new one, she wasn't able to provide that to Telefonica. And the claims condition section of her policy says:

"Damaged Equipment, Damaged accessories and faulty Replacement Equipment must be returned to Us and must include the IMEI and serial number panel". The definition of equipment includes *"the insured device"*

I think it's clear from that a damaged phone needs to be provided to Telefonica as part of the settlement of a claim. I haven't seen anything to show Mrs H had to provide the damaged phone to the retailer (rather than simply buying a new one). And so I don't think Telefonica acted unfairly in not providing her with a replacement or declining to reimburse her for the phone she bought.

I do accept she'll have been caused some inconvenience because it wasn't able to provide her with a replacement sooner or give clearer information on when it would be able to do that. But I think the compensation it's already offered is a reasonable way of recognising the impact of that on her. And Telefonica has confirmed to us that compensation has been paid to Mrs H. If she hasn't received it she may wish to raise that with Telefonica separately.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 11 September 2023.

James Park
Ombudsman