

The complaint

Miss H complains about Assurant General Insurance Limited (Assurant), regarding a claim under her mobile phone insurance policy for damage to her phone.

Assurant uses agents to administer and provide services under the policy, as well as to deal with claims and complaints. Reference to Assurant in this decision includes those agents.

This complaint relates to Assurant as the insurer of the mobile phone insurance policy as part of a package of benefits provided with Miss H's bank account, for which she pays a monthly fee. The complaint doesn't relate to the bank account, or the bank concerned

What happened

In August 2022 Miss H's phone was damaged, with a broken screen and back panel. She contacted Assurant to tell them about the damage and make a claim. She sent the phone to Assurant (paying the £100 excess under the policy) and a phone was sent back to her the following month. Given the extent of the damage to her phone, Miss H thought the phone was a replacement phone.

However, on closer inspection, Miss H saw it was her phone that had been repaired, but with parts that weren't genuine parts from the manufacturer (the screen didn't sit flush with the phone and the settings on the phone indicated genuine parts hadn't been used). Miss H contacted Assurant, unhappy with the situation, but was told using non-manufacturer parts was standard practice and in accordance with the policy terms and conditions.

Subsequently, the phone screen became more raised from the phone and in January 2023 the phone became very hot, and a screen message said the phone was overheating and shouldn't be used. However, the phone became so hot Miss H dropped it, damaging the front and back of the phone. Miss H contacted a manufacturer phone store, who said the most likely explanation for what happened was incorrect parts in the phone's repair, causing the battery to overheat and leading to the screen moving out of alignment with the phone.

Miss H then contacted Assurant to tell them what had happened, expecting them to repair or replace the phone (as the returned phone came with a 180-day warranty). After some discussion, Miss H returned the phone to Assurant. However, she was then contacted by Assurant and told that because she'd dropped the phone, it wasn't covered by the warranty and they wouldn't repair or replace it (and they'd return it to her) unless she made a new claim under the policy (and paid the £100 excess, being per claim). Miss H declined to do so, maintaining she'd dropped the phone because of the overheating, so the damage should be covered under the warranty.

Miss H challenged Assurant's position, who treated her challenge as a complaint, but they didn't uphold the complaint. In their final response, they said the warranty covered the device against mechanical or electrical faults – not damage by the consumer. When Miss H returned the phone in January 2023, it was damaged, so a new claim would be needed (with the excess payable) for it to be repaired or replaced.

Separately from her complaint, when her phone was returned from Assurant, she thought it further damaged. She had it examined in one of the phone stores on three occasions (in February 2023) and was told the phone had been badly repaired (when originally repaired in September 2022). When she tried to use the phone it overheated and stopped working. She then purchased a refurbished phone of the same model as her own phone from the phone store (£369), trading in her old phone.

Unhappy at what had happened, Miss H complained to this service. She thought Assurant hadn't acted fairly as they'd returned her repaired phone in a poor condition, using non-manufacturer parts, which then overheated causing her to drop it and further damage. They had then said she'd have to make a new claim (and pay £100) to have the phone repaired a second time. Given what happened previously, she wasn't prepared to do this. She wanted Assurant to reimburse the cost of replacing her phone (£369) and compensation to cover the time she'd spent visiting the phone store, including travel and parking costs (£100).

Our investigator didn't uphold the complaint. She concluded that based on the information and evidence available, it was unclear whether the damage to the phone (in January 2023) was due to being dropped by Miss H or it had overheated (causing her to drop it). But if there had been a problem with the phone overheating, the investigator thought it would have been apparent sooner than it did and should have been reported to Assurant. The investigator considered the evidence (from Assurant) the phone had been quality assurance checked before being returned to Miss H (in September 2022) as well as that from the phone store who examined the phone after it was returned to Miss H (in January 2023). On balance the investigator was more persuaded by the evidence from Assurant.

Miss H disagreed with the investigator's conclusions and requested an ombudsman review the complaint. She said the evidence she'd provided from three phone shop technicians (who tested the phone) concluded the phone wasn't fit for purpose.

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.

My role here is to decide whether Assurant have acted fairly towards Miss H.

The key issue in Miss H's complaint is whether Assurant acted fairly in declining to repair or replace her phone on the second occasion, saying it wouldn't be covered under the warranty provided when it was first repaired. Miss H says the phone wasn't repaired properly the first time, leading it to overheat and causing her to drop it (so causing the damage). Assurant say the warranty wouldn't cover damage from Miss H dropping the phone, so she'd have to make a second claim for the phone to be repaired under the policy (not the warranty).

In considering the complaint, I've carefully considered the views of Miss H, together with the reports she's provided from the phone store who examined the phone. I've also considered the views of Assurant, including their records of the repair of the phone in September 2022.

As one of the issues in Miss H's complaint is that her phone was repaired using non-manufacturer parts, I've also looked at the policy terms and conditions on this issue. There's a reference (under the heading *"What you need to know about the claims process"*) that states:

“...Repairs may be made using readily available parts, or we may provide refurbished products which may contain parts, which are of a similar or equivalent specification, and which may contain unbranded parts.”

I think this makes it clear repairs may involve parts that aren't original manufacturer items ('unbranded parts'). Which is consistent with what Miss H said she was told when she contacted Assurant after the phone was returned in September 2022.

Turning to the main issue of the complaint, Assurant declining to repair (or replace) the phone under warranty the second time it was damaged, I've looked at the terms of the warranty provided when the phone was returned after its repair. It states:

"Your warranty covers any mechanical and electrical failures as a result of any manufacturing faults or defects. If this occurs please contact [us] and we will look to resolve the problem. The warranty will not be valid if the defect is caused by any faults resulting from customer damage, misuse, neglect or tampering or if any alterations and/or repairs are carried out by someone other than us or our approved repairers."

The issue then becomes one of whether the damage to the phone in January 2023 was due to 'consumer damage' (as Assurant maintains) or due to the battery overheating (causing Miss H to drop it). Miss H's view is that the latter means it was a fault with the phone, indicating a mechanical or electrical failure – and so should have been covered under the warranty. In considering this point, what isn't disputed is that Miss H dropped the phone – it's the underlying cause where the views differ. And whether the phone being dropped caused the damage subsequently recorded in the phone store reports.

At this point, I've considered the evidence provided by Assurant and by Miss H (the phone store reports). Assurant have provided their quality assurance report on the phone at the time it was repaired and returned to Miss H. While Miss H says she noticed the non-manufacturer parts and screen being off alignment, the overheating she said she experienced seems to have only developed some time after the repair. I've thought about this, and while it's not possible to form a definitive conclusion, on the balance of probabilities, had the issue been one arising from the repair, I don't think it likely to have not appeared until the time it did (if the repair was faulty, I would have expected it to become apparent sooner). Together with the evidence from the quality assurance check, I don't think, on the balance of probabilities, to conclude the repair led to the overheating issue (as opposed to it arising from some other cause).

Looking at the reports from the phone store, the first records the condition of the phone as presented, including the damage that would have occurred from it being dropped. It also records some heating in part of the phone. The second report includes similar information but comments the bottom of battery showed signs of being tampered with and starting separate, and 'an unsafe modification'. The third report refers to the overall condition of the phone and that it is being replaced at an 'out of warranty' cost (the phone was out of the manufacturer's warranty) as it was deemed a safety concern.

Taking these reports together, I don't think they provide clear evidence the issue with overheating was caused by Assurant's repair, so I can't reasonably conclude the phone should have been repaired (or replaced) under the Assurant warranty. So, I don't think it was unreasonable for Assurant to say the damage when Miss H dropped the phone was (under the terms of the warranty) 'consumer damage'. And so wouldn't be covered by the warranty. That being the case, I think it was reasonable for Assurant to offer to repair or replace the phone under the terms of the policy (which would have been a second claim allowed under the policy terms and conditions in any one year).

My final decision

For the reasons set out above, it's my final decision not to uphold Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 11 August 2023.

Paul King
Ombudsman