



<b><u>Decision Ref:</u></b>	2021-0374
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Mobile Phone
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainant incepted a mobile phone insurance policy with the Provider on **25 May 2018**. This complaint concerns the Provider's assessment of a claim the Complainant made for a replacement handset, following damage to his insured handset.

#### **The Complainant's Case**

The Complainant says that following damage to his mobile phone handset, he made a claim to the Provider on **3 December 2019** for a replacement handset. The Provider supplied the Complainant with a refurbished replacement handset, however he says the Provider ought to have been provided him with a new handset.

The Complainant sets out his complaint in the **Complaint Form** he completed, as follows:

*"I damaged my phone. I rang [the Provider] ... They said they would replace it but a reconditioned phone would be provided if a new one was not available – in the policy document [the Provider] said this occasionally happens. I asked for a new phone, [the Provider] said no, only a reconditioned one available ... [I was] told, off the record, even though phone calls are recorded, that [the Provider] do this all the time, tell the customer that no new phone is available and they pass on a second hand reconditioned phone. I don't think this is good enough".*

In addition, in his email to this Office on 19 June 2020, the Complainant states that:

*“ ... there was a delay in processing the claim ... so contractually [the Provider] did not honour the commitment and more importantly it's the member of staff who said to me [during a telephone call] that [the Provider] are consistently giving reconditioned phones to customers in order to save money – [the Provider] say they only do this sometimes in the literature”.*

In his email to this Office on 3 August 2020, the Complainant further states that:

*“ ... I got a reconditioned/second hand phone and if I was to buy one of these on ebay or a similar site I would pay max 100 euro and therefore the practice of dishing out reconditioned phones in this context is only favourable for [the Provider] and not good value or fair play for the consumer. 100 euro minus 75 [Euro] leaves 25 euro for a policy I paid 10 euro a month for, the maths and practice certainly works for [the Provider]”.*

The Complainant seeks for the Provider to issue him with a new mobile phone handset and he submits in the **Complaint Form** he completed and submitted to this Office that:

*“I need a new phone that I can depend on with my 7 year old's health condition. I am up and down to [the children's hospital] and I can't be depending on a reconditioned phone. My experience of these is not good. Also I had to take the phone at the time. I felt pressurised as if I didn't have a phone I could not contact the hospital and I need this on a daily basis”.*

### **The Provider's Case**

The Provider says that its records indicate that following damage to his previous mobile handset, the Complainant telephoned the Provider's outsourced Claims Handler (a named regulated insurance intermediary in its own right) referred to below as 'the Agent', on Tuesday **3 December 2019** to make a claim under his mobile phone insurance policy, for a replacement handset.

Telephone calls took place between the Complainant and the Agent on 3, 4 and 5 December 2019 and the Provider says that it is clear from the recordings of these calls that its Agent treated the Complainant's claim with a very high level of care and attention, and that the claim was processed promptly.

The Provider says that it is evident from the recording of the telephone call that took place on **5 December 2019** that the Complainant was offered an upgraded replacement device due to the age of his original device and the unavailability of handsets. The Agent explained the claim settlement offer, that the Complainant had up to 10 days to consider the offer, the excess which would apply and the warranty relevant to the device (which in this case was for 3 months in total).

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The Agent also advised that if the Complainant wanted to proceed that day, the claim could be processed and the handset delivered the following day. The Provider says that it is satisfied that all options were presented to the Complainant so he could make an informed decision and that at no point was he pressurised into accepting the claim settlement offer.

The Provider says that having accepted the offer, a refurbished device, which was a much newer and more high-spec handset, than his previous device, was delivered to the Complainant on Friday **6 December 2019**, 3 days after the submission of his claim.

The Provider says that this replacement device was, as is the case with any refurbished device it issues under the policy, subject to a rigorous refurbishment process whereby the mobile handsets are fully tested to factory standards prior to being issued as a replacement. The Provider says that the Complainant's replacement device also had the benefit of a 28-day warranty. Additionally, a further 2 month warranty period is provided by the supplier of the devices, so that if a claimant notifies the Provider of a fault within this period, they are directed to their mobile phone network provider's retail store where a collection is arranged and if following an inspection, the device is determined to be faulty, the device is then exchanged for a further replacement. The total warranty period provided is therefore 3 months.

The Provider notes that the essence of the Complainant's complaint is that he believes he should be entitled to a new device as a replacement, rather than a refurbished device, under the terms and conditions of his mobile phone insurance policy. The Provider says that there is no such entitlement under the terms of the policy.

The Provider notes that the **Welcome Letter** to the Complainant dated **1 June 2018** refers to a "*factory standard replacement*" and does not make any reference to new devices such as would generate a legitimate expectation which might lead an insured, to believe they were entitled to a brand new device in the event of a claim.

The Provider also notes that the **Insurance Product Information Document** supplied to the Complainant at policy inception, which by regulation is required to set out the key features of the policy in a standardised form, states:

*"Your mobile equipment will be repaired or replaced with a refurbished device of equivalent specification by our authorised repairer".*

[Underlining added by the Provider for emphasis]

The Provider also refers to the '**Benefits**' section of the **Insurance Terms and Conditions** document which states:

*"[The Provider] will at its discretion and in return for Your continued payment of the monthly Premium, provide you with the repair or replacement of Your Insured Equipment to an equivalent specification, which may be by way of a Refurbished Unit, where Your mobile has been Damaged, Lost or Stolen during the Period of Insurance and subject to the following definitions, exclusions and conditions ...*

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**Definitions ...**

11. **“Refurbished Unit”** means a pre-used unit that has been passed through a stringent refurbishment process and is equivalent to a new unit in terms of performance and reliability:

- (i) They are fully tested to factory standards
- (ii) They are refurbished with genuine cosmetic parts by a manufacturer approved repairer
- (iii) They are put through a thorough cleaning process and inspection
- (iv) They are repackaged”.

The Provider notes that no mention is made of an entitlement to a brand new device.

The Provider says that both new and refurbished handsets are provided as replacements for lost or damaged devices. In this regard, new handsets are mainly utilised in instances of an early claim on a new device to market (and the Provider offers an example) or also at the end of life where an identical make/model is no longer available and the only equivalent specification device available is new.

The Provider says that it is a long established legal principle, that an insurance contract is a contract of indemnity. This means that an insured is not entitled to be put in a better position than he or she was in prior to the occurrence of the loss. In this case, the Provider says that the Complainant’s old handset was obsolete at the time it was damaged and he was provided with a significantly more advanced device than his previous handset, resulting in an upgrade as a replacement. As a result, the Provider says that the Complainant was put in a better position than he was in before.

The Provider also says that in providing him with a refurbished replacement handset, it believes that the Complainant received the benefit of the indemnity to which he was entitled under the policy, and that there is no basis for his claim to an entitlement to a new handset (as opposed to a refurbished handset).

**The Complaint for Adjudication**

The complaint is that the Provider wrongly or unfairly assessed the Complainant’s mobile phone insurance claim, in that it provided the Complainant with a reconditioned handset rather than a new handset as a replacement for his damaged mobile phone.

## **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **28 September 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant, following damage to his mobile phone handset, made a claim to the Provider's Agent by telephone on Tuesday **3 December 2019** seeking a replacement handset. The Provider offered and supplied the Complainant with a refurbished replacement handset on Friday **6 December 2019**. I note that the Complainant, however, considers that the Provider ought to have provided him with a new handset.

The Complainant's mobile phone insurance policy, like all insurance policies, does not provide cover for all possible eventualities. Instead, the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, I note that the '**Benefits**' section of the applicable **Insurance Terms and Conditions** document states:

*"[The Provider] will at its discretion and in return for Your continued payment of the monthly Premium, provide you with the repair or replacement of Your Insured Equipment to an equivalent specification, which may be by way of a Refurbished Unit, where Your mobile has been Damaged, Lost or Stolen during the Period of Insurance and subject to the following definitions, exclusions and conditions ...*

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**Definitions ...**

11. **"Refurbished Unit"** means a pre-sued unit that has been passed through a stringent refurbishment process and is equivalent to a new unit in terms of performance and reliability:

(v) They are fully tested to factory standards

(vi) They are refurbished with genuine cosmetic parts by a manufacturer approved repairer

(vii) They are put through a thorough cleaning process and inspection

(viii) They are repackaged".

I am satisfied that the Provider had the option to settle the Complainant's claim by providing him with a refurbished handset in accordance with the policy terms and conditions, which formed part of the contract of insurance in place between the parties.

In addition, I note that the **Insurance Product Information Document** that was supplied to the Complainant when he accepted his mobile phone insurance policy states that:

*"Your mobile equipment will be repaired or replaced with a refurbished device of equivalent specification by our authorised repairer".*

I also note that the **Welcome Letter** sent to the Complainant dated **1 June 2018** states:

**"Factory standard replacement**

*All our replacement handsets are to the highest standard, so high performance and reliability come guaranteed".*

Recordings of telephone calls that the Complainant made to the Provider's Agent on 3, 4 and 5 December 2019 have been supplied in evidence. I have considered the content of these calls and I am satisfied that the different Agents who the Complainant spoke with explained why the claim settlement offer was for a refurbished handset and advised him that if there were any issues with the performance of the refurbished handset, then the Complainant could return the device within 28 days and receive a replacement.

In this regard, I note from the recording of the telephone call that took place on Thursday **5 December 2019** the following exchange:

Agent: ... so we can offer you [indecipherable] an upgrade there to the iPhone 6S 32 gigabytes in grey

Complainant: Yeah, and that's, that's a refurbished phone then, isn't it?

Agent: So yeah, it will be refurbished or refurbished to a as new condition, so it will look and perform as new. It will be an upgrade from your phone.

Complainant: Yeah. Like ideally, I'm not happy taking a refurbished phone but if that's all ye have to offer, I'll have to take it, so I'll take that -

Agent: *so it is on the terms and conditions we may settle by way of a refurbished handset, you know in these kind of cases the iPhone SE is a very old phone so it's very hard to come by that phone new anymore, so we have to offer what we have in stock –*

Complainant: *Yeah. Ok.*

Agent: *Now there is a 28 day warranty on the phone, so let us know if there's any issues we can swap it out for you ...*

Having regard to all of the above, I am satisfied that the evidence does not support the Complainant's complaint that the Provider wrongly or unfairly assessed his mobile phone insurance claim, by providing him with a reconditioned rather than a new handset, as a replacement for his damaged mobile phone.

I am satisfied that not only did the policy make clear that the replacement handset would be a refurbished unit, but also at the time the Complainant accepted the handset in question, he did so having received an explanation from the Provider's Agents as to why this refurbished unit was being offered to him at that time.

Although the Complainant has offered comments as to the financial cost to him of paying his monthly premium for cover under this policy, I am satisfied that the policy cover offered to the Complainant by the policy he put in place in June 2018, did not vary, depending upon whether he had paid only one month's premium or whether alternatively, he had paid that monthly premium over a longer period of time.

As the evidence discloses no wrongdoing on the part of the Provider, I take the view that there is no basis upon which it would be reasonable to uphold this complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint rejected.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**



**MARYROSE MCGOVERN**  
**Deputy Financial Services and Pensions Ombudsman**

20 October 2021

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
  - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

