



<u>Decision Ref:</u>	2018-0001
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - theft or attempt theft
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns a travel insurance policy.

The Complainants' Case

The Complainants had two “*pieces of cabin baggage*” stolen from the hold of an “*Aircoach*” bus between Dublin Airport and Cork on the 22 January 2016, on their trip home from a holiday abroad. A letter from AirCoach states that “*the CCTV had been checked and it had captured both ... bags being stolen from the coach*”.

The first case stolen contained items of clothing, shoes and bottles of perfume. The second case contained clothing, shoes as well as tracksuits and PlayStation games for the Complainants’ grandchildren. The Complainants state that they purchased all the items while on the holiday abroad.

The Complainants state that the total loss was €2,030.00. The Complainants state that the Provider informed them that could only pay the sum of €600 as the Complainants did not have receipts to cover their losses. The Complainants state that the receipts for the items were in the stolen bags and that they showed the Provider “*a bank statement showing the money been taken out of my account*”.

The complaint is that the Provider has incorrectly or unreasonably declined to pay the Complainants’ full claim under the policy. The Complainants are looking for the Provider pay them benefits in the sum of €1280.00.

The Provider's Case

The Provider states that it reviewed the claim in line with the terms and conditions of the policy. It states that the terms and conditions state that *"You must provide an original receipt or proof of ownership for the items lost, stolen or damaged to help you to substantiate your claim"*. It states that it settled the claim for the sum of €600.00. The Provider states as the Complainants were unable to *"provide receipts or any alternative proof of ownership"* that it is *"unable to agree that the settlement figure is unreasonable"*.

Decision

During the investigation of this complaint by the Financial Services Ombudsman's Bureau, 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 Complainants were 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.

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 was 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 was also satisfied that the submissions and evidence furnished were sufficient to enable a determination to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Finding was issued to the parties on the 14 December 2017 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 Finding would be issued to the parties, on the same terms as the Preliminary Finding, in order to conclude the matter.

Following the commencement of the ***Financial Services and Pensions Ombudsman Act 2017***, on 1 January 2018, the final determination of this office is now issued to the parties, by way of this Legally Binding Decision of the Financial Services and Pensions Ombudsman.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The Complainants and the Provider are bound by the terms and conditions of the policy which include as follows:-

"SPECIAL CONDITIONS APPLICABLE TO PERSONAL BELONGINGS

...

You must provide an original receipt or proof of ownership for items lost, stolen or damaged to help you to substantiate your claim. The maximum payment for any single item for which an original receipt, proof of purchase or insurance valuation (obtained prior to loss) is not supplied is €75, up to a maximum of €300 for all such items.

...

Receipts for items lost, stolen or damaged must be retained as these will help you to substantiate your claim...

...

Section I Baggage ...

WHAT IS COVERED

BAGGAGE

*We will pay you up to the amount shown in the Policy schedule, for the accidental loss of, theft of or damage to baggage.... **The maximum we will pay for any one article.... is equal to the Single Item limit shown in the Policy Schedule. The maximum we will pay for all valuables in total is equal to the valuables Limit shown in the Policy Schedule...***

...

SPECIAL CONDITIONS

..

All receipts must be retained

...

CLAIMS EVIDENCE

...

We will require the following evidence where relevant as well as any other relevant information that we may ask you for.

...Section 1 – Baggage ...

1. ...

...

4. Receipts for items lost, stolen or damaged ... "

[my emphasis]

Page 1 of the terms and conditions of the policy also includes:-

"Policy Schedule Platinum ...

...

Section I Baggage...

<i>Baggage (maximum)</i>	<i>€4,000 ...</i>
<i>-Single Item limit</i>	<i>... €400</i>
<i>Valuables Limit in total</i>	<i>... €400</i>
<i>Unreceipted Item Limit</i>	<i>... €300</i>
<i>Unreceipted Single Item Limit...</i>	<i>€75...".</i>

/Cont'd...

The Complainants "Travel Insurance Certificate" issued on the 8 January 2016. It included the following information:-

"Summary of cover and limits

<i>Cover</i>	<i>Limit</i>	<i>Excess</i>
...		
<i>Baggage</i>	<i>4000</i>	<i>75</i>
<i>Single Item Limit</i>	<i>400</i>	
<i>Valuables Limit</i>	<i>400</i>	
<i>UnReceipted Item Limit</i>	<i>0</i>	
<i>UnReceipted Single Item Limit</i>	<i>0 ...",</i>	

The Provider's Claims Management Report of the 11 March 2016 states that *"we have agreed a cash settlement of €600 with the insured. Please note that all of the items were purchased on the holiday therefore there is no wear and tear to be applied... the excess has been deducted and the limits have been applied"*.

The issue for adjudication in this complaint is whether the Provider incorrectly or unreasonably declined the Complainants' claim for the full losses sustained. I note that the Complainants used cash to make purchases on holiday to avoid the possibility of credit card fraud. I note that the Complainants state that the receipts for the items purchased were contained in the stolen suitcases. They furnished the Provider with a copy of their bank account statement which shows the sum of €700 being withdrawn prior to their holiday on the 5 November 2015, 11 November 2015 and the 9 December 2015. Under the terms of the policy, however, the onus is on the Complainants to provide receipts to substantiate the claim. There is no obligation on the Provider under the policy to accept a bank statement which merely shows cash being withdrawn from a bank account prior to Christmas as evidence of the value of items stolen in January. While the Complainants were the unfortunate victims of a crime, I am of the view that they have not furnished satisfactory independent written verification of their loss and consequently I accept that under the terms and conditions of the policy it was not unreasonable for the Provider to limit their claim to the figure of €600.

For the reasons outlined above, I am satisfied that on the basis of the evidence before me, that this complaint cannot be upheld.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is 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
DIRECTOR OF ADJUDICATION AND LEGAL SERVICES**

17 January 2018

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) in accordance with the Data Protection Acts 1988 a