



<u>Decision Ref:</u>	2018-0082
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/security of vehicle
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's decision to decline a claim by the Complainant in respect of the theft of her car.

The Complainant's Case

The Complainant holds a motor insurance policy with the Provider.

The Complainant states that her car was stolen from her place of work where she works as a cleaner twice a week. She states the offices are situated on a small rural road and there are very few other buildings in the area. The Complainant explains that on the morning of 2 July 2015, she went to these offices at approximately 6:20 am. She stated there was nobody else there at the time and she drove her car into the ground and parked just outside the front door of the office. She states that the car was parked very close to the front door which was something which she did by habit. She explains that nobody else would be using the office at that time of the morning.

The Complainant accepts that she did not lock her car and that she left the car key underneath the driver's seat. Unfortunately, on the morning in question, about 20 minutes after she started cleaning, she noticed her car being reversed outside of the office and she ran to the door to see that her car was being driven away by a car thief. She rang An Garda Síochána who arrived about 15 minutes later and the car was subsequently found

abandoned and burnt out. An Garda Síochána have not managed to prosecute anybody thus far.

The Complainant made a claim against her insurance policy. The Provider declined the claim on the basis that the Complainant failed to comply with a condition of her policy to the effect that she must take *“all reasonable steps to protect”* her car *“from loss and damage”*.

The Complainant points out that she was only a few feet away from the car at the time it was stolen and that she was in a very rural area where it is inconceivable that a car would be stolen, particularly at such an early hour on a Thursday morning. It is the Complainant's view that it is a very normal thing to park your car just outside your place of work and to not lock it or to take out the key. The Complainant believes that in light of all of the foregoing circumstances, she did not behave unreasonably in leaving her key in the car and therefore, the Provider did not have grounds for denying the claim.

The Provider's Case

The Provider explains that under the Complainant's private motor car policy of insurance, it is a condition of the policy that the insured shall take all reasonable steps to safeguard from loss or damage and maintain an efficient condition any vehicle described in the schedule of the policy. The Provider asserts that in circumstances where the Complainant, by her own admission, left her car unlocked with the car key under the driver's seat, the Complainant did not comply with this condition therefore the Provider was entitled not to indemnify the Complainant.

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 24 July 2018, 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

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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, my final determination is set out below.

Declining of claim

The policy document was provided by the Provider. This was policy 2011 – 06 which was the private motor vehicle policy issue to the Complainant at policy inception.

The policy conditions are set out at pages 22 and 23 of the policy document. Section 4 of the policy conditions sets out the obligations on the insured to take reasonable care.

It states:

4. Reasonable Care: The Insured shall take all reasonable steps to safeguard from loss or damage and maintain an efficient condition any vehicle described in the schedule hereto and the Company shall have at all times free access to examine such a vehicle.

Section 6 of the policy conditions provides:

6. Due Observance & Fulfilment: The due observance and fulfilment of the terms and provisions conditions and endorsements of this Policy insofar as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make Any payment under this policy.

The Complainant does not appear to dispute that the above provisions were conditions of her insurance policy, however she denies that she failed to take reasonable steps.

The question to be determined is whether the Complainant, by leaving her car unlocked and with the key under the driver's seat, failed to comply with the reasonable care condition i.e. did she take all reasonable steps to safeguard her car from theft. From an objective viewpoint, I must determine that she did not take reasonable steps.

The Complainant has argued that *"it is a very normal thing"* to park your car just outside your place of work and not lock it or take out the key. I cannot objectively accept that as a general concept and in particular in circumstances where it is a condition precedent of an insurance policy to take *"all reasonable steps"* to safeguard your vehicle from theft, that it could be considered normal to leave your car unlocked, unattended and with the key of the car under the driver's seat.

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In addition, the Complainant states that it is “*inconceivable*” that a car would be stolen in this area at that time on a Thursday morning. Sadly, no area is immune to crime and theft and unfortunately for the Complainant, that is exactly what happened in this instance. There is a sufficient connection or link between the Complainant leaving her car unlocked with the key in it and the subsequent theft of the car in order to come to the conclusion that she failed to take reasonable steps to protect her car from theft.

Accordingly, while I understand the loss and frustration the Complainant feels, I must accept that the Provider was entitled, under the terms and conditions of the Policy, to decline the claim and accordingly the complaint is not 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 August 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.