



<u>Decision Ref:</u>	2018-0107
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/security of vehicle Claim handling delays or issues Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

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 and the manner in which it handled the claim, including the voiding of the policy.

The Complainant's Case

The Complainant held a motor insurance policy with the Provider.

The Complainant states that her car was stolen from the driveway of her home. She had left her sitting room window slightly open and gone to a neighbour's house. When she returned, her front door was wide open and her car key fob and car had been taken. She states that she left the key fob on the arm of a sofa in the sitting room. The Complainant reported the theft to the Gardaí. The car was recovered but had been badly damaged to the extent that it was written off.

The Complainant made a claim against her insurance policy. The Complainant telephoned the Provider a number of times and was told the claim was being investigated. She then received a letter from her insurance broker advising that her policy had been voided from its inception date and no valid contract of insurance had existed between her and the Provider. No explanation was given in the letter; however, the Complainant telephoned the

Provider and was told that the policy had been voided on the basis of information received from the Gardaí.

The Complainant telephoned again to complain and was told that her policy had been reinstated and her claim was being re-investigated.

Some weeks later, she was told by telephone and letter that her claim had been declined because she 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 does not deny that this was a term of her policy but states that she did not fail to take reasonable steps. She does not believe the key fob would have been visible from outside the window. She also states that her front garden is long and it is difficult to see anything through the front window from the foot path. In addition, she states that the fob was black and would have been amongst toys. She further states that she was just across the road from her house and felt that her house was safe and secure.

The Complainant complains that the Provider did not have grounds for denying the claim. She also complains about the customer care she received.

The Provider's Case

The Provider explains that it instructed the broker to write the letter to the effect that the policy had been voided from inception due to a misunderstanding. The Provider realised its mistake within 3 days. It then re-instated the policy, proceeded to investigate the claim and notified the Complainant to that effect.

The Provider states that the Complainant advised its investigator that her sitting room window (on the ground floor at the front of the property) had been left open and the key fob was left in that room. The investigator concluded that this amounted to a failure to take reasonable steps to protect the car, in breach of the condition in the policy to that effect.

The Provider states that since the making of the complaint, the car was sold at auction for salvage, with the consent of the Complainant. The Complainant dealt directly with the auctioneer in this regard and would have recovered the proceeds of the sale, less the auctioneer's fee.

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 7 June 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 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.

A further communication was received from the Complainant on 27 June 2018 and from the Provider on 10 July 2018.

Both sought clarification of my Preliminary Decision. I will deal with those queries in my direction to the Provider at the conclusion of this Legally Binding Decision.

In her submission of 27 June 2018, the Complainant takes issue with the statement in the Provider's Case that *"my car was sold at auction for salvage and that I directly dealt with the auctioneer"*.

The Complainant points out that she felt *"backed into a corner"* and had no choice but to accept what she was offered as salvage due to mounting charges.

Neither of these decisions contain anything that would lead me to alter my decision as set out in the Preliminary Decision issued to the parties.

Cancellation of the Insurance Policy

I find that the manner in which this complaint was dealt with to be unacceptable.

The Complainant reported her car stolen in March 2017. On 26 April 2017, she received a notification from her Broker, on the instructions of the Provider, informing her *"we hereby advise you, that this policy has been voided from its inception date 27/07/2016 and no valid contract of insurance has existed between us under the above policy number"*.

The letter goes on to seek the return of the Certificate of Insurance and the insurance disc and states *"failure to comply with this request is an offence under Section 70 of Part VI of the Road Traffic Act 1961, which could result in a prosecution under the Act. We have advised the statutory authority accordingly"*.

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This letter cancelling the Complainant's insurance offered no reason whatsoever for the cancellation.

Cancellation of an insurance policy has very serious consequences for the person concerned. It should not be done lightly. It would appear it was done in this instance based on some mis-communication between the Gardaí, the agents of the Provider and its underwriters.

I note that when the Complainant queried this correspondence the matter was corrected by the Provider and the insurance policy was reinstated and the claim accepted.

This office has not been provided with any evidence of what information was passed between the Gardaí and the Company.

What has been provided as evidence is the letter to the Complainant cancelling her policy. I find it most unacceptable that an insurance company would cancel a policy of insurance in such a manner without any explanation. This would leave the Complainant in a very difficult position with regard to any future insurance policy. Further, it would rule out the possibility of having her claim considered.

When the Complainant queried this decision, it was reversed and the claim for the theft of the car was then progressed.

I note in its submission to this office dated 21 March 2017 the Provider states:

"The Gardaí were contacted by our claims handler that day to verify the details.

The Gardaí advised they had concerns regarding the theft; a receipt for a McDonalds drive-through restaurant was found in the vehicle, dated the same day as the theft. On checking the CCTV, Gardaí identified the Complainant's partner as the male driver of her car in the CCTV footage and when questioned about this by them, [the Complainant] stated that her partner had been driving the car, but he had been banned from driving, and she didn't want to get him in trouble".

It would appear that this was the reason the policy was cancelled. However, this reason was not given to the Complainant at the time.

For the avoidance of doubt, I have been provided with no evidence of any connection between the fact that the Complainant's partner was seen driving the car and the theft of the car.

Declining of Claim

The policy document was provided by the Provider. On P. 14 of the document, under the heading "Section 9: Conditions (Applying to the whole Policy)", the following appears, in paragraph 3:

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“You must take all reasonable steps to protect from loss or damage, and keep in a roadworthy and legal condition, any vehicle in the ‘Description of Vehicles’...”

The Complainant does not deny that this was a condition of her insurance policy, however she denies that she failed to take reasonable steps.

The reason the car was stolen was that the Complainant’s house was burgled and her key fob was taken from it. It is not unreasonable for a car owner to leave her car keys in her house.

The policy did not contain any condition that the keys were to be hidden or stowed in any particular place, or kept on her person. The question is whether the failure to close the sitting room window amounted to a failure to protect the car from theft.

On balance, I believe that the Complainant, in leaving her house unattended with the window open while the car keys were inside, does not meet the requirement to *“take all reasonable steps to protect from loss or damage...”*

Customer care

I note in its submission to this office the Provider states *“Please note no formal complaint was received in respect of this claim or its handling”*.

This appears to me to be at odds with the letter issued to the Complainant on 14 June 2017 by the Provider which states:

“After conducting a thorough review of your case, we are not upholding your complaint”.

I believe the Complainant did in fact make a formal complaint to the Provider about the cancellation of her policy and the rejection of her claim.

For the reasons set out above with regard to how this claim was dealt with and particularly the manner in which the policy was voided, I am partially upholding this complaint and I direct that the Provider pay a sum of €4,000 in compensation.

For the avoidance of doubt, the Provider is to now pay a sum of €4,000 to the Complainant in full and final settlement of all matters arising out of this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2) (b) (d) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €4,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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**

17 July 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*.