An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0213
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Claim handling delays or issues Maladministration
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint arises out of a travel insurance policy and relates to alleged maladministration.

The Complainants' Case

On 22 March 2016, the Complainants took out an annual multi-trip travel insurance policy which was underwritten by the Provider.

The Complainants' car was broken into whilst they were in Spain on [Date Redacted] 2016. A number of items were stolen out of the car and as a result, the Complainants lodged a claim with the Provider in the amount of €1,725.22. The Complainants completed a claim form dated 12 October 2016 and in the said form it is set out that the Complainants were in Malaga in Spain between [Date Redacted] 2016. The claim form provides the name, address and policy number of their home contents insurer [third party Insurance Company]. The claim form also states that on [Date Redacted] 2016, the Complainants had played golf and had put all bags in the boot of the car outside the golf club. They travelled to a restaurant, parked their car and locked it. They stated that they came out and noticed that the rear passenger door had been opened and all the bags and their contents had been taken from the car.

Initially, the Provider declined to cover any of the claim on the basis that the Provider had decided that there was no sign of a forced entry to the car and therefore it was not covered under the policy. The Complainants appealed this decision and they explain that

they ultimately agreed to settle the claim with the Provider. They state that as part of the settlement, the claim was partly paid along with two amounts of compensation.

However, the Complainants state that they then received a letter from their home insurance provider [Household Insurance Company], some weeks after they had settled the claim with the Provider. The letter from the [Household Insurance Company] explained that it had received a claim form arising out of the Complainants' claim under the travel insurance policy and it transpired that the [Household Insurance Company] had paid the Provider for certain items that the Provider had declined to pay the Complainants.

The complaint is that the Provider has wrongfully, unreasonably and unlawfully failed to administer or handle their claim appropriately.

The Provider's Case

The Provider rejects any wrongdoing and states that it was entitled under the terms and conditions of the policy to approach the Complainants' home insurance provider to seek a contribution for the claim. The Provider states that [the third party insurance provider] incorrectly paid the Provider for items that were not part of its settlement with the Complainants but that same has been returned to the [Household Insurance Company].

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 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.

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 11 September 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

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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.

Following the issuing of my Preliminary Decision, both parties made additional submissions to this Office as follows:

1. Letter from the Provider dated 21 September 2018.

2. E-mail from the Complainants dated 29 October 2018.

3. E-mail from the Provider, together with attachments, dated 19 November 2018.

Having considered those submissions, I set out below my final determination.

At the outset, it is important to point out that the Complainants' claim under their travel insurance policy for the losses incurred as a result of the theft of items from their car on [Date Redacted] 2016, was settled by agreement between the Complainants and the Provider and therefore this Preliminary Decision does not deal with any assessment of the original claim or the ultimate settlement reached by mutual agreement between the Complainants and the Provider. This complaint relates to the fact that the Provider then made contact with the Complainants' home insurance provider and sought and received a contribution from it arising out of the Complainants' claim under the policy.

Audio recordings have been provided in evidence of three telephone calls between the Provider and the Complainants. I do not consider that the contents of the calls are material to, or determinative of, the matter to be addressed as part of this complaint.

The Provider has provided a copy of the relevant terms and conditions of the policy and in particular relies on the "General Conditions Applying to All Sections" part of the policy. Section 14 of that part of the policy provides:

"We are entitled to take over your rights in the defence or settlement of a non-medical claim, or to take proceedings in your name for your own benefit against another party and we shall have full discretion in such matters. This is to enable us to recover any costs we have incurred from any third party who may have liability for the costs."

It appears therefore that on foot of the above provision, the Provider approached the Complainants' home insurance Provider [third party Household Insurance Company], in order to seek to recover some of the costs that were paid out under the claim that was settled with the Complainants.

The Complainants have also provided copies of correspondence, by email, with the [third party Household Insurance Company]. By email dated 30 November 2016, the [third party Household Insurance Company] explained to the Complainants that there is a dual insurance in place under both the travel insurance policy and the home insurance policy and on foot of this there is a legal obligation on both insurance Providers to pay the claim.

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The [third party Household Insurance Company] explained that the Provider paid to the Complainants the amount that was ultimately settled and then sent a request to the home insurance provider to contribute towards same.

The home insurance provider explained that it had calculated, that under the terms and conditions of its policy, it would have paid the Complainants €1,410. It was advised that the Provider had paid the Complainants €601.73 and it had calculated therefore that its contribution amount to the Provider, based on the cover available between the two policies, was €421.74.

The home insurance provider also explains that there is a Travel Contribution Formula in place between it and the Provider and which is standard across the insurance industry.

In a further email from the home insurance provider, dated 7 December 2016, it was explained to the Complainants that they benefit from more cover under their home insurance policy. In addition, the [third party Household Insurance Company] conceded that it had miscalculated the amount due to the Provider and stated that the error was on its part and not the Provider's. It invited the Complainants to proceed with a claim under their home insurance policy. The Complainants declined to do so.

The home insurance provider also stated that the travel contribution claim has had no effect on their policy or their no claims discount going forward.

In light of all of the foregoing evidence, and the terms and conditions of the travel insurance policy, I am not at all satisfied on reading the provisions in the Complainants' insurance policy that it was made clear to the Complainants that the Provider would seek to recoup the cost of any claim from the insured's home insurance policy.

I am not questioning the right of the Provider to have a subrogated claim that permits it to take over the rights of the insured in the defence or settlement of a claim. However, it seems quite a stretch to extend this to claiming on the insured's home insurance policy without either spelling this out in detail in the policy conditions or notifying the policy holder of their intent to do so.

I welcome the information that the Complainants' home insurance policy has not been affected and the Complainants have suffered no prejudice or loss as a result of the dual insurance arrangement that is in place between the Provider and the [third party Household Insurance Company]. If it had been, I believe it would be even more serious, especially given that the Complainants were not notified of this intent or action. While this may be the case, there is no guarantee that the Complainants would not be prejudiced in the future. In this regard, the Complainants now find themselves in a position where, if they decided to change their home insurance provider, they would be required to inform any potential insurer that there has been a claim or event on their home insurance. Not to do so could risk finding themselves in a situation of non-disclosure of a previous claim or material event. I believe the Complainants should have been informed by the Provider that it would seek to recover part of the claim from the Complainants' home insurer. This should have occurred during the process of assessing and considering the claim as this

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would have afforded the Complainants an opportunity to make an informed decision as to whether they wished to proceed with the claim in circumstances where the Provider would seek to recover a contribution from the Complainants' home insurer.

On 28 December 2016, the Complainant furnished the Provider with an invoice for €2,705.21. The invoice was stated to be representative of the time the Complainants had spent in their claim. The amount is broken down as follows:

> 27 hours at €100 per hour = €2,700
> Stamps x 2 at €0.72 = €1.40
> 49 sheets of white paper at €0.31 = €2.79
> one envelope = €0.98

Because of the unclear wording in the policy terms and conditions and the Provider's failure to inform the Complainant that it would seek to recover part of the claim from their home insurance policy, I uphold this complaint.

While I do not accept the Complainants' claim for €2,705.21, I do believe a sum of €1,000 in compensation is merited for the inconvenience caused to the Complainants for the reasons set out above.

I am also bringing the content of this Decision to the attention of the Central Bank of Ireland so that it may consider if any action in relation to information provided to policyholders in relation to the "*Travel Contribution Formula*" is merited.

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Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld, on the grounds prescribed in ***Section 60(2) (b) 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 Complainants in the sum of €1,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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

19 December 2018