



<u>Decision Ref:</u>	2019-0064
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/unattended
<u>Outcome:</u>	Upheld

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

Background

The Complainants incepted a single trip travel insurance policy online with the Provider on **3 September 2017**, which provided cover from 12 January to 19 January 2018.

The Complainants' Case

The Complainants travelled to Tenerife, Spain on 12 January 2018. Their rental vehicle was broken into on 16 January 2018 and items worth GBP £2,168.29 were stolen from the boot, namely, a camera (£497), a camera lens (£999), a memory card (£23.49) a drone (£599) and a drone battery (£49.80). The Complainants notified the Provider of this loss by telephone on 17 January 2018 and then submitted a claim form detailing the circumstances, as follows:

“We locked all our items (all items were not visible from outside) in a boot of a car...We went for a walk from 12 – 3:30 pm. When we came back rear window of the right door was forced down and back seat was folded down so the robbers had access to the boot. Everything that was in the boot of [the] car was stolen”.

The Provider declined the Complainants' claim on the basis that their travel insurance policy did not provide cover for the loss, theft of or damage to valuables left unattended at any time, including those left in a motor vehicle.

In this regard, the Complainants set out their complaint, as follows:

“We were robbed during our holidays. We left our items in the locked boot of a car. Items were not visible from the outside. We came back after 3.5 hrs and we noticed that someone broke into the car and stole our items. [The Provider] said that robbery from the locked boot is not a part of our policy [cover]. We checked our policy and there is a fragment that say on [page 29], “What is not covered: baggage contained in unattended motor vehicle between 9 am and 9 pm unless it is in the locked boot which is separate from the passenger compartment for those vehicles with a boot and for those vehicles without a separate boot, locked in a vehicle and covered from view”. This means that [the Provider] lied to us that it is not a part of our policy. I think we are entitled for compensation”.

The Provider’s Case

Provider records indicate that the Complainants incepted a [specified level] single trip travel insurance policy online with the Provider on 3 September 2017, which provided cover from 12 January to 19 January 2018 for a premium of GBP £51.82.

The First Complainant telephoned the Provider on 17 January 2018 to register a claim and explain the circumstances of the theft at hand. The Agent advised the First Complainant of the policy exclusion under the baggage section of the Complainants’ policy, that is, that there is no cover for the loss, theft of or damage to valuables left unattended at any time, including those left unattended in a motor vehicle. In this regard, the Provider first declined the Complainants’ claim verbally on 17 January 2018.

The First Complainant telephoned the Provider the following day on 18 January 2018 to advise that he did not agree with the information he had been given by telephone the previous day and requested a claim form, which was sent to him. Having received and reviewed the ensuing completed claim form and supporting documentation, the Provider declined the Complainant’s claim in writing on 22 January 2018.

Having listened to its recordings of the relevant telephone calls, the Provider notes that the First Complainant advised its Agent during the call on 17 January 2018 that he had parked the vehicle in the parking lot and that there were other cars there so he thought it would be safe. He stated that they were approximately 500 meters from the car and that when they came back the rear window had been forced down and the boot was empty. During his telephone call on 18 January 2018, the First Complainant advised the Agent that he did not consider the car to have been left unattended as the Complainants *“weren’t far from the car and it was locked”*. The Claim Form completed by the Complainants on 20 January 2018 advised, as follows:

“We locked all our items (all items were not visible from outside) in a boot of a car...We went for a walk from 12 – 3:30 pm. When we came back rear window of the right door was forced down and back seat was folded down so the robbers had access to the boot. Everything that was in the boot of [the] car was stolen”.

/Cont’d...

Having reviewed the matter, the Provider concluded that the Complainants' vehicle was left unattended for over 3 hours and therefore Exclusion 2 under Section E, 'Baggage', at p. 29 of the applicable Travel Insurance Policy Document applied, as follows:

"What is not covered ...

2. *Loss, theft of or damage to Baggage including Valuables left Unattended at any time (including in a vehicle or in the custody of carriers) unless deposited in a locked hotel safe, locked safety deposit box or left in Your locked (doors and all windows) accommodation.*

The Provider notes that the Complainants' policy does not therefore provide cover for the loss, theft of or damage to valuables left unattended at any time, including those left unattended in a motor vehicle. As a result, the Provider is satisfied that it declined the Complainants' travel insurance claim in accordance with the terms and conditions of their travel insurance policy.

The Provider notes that during his telephone call on 22 January 2018 the First Complainant mentioned that no one had explained the travel insurance cover to him when incepting the policy. In this regard, the Provider notes that the Complainants' travel insurance policy was incepted by the First Complainant online on 3 September 2017 and that during his online journey the First Complainant ticked a box to confirm the statement, "Tick here to confirm you have read and understood the terms & conditions for the purchase of this travel insurance policy". In this regard, clicking the highlighted link "terms & conditions" brings the customer to the travel insurance terms and conditions for them to read.

The Provider is satisfied that it declined the Complainants' travel insurance claim in accordance with the terms and conditions of their travel insurance policy.

The Complaint for Adjudication

The Complainants' complaint is that the Provider wrongly or unfairly declined their travel insurance claim.

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.

/Cont'd...

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 February 2019 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, the final determination of this office is set out below.

The complaint at hand is that the Provider wrongly or unfairly declined the Complainants' travel insurance claim. In this regard, the Complainants incepted a single trip travel insurance policy online with the Provider on 3 September 2017, which provided them with cover from 12 January to 19 January 2018.

Whilst holidaying in Spain, the Complainants' rental vehicle was broken into on 16 January 2018 and items worth GBP £2,168.29 were stolen from the boot, namely, a camera (£497), a camera lens (£999), a memory card (£23.49) a drone (£599) and a drone battery (£49.80). The Complainants notified the Provider of this loss by telephone on 17 January 2018 and then submitted a claim form detailing the circumstances, as follows:

"We locked all our items (all items were not visible from outside) in a boot of a car...We went for a walk from 12 – 3:30 pm. When we came back rear window of the right door was forced down and back seat was folded down so the robbers had access to the boot. Everything that was in the boot of [the] car was stolen".

The Provider declined the Complainants' resultant claim on the basis that their travel insurance policy did not provide cover for the loss, theft of or damage to valuables left unattended at any time, including those left in a motor vehicle.

Travel insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

I note that **Section E, 'Baggage'**, of the applicable Travel Insurance Policy Document provides, *inter alia*, at pg. 28, as follows:

/Cont'd...

“What is covered

1. *We will pay You up to the amounts shown in the Features and Benefits table for the accidental loss of, theft of or damage to*

a) Baggage including Valuables but excluding Gold Equipment”.

In this regard, the ‘Features and Benefits’ table at pg. 2 of the Policy Document details that under the [specified level] of cover, that is, the level applicable to the Complainants’ policy, there is a limit of GBP £1,500 for any one Baggage claim, with a single article limit of £250, a valuables limit of £300 and an excess of £75.

In addition, I note that **Section E, ‘Baggage’**, of the Policy Document contains the following exclusions at pg. 29, as follows:

“What is not covered ...

2. *Loss, theft of or damage to Baggage including Valuables left Unattended at any time (including in a vehicle or in the custody of carriers) unless deposited in a locked hotel safe, locked safety deposit box or left in Your locked (doors and all windows) accommodation.*
3. *Loss, theft of or damage to Baggage contained in an Unattended motor vehicle between 9 p.m. and 9 a.m. (local time) or Baggage contained in an Unattended motor vehicle between 9 a.m. and 9 p.m. (local time) unless it is in the locked boot which is separate from the passenger compartment for those vehicles with a boot, or for those vehicles without a separate boot, locked in the vehicle and covered from view”.*

In this regard, I note that the ‘**Definitions**’ section of this Policy Document provides the following definitions at pgs. 9 - 12:

“Baggage

– means luggage, clothing, personal effects, sports equipment (not applicable to Golf Equipment if cover is included) and Valuables which belong to You (or which You are legally responsible) which are worn, used or carried by You during a Trip but excluding Personal Money and documents of any kind ...

Please also note that if You are planning to take expensive items such as certain items of jewellery, photographic or telecommunications equipment or other items that We define as Valuables on Your Trip, then You should check that You have adequate cover under a home contents insurance policy ...

Valuables

– means jewellery, gold, silver, precious metal(s), precious or semiprecious stone articles, watches, telescopes, items made of leather (including designer footwear, handbags or purses), binoculars, sunglasses, reading/prescription glasses, furs, **cameras**, camcorders, **photographic** audio video computer television or telecommunications **equipment** (including mobile phones, mobile phone accessories, smart phones, personal digital assistant(s), blackberries, iPods, iPads, laptops, tablets, personal organisers, notebooks, netbooks, kindles, eBooks, eReaders, CD's, DVD's, **memory cards**, speakers or headphones, Nintendo DS, games console, computer games and associated equipment ...

Unattended

– means when You cannot see or are not close enough to Your Baggage, Personal Money, property or vehicle to stop it being damaged or stolen”.

[Emphasis added]

Having considered the evidence before me, including the Claim Form wherein the Complainants advise that “We locked all our items (all items were not visible from outside) in a boot of a car...We went for a walk from 12 – 3:30 pm”, I am satisfied that it was reasonable for the Provider to conclude that the Complainants’ vehicle was left unattended for over 3 hours. As a result, the Provider declined the Complainants’ claim on the basis that their travel insurance policy did not provide cover for the loss, theft of or damage to valuables left unattended at any time, including those left in a motor vehicle.

In doing so, the Company relied on the previously cited Exclusion 2 under **Section E, ‘Baggage’**, of the Policy Document:

“What is not covered ...

2. *Loss, theft of or damage to Baggage including Valuables left Unattended at any time (including in a vehicle or in the custody of carriers) unless deposited in a locked hotel safe, locked safety deposit box or left in Your locked (doors and all windows) accommodation”.*

This exclusion excludes cover for the loss, theft of or damage to baggage including valuables left unattended at any time, including those left in an unattended motor vehicle.

However, directly below this, is the previously cited Exclusion 3 under **Section E, ‘Baggage’**, of the Policy Document:

“What is not covered ...

3. *Loss, theft of or damage to Baggage contained in an Unattended motor vehicle between 9 p.m. and 9 a.m. (local time) or **Baggage contained in an Unattended motor vehicle between 9 a.m. and 9 p.m. (local time) unless it***

/Cont’d...

is in the locked boot which is separate from the passenger compartment for those vehicles with a boot, or for those vehicles without a separate boot, locked in the vehicle and covered from view”.

[Emphasis added]

This exclusion provides cover for baggage left in an unattended motor vehicle between 9am and 9pm where it is in a locked boot that is separate from the passenger compartment for those vehicles with a boot. I note that the policy definition of Baggage includes Valuables.

In this regard, the Complainants note that their stolen possessions had been locked in the boot of their rental vehicle, which was separate from the passenger compartment of the vehicle, from 12 noon to 3:30 pm and thus they consider that the terms and conditions of their travel insurance policy does provide them with cover in this instance as the circumstances of their loss falls under the emphasised section of the above policy provision.

Having considered these two exclusion clauses together, it seems to me that Exclusion 2 excludes cover for the loss, theft of or damage to all baggage including valuables left unattended at any time, including those left in a motor vehicle (unless deposited in a locked hotel safe, locked safety deposit box or left in the policyholder’s locked accommodation), whereas Exclusion 3 then provides cover for the loss, theft of or damage to baggage (the policy definition of which includes valuables) contained in an unattended motor vehicle between 9 a.m. and 9 p.m. once it is locked in the boot of that vehicle, which is the accepted circumstance of the Complainants’ claim.

It is therefore my opinion that the wording of these exclusion clauses creates a particularly confusing situation where it must be nearly impossible for a policyholder to understand whether or not they will be covered for the loss, theft of or damage to items left unattended in a locked vehicle boot between 9am and 9pm.

In this regard, Chapter 4, ‘Provision of Information’, of the Central Bank of Ireland’s Consumer Protection Code 2012 provides, *inter alia*, at pg. 21, as follows:

“4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English”.

I do not consider the information in Exclusion 2 and Exclusion 3 of **Section E, ‘Baggage’**, of the applicable Policy Document, when read together, to be clear, and therefore I do not consider the wording of these two exclusion clauses to satisfy this requirement of the Consumer Protection Code 2012.

Accordingly, I consider that the ambiguity caused by the wording of these exclusion clauses in the Policy Document should, in this instance, be resolved in favour of the Complainants, *contra proferentum*. I believe, in those circumstances, that for the reasons outlined above it is appropriate to uphold this complaint.

Conclusion

/Cont’d...

- 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) (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 rectify the conduct complained of by admitting the Complainants' claim, applying the applicable cover limits detailed in the Baggage section of the 'Features and Benefits' table at pg. 2 of the Policy Document, and by making an additional compensatory payment to the Complainants in the sum of €500, 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

25 March 2019

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.