



<u>Decision Ref:</u>	2019-0238
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mobile Phone
<u>Conduct(s) complained of:</u>	Rejection of claim - theft or attempt theft Maladministration
<u>Outcome:</u>	Rejected

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

Background

On **17 October 2016**, the Complainant incepted an insurance policy with the Provider in respect of his mobile phone.

On **21 February 2017**, the Complainant was in a bar whilst abroad. The Complainant's phone was in his jacket pocket. The Complainant's jacket and phone were stolen from the bar and were not retrieved. The Complainant filed a police report and made a claim on the policy with the Provider.

On **6 March 2017**, the claim form was received and on **9 March 2017**, the claim was declined on the basis that the policy's definition of theft and loss did not apply. The Complainant appealed that decision, but the Provider maintained its position on appeal on **13 March 2017**.

After further correspondence, the Provider issued a final response letter on **3 May 2017**.

The Complainant's Case

Firstly, the Complainant asserts that the policy covers the circumstances of his situation. The Complainant states that his phone was stolen and that the definition of 'theft' within the policy should, therefore, apply to his circumstances.

The Complainant states that the definition of 'theft' adopted by the Provider is too narrow and includes an unnecessary requirement of force or intimidation where the phone is not taken from a secured premises. The Complainant notes that he was not informed of the definition of 'theft' at the inception of the policy and that he would not have taken out the policy had he known of the definition. The Complainant asserts that this amounts to improper conduct and is unfair and misleading.

The Complainant also asserts that the definition of 'loss' in the policy applies to his circumstances and that he did not intentionally leave the phone unattended during his stay in the bar.

Secondly, the Complainant asserts that there was a delay in processing his complaint and that he did not receive any of the policy documentation at the time of inception. The Complainant asserts that the Provider should have sent this information at the material time and that the complaint should have been processed quicker.

The Provider's Case

The Provider's case is set out in its formal response and in the e-mails exchanged with the Complainant and additional submissions made throughout the investigative process.

Firstly, the Provider states that the definitions of 'theft' and 'loss' contained within the policy do not apply to the Complainant's set of circumstances. The Provider notes that 'theft' requires some element of 'force or intimidation' in order to apply where the phone was not stolen from a secured premises. The Provider notes that 'loss' does not apply when the phone has been 'intentionally left unattended.'

In the claim form, the Complainant's account states that he was '*out in nightclub in [location]. Phone was in jacket pocket and jacket and phone was taken from club.*' In the additional claim form, the Complainant's account states that he had been in a club for the evening and that his phone was in a jacket hanging off the back of his chair. When the Complainant was leaving, he noticed that the jacket was gone. On this basis, the Provider states that there was no force or intimidation and that the Complainant did intentionally leave the jacket and phone unattended. The Provider asserts, therefore, that the Complainant is not entitled to benefit.

With respect to the assertions relating to what was represented to the Complainant at the point of purchase, the Provider indicates that it cannot be responsible for this as the insurance was purchased through a third party network provider. The Provider states that the terms and conditions were sent to the Complainant.

In respect of the suggested delay, the Provider's timeline notes that the initial claim was received on **6 March 2017** and that the complaint and appeal were concluded by **13 March 2017**. The complaint was then escalated and reviewed by the customer support team. On **11 April 2017**, the representative indicated that the review would soon be completed. On

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3 May 2017, the Provider issued its final response letter and concluded that the decision should be upheld to decline the claim.

In respect of the policy documentation, the Provider states that policy information is sent by the third party network provider. The Provider states that the documents were processed on **17 October 2016** and were given to the courier to be delivered on the Friday of that week. The Provider states that if a policyholder does not receive this documentation in the post, then the onus is on the policyholder to contact the Provider.

The Complaints for Adjudication

1. The first complaint is that the Provider wrongfully refused the Complainant's claim.
2. The second complaint is that the Provider failed at the time of the policy inception, to explain the nature and terms of the insurance cover to the Complainant.
3. The third complaint is that the Provider acted improperly in delaying the processing of the Complainant's complaint.

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 10 July 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, within the period permitted, the final determination of this office is set out below.

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POLICY PROVISIONS

I note from the Policy Document that the [brand] mobile phone insurance in place at the time when the Complainant's mobile telephone was stolen, contained the following policy definitions on the first internal page:-

"Policy definitions

...

Loss – *the unforeseen loss of your device where you are permanently deprived of its use. It does not cover loss of the device where it has been intentionally left unattended.*

...

Theft – *The unlawful and intentional taking of the insured device from a secured premises or whilst the device is concealed or secured on or about the insured person, by force or intimidation.*

..."

The first complaint is that the Provider wrongfully refused the Complainant's claim.

It is clear from the description of events, made available by the Complainant himself, that there was no force or intimidation used in the theft of the Complainant's phone. On that basis alone, the definition of 'theft' does not apply to the circumstances of this case. Similarly, on the account provided by the Complainant, I consider it more than likely, that he did leave his jacket and phone 'unattended' within the meaning of the definition of 'loss'. This is because, firstly, it seems that the Complainant only appreciated at the end of the evening that his jacket was missing. Secondly, the Complainant, in the claim form, states that he last had possession of the phone '*that same evening / early morning*'.

In my opinion, this indicates that the Complainant, more than likely, left his jacket and phone unattended, in that he does not know when in fact he last had it. In all of the circumstances, I take the view that the policy wording which explains the limits of the cover available, makes it clear that there is no cover for the Complainant's claim. There is nothing unreasonable or unfair in the Provider applying the terms of its insurance contract. This is the fundamental basis upon which the Provider has agreed to indemnify an insured, and there can be nothing unreasonable in the proper application of the terms of an insurance policy, to a factual situation.

The second complaint is that the Provider failed, at the time of the policy inception, to explain the insurance cover to the Complainant.

I note that when the Complainant first made his complaint to this office, he advised that at the time when the mobile phone insurance was sold, in store, he was not told about any of these clauses, "*nor was I given any opportunity to view an insurance contract which quoted these definitions which [the Provider] is now using against me*". The Complainant also refers to the in store leaflet offering him Smart Insurance for his phone and he describes this leaflet as "*the only literature I received in relation to my policy*".

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In December 2018, the Complainant also indicated that he “*was never once given a policy document when [he] first took out the phone insurance...*”.

The Provider however, confirms that the policy documents were posted to the Complainant at the time when the policy was inception. The Provider contends that the onus was on the policyholder to read the policy to ensure that the terms contained in the policy met his needs. It points out that no insurance policy covers every possible eventuality and that all insurance policies contain certain terms and conditions. The Provider contends in that regard that “*Loss of a phone when it has been deliberately left unattended is not covered under this policy*”.

The Provider has in that respect, submitted a copy of the letter addressed to the Complainant dated 17 October 2016. I note that the letter in question advised, inter alia, that:-

“Attached is your Policy Schedule and Policy Document, so you can view your phone details and policy cover. We advise you to read through the attached documentation carefully to ensure it meets your requirements, paying attention to the exclusions and warranties of your cover.

If you have any queries about your cover, you can get in touch on xxxxx”.

On the basis of the evidence available, I accept that the Complainant was indeed issued with the Policy Document at the time when he inception insurance on his phone. It is unclear whether the Complainant took the time to review the 4 pages of policy terms which included the Policy Definitions on the first page. On the basis of the evidence before me, I do not consider it reasonable to uphold the complaint that the Provider failed to explain the policy terms to the Complainant, upon the inception of the policy. I accept that when the policy details, including the precise terms and conditions of cover, were issued to the Complainant by the Provider, he ought to have reviewed the contents, so as to ensure that the policy would meet his needs. If, having reviewed the policy terms and conditions, he believed that the policy would not be suitable for him, he could then have taken steps to cancel the cover.

Accordingly, this element of the Complainant’s complaint is not upheld.

The third complaint is that the Provider acted improperly and was guilty of delay in its interactions with the Complainant.

In my opinion, the timeline in processing the complaint was comparatively short. The initial complaint and initial appeal were dealt with expeditiously by the Provider between **6 March 2017** and **13 March 2017**. While there was a brief delay in the Provider issuing a final response letter, and I note from the audio evidence submitted that the Complainant was anxious to have his claim determined expeditiously, nevertheless I do not accept that the timeline was excessive.

In all of those circumstances, I am satisfied that it would not be reasonable to uphold these complaints.

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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 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 INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

1 August 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.