



<b><u>Decision Ref:</u></b>	2019-0350
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Contents
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - theft or attempt theft Poor wording/ambiguity of policy
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This complaint relates to a claim under a house insurance policy. The Complainant made a claim in respect of damage to the building and loss of contents. The building aspect of the claim has been settled and this complaint relates to the contents aspect of the claim

**The Complainants' Case**

The Complainants incepted a home insurance policy underwritten by the Provider on **14 July 2003**. The Complainants' house was burgled on **14 October 2017**. Following the burglary, the Complainants made a claim under the policy in respect of a number of items of jewellery that were stolen. The Provider requested that the Complainants provide pre-loss proof of ownership in respect of the items claimed. The Complainants were unable to produce any documents which demonstrated that they owned the items being claimed for. As a result of this the Provider applied entry level valuations to certain of the items claimed for. The Complainants are dissatisfied with the Provider's assessment of their claim and submit that the policy document does not state that proof of ownership is a requirement in the event of a claim.

The Complainants state that following a theft at their home in **October 2017** they submitted a claim under their home insurance policy. The Complainants state that "[h]aving carried a high level of cover for many years, (our 2017 premium was €1,167.76 with contents cover of

€99,724.00 in place), we had always assumed in good faith that our home and possessions were safe in the event of disaster.”

The Complainants submit that this was not the case and that “[w]hile the [Provider was] prepared to accept these high premiums for the last 14 years, they were not in fact giving the cover they promised, and we believed in good faith.”

The Complainants state that following the theft the Provider sought proof of ownership of the items that were stolen. The Complainants submit that “[n]o where in the policy does it say that this is a pre-requisite in the event of a loss.” The Complainants state:

*“The problem arises in that many of the items were quite old, were rarely worn, were gifts or were inherited. This means there are no receipts and we don’t have bank statements going back 30 years. In the case of gifts, obviously there are no receipts. We are both innately camera shy and most of the family photos we have are of our children or pets, so we are also unable to provide photographic evidence. We also had an issue some years back when some suitcases with documents and photos we had stored in an outside building were destroyed by mould and mildew. There may or may not have been some evidence here, but we can’t be certain of that either.”*

The Complainants state that the Provider is relying on one sentence in the policy document to avoid liability which states: *“You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to us ...”* In respect of this sentence the Complainants pose the following question: *“Is it not strange that there are many pages detailing accurately what exactly is insured and the values associated with these risks, but they can then fall back on this one sentence and deny liability.”* The Complainants state that the policy should explicitly state that evidence of ownership is required in the event of a claim and also provide examples of the types of vouching documents that would be accepted by the Provider. The Complainants state that if they had been advised to keep such documentation they would have taken the necessary precautions. The Complainants state that *“[t]his kind of obfuscation is not what we were expecting from a company who we have been dealing with for over 14 years and who we paid our premiums to on time, every time.”*

The Complainants got valuations from two jewellers after the items were stolen and they state *“... that supplying the quotes from the relevant jewellery experts, which took a lot of time and expense to get, constitutes providing the ‘necessary documents’.”* The Complainants state that the term *“necessary documents”* is vague and ambiguous and the Provider is using *“abstract conditions”* to avoid liability. The Complainants submit that if the Provider requires specific documents in the event of a theft then these should be specified in the policy and any item not specified cannot be requested after the theft.

The Complainants are also dissatisfied that the Provider has used entry level values for many of the items claimed for. The Complainants state that certain valuations are based on 9ct gold valuations in respect of items that are 18ct gold. The Complainants state: *“Is this not like saying you had a Mercedes stolen but we will give you the value based on a Toyota?”*

The Complainants state that the Provider is “... *trying every which way to avoid liability and avoid making a reasonable offer on many of the items we lost.*”

The Complainants state that the value of the items stolen from their home was €58,825. The Provider offered the Complainants two options in respect of their claim: re-instatement value of €18,610 or a cash alternative of €14,880. The Complainants state that these offers “... *fall way short of the value of what was actually lost. We ask you to please look at these figures and adjudicate accordingly.*”

### **The Provider’s Case**

The Provider submits that for theft claims, it expects a policyholder to provide evidence that they owned the items claimed for and also provide evidence to support the amount being claimed. The Provider refers to page 29 of the policy which contains the requirement that a policyholder provide “*all necessary documents and information to support any loss.*” The Provider states that its policy does not stipulate the specific documents and information necessary to support a loss. However, the Provider submits that “[i]t is reasonable that a person provides us with pre-loss evidence that they owned the item(s) claimed for, and pre-loss evidence to support their valuation of the item(s).”

The Provider states that it does not expect the Complainants to provide pre-loss documentation for all of the items claimed for; however “*we would expect the Complainants to provide pre-loss documents for some of the items, especially those of high value.*”

The Provider gives examples of the type of pre-loss documents it would expect to be furnished in support of a claim. These include:

- Purchase receipts,
- Credit/debit card statements proving purchase of the items,
- Guarantees/warranties,
- Presentation boxes,
- Photographs,
- Pre-loss valuations,
- Receipts for repairs/service,
- Battery replacements receipts.

The Provider states that the Complainants have not provided proof of ownership of any of the 45 items of jewellery claimed for. The Provider states that the Complainants have provided two post-loss valuations for these items. The Provider submits that these valuations are based on specific descriptions given by the Complainants and are not based on an actual examination of the items.

In response to the Complainants’ submission that the Provider is relying on an ambiguous clause, the Provider states that this clause needs to be considered in its entirety and in the context of the theft claim.

The Provider states that while the clause does not stipulate what the necessary documents and information are, it has provided a lengthy list of items that it would accept in support of the Complainants' claim. The Provider states that *"... the phrase has an obvious meaning and is not open to more than one interpretation."*

The Provider states that of the 45 items claimed for by the Complainants, the post-loss valuations provided by the Complainants were accepted. A discount was applied to 24 of the items as these items were available via a jewellery replacement scheme operated by its jewellery claims appraiser. In respect of a further 7 items the Complainants' post-loss valuations were accepted and no discount was applied as these items were not available via a jewellery replacement scheme. For the remaining 14 items, the Provider states that no pre-loss documentation was provided and for these items the Provider states it could either decline to make an offer in respect of these items or place a value on the items based on entry level values.

The Provider states that the second option was offered to the Complainants together with a settlement offer. The Provider states that *"[a]s the settlement offer has been referred to the formal adjudication, we consider the offer to be rejected. At this time, there is no settlement offer open to the Complainant."*

### **The Complaint(s) for Adjudication**

The complaints for adjudication are that the Provider:

1. wrongfully and/or unreasonably sought proof of ownership in respect of the items claimed for by the Complainants; and
2. wrongfully and/or unreasonably attributed entry level values to certain items claimed for by the Complainants.

### **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 on 12 September 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, I set out below my final determination.

### **The Policy**

The Provider has furnished a copy of the policy. I have reviewed this document and I would note the follows provisions. In the definitions section the policy defines contents as:

*“Household goods and Personal Effects belonging to You (or for which You are legally responsible) or belonging to members of your Household ...”*

Section 1 of the policy discusses what is covered by the policy and states:

*“We will indemnify You by payment or, at our option, by reinstatement, replacement or repair, for loss or damage by any of the causes listed in paragraphs numbered (1) to (12), to the Premises and/or Contents, subject to the terms, limitations, exceptions and exclusions set out in this Policy.”*

A similar type of cover is provided for in section 2 of the policy in respect of All Risks Cover. This is the type of cover that was maintained by the Complainants at the time of the theft.

In the terms and conditions section of the policy it states:

### ***“Claims – Your Duties and Our Rights***

#### ***What You must do***

*Tell Us IMMEDIATELY of any loss, damage, or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to Us, together with completed Claim Form, within 30 days of first notifying Us of the incident.”*

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**Correspondence**

In an email from the Provider's loss adjuster to the Provider dated **21 December 2017** the loss adjuster states:

*"... I met with the Insured and his PLA at the risk address, they did not have a full list prepared, they did mention Rolex watches during the inspection but I explained I would need some original documentation for them (boxes guarantees etc)."*

In a letter dated **24 October 2017** from the Provider's loss adjuster to the First Complainant it states on the second page:

*"As requested, please arrange to submit the following with the next 30 days in accordance with Policy Conditions (i.e. before 23 November 2017):*

- Detailed list of stolen items \*\**
- Estimate of repairs*
- Photographs of you wearing the stolen/missing jewellery*
- Pre- loss valuations*

***\*\*Detailed list of stolen items pre loss supporting documentation for same i.e. receipts/original or pre-loss valuations (valuations received at time of purchase or carried out before the items were lost/stolen)/photographs of the jewellery being worn, branded boxes, watch guarantees, instruction manuals etc. All photos must be married to the list of items otherwise they will be returned thus delaying your claim. Failing to submit the above, may unfortunately result in your claim being validated at entry level prices due to insufficient pre loss documentation."***

I note that one post loss valuation lists 40 items of jewellery stolen with a value of €28,875.00. The second valuation lists 5 watches which were valued at €29,950 brings the total jewellery claim to €58,825.



**SCHEDULE**

<i>Item No.</i>	<i>Description</i>	<i>€</i>
<b>One</b>	<b><i>Gentleman's 18ct yellow gold Patek Philippe Calatrava wristwatch, hobnail bezel, white roman numeral dial, leather strap, mechanical movement. Model No: 3919 Current Replacement Value:</i></b>	<b>10,500.00</b>
<b>Two</b>	<b><i>Gentleman's 18ct yellow gold Patek Philippe vintage 1960's mechanical movement wristwatch, silver dial, leather strap. Model No: 2599 Current Replacement Value:</i></b>	<b>10,000.00</b>
<b>Three</b>	<b><i>Ladies stainless steel Rolex Oyster Perpetual Datejust, jubilee bracelet, silver baton dial, self-winding, sapphire crystal. Model No: 69240 Current Replacement Value:</i></b>	<b>3,500.00</b>
<b>Four</b>	<b><i>Gentleman's stainless steel and white gold bezel Rolex oyster Perpetual Datejust, leather strap, self-winding, sapphire crystal. Model No: 16014 Current Replacement Value:</i></b>	<b>3,950.00</b>
<b>Five</b>	<b><i>Ladies stainless steel Ebel Classic wave bracelet watch, silver dial, quartz movement, sapphire crystal. Model No: 9087F21 Current Replacement Value:</i></b>	<b>2,000.00</b>
	<b><i>Valuations based on descriptions given by above mentioned client .....</i></b>	
		<b>€29,950.00</b>
	<b><i>Dated this 11<sup>th</sup> day of November 2017</i></b>	

I note both valuations were carried out after the loss of the jewellery based on descriptions given by the Complainants.

**The Consumer Protection Code**

In adjudicating on this complaint, I also have regard to the following provisions of the **Consumer Protection Code 2012**:

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*“7.6 A regulated entity must endeavour to verify the validity of a claim received from a claimant prior to making a decision on its outcome.*

...

*7.15 A regulated entity must ensure that any claim settlement offer made to a claimant is fair, taking into account all relevant factors, and represents the regulated entity’s best estimate of the claimant’s reasonable entitlement under the policy.”*

### **Analysis**

The policy provides cover for items owned by the Complainants and items for which they are legally responsible. In the event of a claim, the policy requires the Complainants to produce *“all necessary documents and information to support any loss.”* When a claim was made by the Complainants under the policy, the Provider was entitled to verify the Complainants’ claim. As part of this process, the Provider is entitled to require the Complainants to demonstrate that they owned or were legally responsible for the items being claimed for. The Provider has identified a broad range of the types of documents, information or items it would accept in order to verify the Complainants’ claim. The Provider has not been prescriptive in this regard. Furthermore, I note that the Provider has acknowledged that the Complainants may not be in a position to provide proof of ownership in respect of every item claimed.

It ultimately transpired that the Complainants were unable to provide any form of document or information which demonstrated that they owned any one of the 45 items the subject of the claim. While the Complainants provided post-loss valuations, it is unfortunate that they were unable to produce any one of the possible indicators of ownership for any one of the 45 items.

It is not unusual for consumers to have high value items valued and recorded for insurance purposes. Given the very high value of some of the Complainants’ jewellery, it would have been prudent for the Complainants to have some record of, at least, the more valuable items.

I do not accept that the requirement to produce *“all necessary documents and information to support any loss”* is ambiguous or vague. The Provider cannot be expected to accept an unverified claim and it is not unreasonable to expect a policyholder to produce some form of proof that they owned a particular item.

That said, I believe it would be helpful if the Provider were to give more information or an explanation of what is required of the insured.

The schedule supplied by the Provider’s loss adjuster lists 14 items as having no pre-loss supporting documentation. The schedule further indicates that entry level values have been applied to 13 of these items. Based on the Complainants’ inability to provide any documentation in support of any of the items claimed for, I do not believe it was

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unreasonable for the Provider to adjust the valuations provided by the Complainants in the manner it did. Furthermore, I also accept that the Provider was entitled to apply entry level values to the chosen items.

It is important to note that the Provider accepted the loss of the items despite the Complainants' inability to prove ownership of any one item. Furthermore, the Provider offered the Complainants two options in respect of their claim: reinstatement value of €18,610, or a cash alternative of €14,880.

I accept the Complainant is unhappy with the value placed on the items but I accept that the Provider took a reasonable approach to its assessment of the Complainants' claim. Therefore, I do not uphold this complaint.

### **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**

7 October 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.