



<b><u>Decision Ref:</u></b>	2019-0434
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Other
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - reasonable care/security of vehicle Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

##### **Background**

The Complainant held an insurance policy with the Provider in respect of his mobile catering trailer. On or about **30 October 2015**, the Complainant's trailer was stolen. The Provider declined to indemnify the Complainant in respect of the theft of his trailer as a number of conditions relating to the security of his trailer were not complied with.

##### **The Complainant's Case**

The Complainant submitted a Complaint Form to this Office dated **24 January 2017** in respect of an insurance policy for his catering trailer. It is apparent that the Complainant was dissatisfied with the decision of the Provider to refuse to indemnify him in respect of the theft of his catering van, on or around **30 October 2015**.

##### **The Provider's Case**

The Provider states that the Complainant's complaint relates to a claim in respect of the theft of his mobile catering trailer. The Provider states that on **31 October 2015**, there was a theft of the Complainant's trailer from [X.] Road near to [P.] Garda Station. The Provider states that the loss adjusters appointed to investigate the claim established that the Complainant locked and secured the trailer. However, it was also established that the

Complainant did not comply with the security requirements contained in his policy schedule. The Provider submits that these were conditions precedent to liability which meant that they must be complied with, in order for the policy to operate. The Provider then sets out these conditions and the findings of its loss adjuster.

The Provider states that on reviewing the Complainant's claim it saw no reason to disagree with the decision to reject the claim or to conclude that the Complainant had been treated unfairly or unreasonably in relation to the declinature of his claim. The Provider states that it investigated the Complainant's complaint and issued a Final Response letter dated **12 June 2017**.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully and/or unreasonably declined the Complainant's claim in respect of the theft of his mobile catering trailer.

### **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 21 November 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.

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In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

- **The Policy Schedule**

The third page of the Complainant's policy schedule states:

**"Notes:**

*27/07/2015: Mobile Catering Van Sum Insured Eur38,000 Fire and Theft Cover only.*

*Excess Eur750 Catering Trailer Clause:*

*It is a condition precedent to liability that:*

*1. Unattended trailers must either be stored:*

- a. In a securely locked building built of brick or stone with a tiled or slate roof or,*
- b. On the insured's driveway at his/her private dwelling house or,*
- c. In a compound and is either fully locked outside of office hours or has a 24hr security guard on site. For the purpose of this insurance, a compound is defined as a fully enclosed area surrounded by a continuous fence or wall to a minimum height of 2 metres in which entry and exit can only be made through a securely locked entryway.*

*2. All trailers must be fitted with a*

- a. Suitable key operated Hitch-Lock (identified by own key number) and wheel-clamp manufactured to British standard "Sold Secure" status.*
- b. ...*
- c. Professionally fitted Bar-Stabiliser and/or Towball-Stabiliser*

*3. ...*

*4. ...*

*Whereby you have confirmed to be the case on your application or renewal, trailers valued at £10,000 and above will be;*

*A. Secured with a VCA (Vehicle Certification Agency) approved Tracker, which is armed and under subscription contract*

*B. The trailer will be Data tagged and the insured will have documentation to verify this.*

*C. Prevented from being moved by a Telescopic or fold-Down security post with a minimum weight of 14 kilos. ..."*

- **Loss Adjuster's Report**

The Provider's loss adjuster furnished the Complainant's insurance broker with a report dated **25 November 2015**. This report outlines on the second page that:

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*“When we met [the Complainant], we also discussed the security requirements as listed in the policy in which are conditions precedent to liability.*

*No evidence or documentation was produced by [the Complainant] to indicate the catering van was fitted with a key operated hitch lock or a VCA (Vehicle Certification Agency) approved trailer or telescopic or fold down security post. [The Complainant] indicated that he was unaware it was a requirement of the policy that a VCA tracker had to be fitted to the catering van.*

*We confirm having reported to underwriters and they responded confirming that **due to breaches of the following conditions which are precedent to liability**, they are declining liability:-*

*[In respect of condition 1 of the catering trailer clause]*

*The theft of the catering van in this case arose whilst it was left unattended on a public roadway outside [Stadium] which is in breach of this condition precedent to liability.*

*[In respect of condition 2a. of the catering trailer clause]*

*No evidence has been produced to indicate the catering van was fitted with a hitch lock identified by own key number and wheel clamp manufactured to British Standard Sold Secure status.*

*[In relation trailers valued in excess of €10,000]*

*The Insured has confirmed he was unaware that his catering van required to be fitted with VCA approved tracker and no evidence has been produced indicating the catering van was data tagged. In addition, no evidence has been produced to indicate the catering van was protected by a telescopic or fold down security post. ...”*

This report was forwarded to the Complainant by his insurance broker by email dated **26 November 2015**. In response to this, the Complainant wrote to his broker on the same date stating:

*“... I had a lock on it and I thought it would be fine as it was a big heavy duty lock and it was outside the Garda Station ...”*

In a letter dated **21 November 2016**, which appears to have been sent to the Provider, the Complainant states:

*“I [Complainant] think I should be paid compensation on the grounds that I was insured at the time. I thought the catering van would be fine as it was a few metres away from [P.] Garda Station [location], I spoke to the Sargent and told him the situation and I asked would it be okay if I left it there overnight he assured me it would be okay. I would be grateful if I received some compensation as I thought my catering van was safe as I left it in a reasonable place and would never think it would be stolen*

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*from there. This has brought a great amount of stress to me as I can't carry out any business duties as this tragedy has left me broken financially and mentally."*

### **Analysis**

I note from the contents of the Complainant's email of 26 November 2015, that the Complainant recalls the events as follows:-

*"I had a good pitch for the match so I went back into town to stock my catering van. I came back to the van at 4 o'clock the same day to open up for the match and my generator wouldn't work so I made a few phonecalls to get a replacement for it and I couldn't get one so it was getting too late and I had to ring my brother-in-law to bring in the catering van for me so he told me he couldn't do it till the next day as he was working. I decided to go over to the Garda Station and explain this situation to the sergeant and I asked him was it alright to leave it there overnight. The sergeant assured me it would be fine as I thought so myself as it was outside a Garda station. I went back to my trailer at 7:15 pm to make sure it was locked up and fine and it was."*

It is clear from the Complainant's recollection that prior to the van being stolen, he had already left the van unattended, in order to go "back into town" to collect stock for the catering van. Unfortunately, later that day, or perhaps early the following day, after the Complainant had left the catering van unattended for the second time, it seems that unknown third parties stole it. When the Complainant returned to the location at approximately noon on the following day, the van was missing and at that point the Complainant reported it stolen.

The Complainant has entreated with the Provider to admit his claim, as he has a lot of money invested in the trailer and it was the source of his livelihood. The Provider however, made insurance cover available to the Complainant, only on the basis of certain specified conditions. In particular, owing to the nature of the vehicle, the policy schedule set out a number of very specific security measures which the Complainant was required to take, without which cover would not be in place. Regrettably, the Complainant was unable to confirm to the loss adjuster that the van had been fitted with a key-operated hitch lock or a VCA approved trailer or telescopic or fold-down security post. Indeed, the Complainant appears to have been unaware that this was a requirement for the policy to be effective.

Because the Complainant could not demonstrate that he acted in accordance with the security requirements contained in his policy schedule, the Provider declined to admit his claim for payment. In the Complainant's email of **21 November 2016**, the Complainant says that he:

*"... thought the catering van would be fine as it was a few metres away from [P.] Garda Station [location], I spoke to the Sargent and told him the situation and I asked would it be okay if I left it there overnight he assured me it would be okay ..."*

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The Provider is not obliged to admit a claim on this basis. The cover made available by the policy was not dependent upon an assurance being made available by a serving Garda. Rather, the policy cover was in place on the basis of strict criteria and conditions which the Complainant did not meet, as he did not have the required security measures in place which it seems would have ensured that the theft of the vehicle would have been made more difficult.

In circumstances where the Complainant did not comply with the policy pre-conditions for cover, I am satisfied that the Provider was entitled to adopt the position which it did.

Accordingly, I am unable to determine that the Provider acted wrongfully in declining the claim and consequently, this complaint cannot be upheld.

### **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**

18 December 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.