An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0011
Sector:	Insurance
Product / Service:	Household Contents
Conduct(s) complained of:	Claim handling delays or issues Dissatisfaction with customer service Rejection of claim - theft or attempt theft
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns a household insurance policy underwritten by the Provider. The Complainant made a claim on his policy on foot of a burglary at his property in December 2015. The Provider contends that it was unable to progress the claim as certain information, requested by the Provider, was not furnished by the Complainant.

The Complainant's Case

The Complainant is unhappy with the way the Provider handled his insurance claim arising from a burglary at his home on **19 December 2015** while he was abroad. The Complainant submits that he was informed of the burglary on **20 December 2015** by a neighbour who had noticed the front window was ajar. He further submits that this same neighbour also called the Gardaí, who sent a Garda to the Complainant's home that same day. The Complainant states that he telephoned the Provider at the earliest opportunity, which was 9am on Monday **21 December**, to report the burglary, and that he and his wife returned home early from their trip on **28 December 2015**. The Complainant contends that he provided a list of stolen items to the Gardaí on **6 January 2016** and eventually assembled a *"full stolen inventory"* which estimated the purchase cost of the stolen property was *"in excess of €40,000"*. The Complainant submits that the claim was originally *"set up"* on **25 February 2016** with the Provider, and that he contacted the Provider again on **14 April 2016** to request a Loss Adjuster visit his home *"in order to discuss and progress the claim"*. The Complainant submits that he was unhappy with the Provider's appointed Loss Adjuster from the outset, contending that from the very first contact (a telephone call to arrange a site

visit) the Loss Adjuster was *"condescending"* and *"rude"* in his interactions with him. The Complainant states he appointed his own Loss Assessor to act on his behalf, and that a meeting took place between himself, the Provider's Loss Adjuster and his own Loss Assessor at the insured property on **22 April 2016**. He submits that this meeting was *"more like an interrogation"* by the Loss Adjuster who requested a copy of the Complainant's boarding pass for his recent outward journey abroad, as well as *the "Engineering Code and the Access Log"* for the house alarm. The Complainant contends that the Loss Adjuster also requested *"that an alarm engineer of his choosing could interrogate the alarm system"*, and that after the meeting ended the Complainant telephoned the company that had installed his house alarm and arranged a site visit immediately. As the alarm company was sending a technician immediately, the Complainant states that he approached the Provider's Loss Adjuster, who was at this point in his car, and attempted to get his attention. The Complainant contends that the Loss Adjuster dismissively indicated that he was on the telephone, and shortly thereafter drove off without *"any further communication"*. The Complainant states that he was speaking with his Loss Assessor when the alarm technician arrived, who reported that the Complainant's *"alarm model did not have an Engineering Code nor an Access Log"*. The Complainant contends that:

> *"… this whole charade regarding the alarm was completely unnecessary, as [the Provider's Loss Adjuster] personally witnessed the alarm functioning properly and correctly during his visit to [the insured property] on 22nd April"*.

The Complains submits that the Provider's Loss Adjuster did not question him about any *"strangers visiting the house"*, and that *"an experienced, competent, and professional insurance operative"* might have explored this *"standard line of questioning"*. The Complainant states that he later recalled a *"casual grass cutter who came to the house on Saturday the 5th December"* and *"passed through the house twice in order to gain access to the rear garden"*. The Complainant contends that one of the fobs for activating/deactivating the alarm had *"mysteriously disappeared"* and that he advised the Loss Adjuster of this fact but that it was never referred to again.

The Complainant states that the possibility of a third party (in this case, the alarm company that the Provider later appointed) *"interrogating"* his alarm left him with *"many grave concerns and legal questions"*. He contends he was uncomfortable with this as the proposed third party might not be *"vetted"* and he was concerned that the interrogation could cause the alarm to be *"flagged as 'tampered'"* which would not be in his best interests whilst making a claim. The Complainant maintains that at that time, the alarm's *"integrity [was] fully maintained… in perfect working order"*.

The Complainant submits that the Provider's Loss Adjuster expressed concerns about the *"professional use of the stolen camera equipment"* as he had discovered the Complainant's membership of *"the Irish Professional Photographers' Association"*. The Complainant states that he has been a member of the association for twenty four years but has never worked as a professional photographer, and further states that the Loss Adjuster's investigations in this regard showed *"unfair bias*".

/Cont'd…

The Complainant also refers to the Loss Adjuster's *"concern… around the occupancy of the house"*. He states that his Loss Assessor was told by the Loss Adjuster that he *"did not believe the insured resided"* at the insured property. The Complainant submits that he *"provided 12 months of utility bills"* in addition to his *"Activity Report"* from his place of employment, documenting his attendance, leave and absences. The Complainant states that the longest period of absence during the year in question was *"well within the terms and conditions of [his] policy"* with regard to occupancy. He also submits that the Provider's Loss Adjuster, despite being furnished with contact details for the Complainant's neighbour, did not contact her to ask for a statement. The Complainant contends that the Provider's Loss Adjuster did not investigate the *"actual facts of the incident"* and that it instead sought to *"invalidate a completely legitimate claim on small technical grounds or petty entrapment"*.

The Complainant submits that the stress of the burglary, and his subsequent experiences with the Provider and its Loss Adjuster regarding his claim under the policy, *"have impacted very significantly"* on his family. He describes the Loss Adjuster's *"overly aggressive and insensitive approach"*, comparing it to a *"living nightmare"*, and contrasts it with his interactions with the Gardaí who were *"sensitive and respectful"*.

The Provider's Case

The Provider states that it had *"no option but to decline [the Complainant's] claim as it [had] not been possible to reach a decision on policy cover"*. The Provider submits that it had concerns regarding the Complainant's alarm system, namely that *"no alarm activation was noted when the break in is said to have occurred"* and that it requested access to the alarm system in order to carry out a technical examination to ensure it complied with the required standard as set out in the policy. The Provider further submits that it also had concerns about the occupancy of the insured property, and requested that the Complainant provide *"consumption based utility bills"* in order to verify occupancy. The Provider acknowledges that the Complainant provided *"estimated bills"* but contends that *"these do not confirm the occupancy of the property"*. The Provider states that though the consumption based utility bills were allegedly furnished to the Complainant's Loss Assessor by the Complainant, these items were not forwarded to the Provider.

The Provider's position is that it could not reach a decision on policy cover until its requests were complied with, and that, given the Complainant's refusal to allow access to the alarm for a technical inspection and his refusal to provide consumption based utility bills, the Provider found itself in *"an untenable position"* given the time that had elapsed since the burglary. The Provider states that *"the claim has been declined primarily due to the breach of policy condition that one must:*

> *Within 30 days of any event, provide all details, documents, proof of ownership and value, information and help which we may need"*.

The Provider submits that it was notified of a claim for theft by the Complainant on **21 December 2015.** As the Complainant was abroad at the time, the Provider agreed that the Complainant should make contact on his return to progress the matter. The Provider states that the Complainant made contact in **February 2016**, and that the parties agreed the

/Cont'd…

Complainant would prepare a detailed list of the stolen items so that the Provider *"could consider the claim appropriately"*. The Provider submits that the claim was registered on **14 April 2016**, and that both parties then appointed representatives (a Loss Adjuster by the Provider and a Loss Assessor by the Complainant). The Provider asserts that an inspection of the property was carried out on **22 April 2016**, and that it *"became apparent that the alarm was not activated during the break in"*. The Provider states that a neighbour, when contacted some months later, did not recall an alarm sounding, and that the Garda who attended the scene stated that *"no alarm was sounding on their arrival"* at the property but that a window was found to be ajar. The Provider states that during its claim investigations, *"the Complainant indicated that it may be possible to manipulate/open the window without triggering the alarm, but when this was tested, the alarm sounded each time"*.

The Provider contends that due to previous theft claims on the policy and the fact that the property was not fitted with an alarm, a review was carried out in **2010**. Prior to the renewal, the Provider received *"confirmation in the form of an invoice which detailed that an alarm had been fitted and that it met [the required standard under the policy]"*. The Provider states that its sole basis for renewing the policy with *"Stealing"* cover included was that the Complainant had installed an alarm compliant with the policy requirements, and that *"the Complainant's alarm system is therefore an essential part of [the Provider's] investigations of the Complainant's latest theft claim"*.

The Provider submits that its Loss Adjuster requested access to the Complainant's alarm system on *"numerous occasions"*:

> *"This included a request in writing on 3 May 2016, and also by telephone on 14 June 2016, 8 July 2016, 19 August 2016 and 22 August 2016".*

The Provider further submits that it proposed a joint inspection with an appointed alarm company, along with the Complainant's alarm technician to ensure that the Provider's appointed alarm company could gain access to the alarm system without the need to disclose the engineering code(s) to a third party. The Provider takes the view that *"the alarm's inspection, had it been facilitated would have been open and transparent"* and that its requests to inspect the alarm were *"fair, reasonable and in line with the terms of the policy"*. The Provider states that it was entirely within the Complainant's power to allow the inspection to go ahead, but that he chose not to do so, and thus was *"in breach of the terms of the contract of insurance"* between the parties.

The Provider submits that it furnished photographs of the Complainant's alarm to its appointed alarm company for professional assessment, and that the company stated:

> *"In our opinion the alarm system would not have met the [policy] standard. Just for instances, there is a separate power supply that comes with the main control panel, which plugs into a socket….. the panel should have a separate non-switching spur with neon light to support mains. Not a plug that can be pulled out of a wall socket"*.

The Provider contends that it requested that Complainant verify occupancy of the insured property as its Loss Adjuster had noted during his inspection that *"there were indicators that*

/Cont'd…

it was not normally occupied coupled with the fact that many of the stolen items were boxed up as if ready for transit". The Provider states that *the* Complainant's comments to the Gardaí coupled with the Provider's own Garda enquiries *"verified that the Complainant was in the process of moving [abroad]"*. The Provider submits that despite requesting consumption based utility bills from the Complainant, these have not been received to date. The Provider notes the Complainant's submission that these bills were already *"transmitted"* to the Complainant's Loss Assessor, and states that it is *"at a loss as to why they have not been forwarded to [the Provider] for review….. the provision of these bills for review is something the Complainant can easily address; these documents have allegedly already been provided to the Complainant's appointed representative"*.

The Provider states that:

> *"A contract of insurance is a legally binding contract subject to terms, conditions, endorsements and exclusions; it will not cover every eventuality…. [the Provider] has made numerous attempts to progress the matter by arranging to have the alarm professionally inspected by a qualified and licensed alarm engineer. Our requests for inspection have not been facilitated by the Complainant. At all times during this investigation we acted professional and in a fair and reasonable manner"*.

In its letter to the Complainant dated **27 June 2017**, over eighteen months after the reported theft at the Complainant's property, the Provider stated that *"based on the limited information, documentation and access"* the Complainant had provided, the Provider was declining his claim due to his breach of a general policy condition that stated an insured must *"within 30 days of any event, provide all details, documents, proof of ownership and value, information and help"* requested by the Provider. The Provider also stated in this letter that the Complainant had frustrated its claim investigation.

The Complaint for Adjudication

The complaint is that the Provider did not deal fairly or appropriately with the Complainant's claim under his policy on foot of a burglary at his property in **December 2015**. The Complainant is also unhappy with the Provider's appointed Loss Adjuster's handling of the claim investigation.

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.

/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 **26 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.

Following the consideration of additional submissions from the parties, together with all the submissions in evidence, my final determination is set out below.

The Complainant makes two main arguments:

- That the Provider did not deal fairly with his claim under his home insurance policy;
- That the Provider's appointed Loss Adjuster did not handle the investigation of the Complainant's claim appropriately.

The Provider states in its formal response that the policy was incepted in **June 1996**. Documents submitted relating to policy renewals from **2010** to **2016** indicate that the Complainant renewed his policy annually through a broker. The Provider details the Complainant's claim history dating from **2002**, including claims for theft in **2004** (resulting in a payment of €92,709.18 to the Complainant) and **2009** (resulting in a payment of €19,510.65 to the Complainant). The Provider contends that a review of the policy *"was completed in 2010 due to the previous theft claims on the policy and also the house was not fitted with an alarm"*. The Provider wrote to the Complainant via his broker on **31 March 2010** to advise the following:

> *"Please note that it is necessary for an alarm to EN50131 standard to be fitted in the above property"*.

The Provider wrote again on **16 April 2010** to reiterate the above point, and again on **25 May 2010** advising that "Stealing" cover would be excluded from the policy as *"an alarm to EN50131 standard has not been installed"*. The Provider states that prior to the renewal that it received *"confirmation in the form of an invoice which detailed that an alarm had been fitted and it met with the EN50131 standard"*. I note from the evidence submitted by the Provider that it received an invoice from the Complainant dated **3 June 2010** which indicated that he had had an alarm installed at the insured property at a cost of €700. It appears that the Provider accepted that this invoice indicated the Complainant had installed an alarm that complied with the required standard, and it included "Stealing" cover on his policy thereafter. I also note from the policy schedules from **2010** to **2015** that the Provider included the 'Endorsement codes' applicable to the policy. In the schedules pertaining to

/Cont'd…

2010, **2011** and **2012** policy renewals, the Provider states that the applicable endorsement relating to the alarm relates to a *"monitored alarm"*, which, according to the invoice presented to the Provider, the Complainant's alarm was. In the policy schedules from **2013**-**2016** inclusive, the Provider lists the endorsement codes that apply to the policy, including the endorsement code that pertains to the alarm. The full wording of the endorsement relating to the alarm during this period is as follows:

> "*Security – Intruder alarm*
>
> *"We will not cover loss or damage as a result of theft or attempted theft, unless the intruder alarm system*
>
> a. *Meets EN50131 or IS199 standard*
> b. *Is installed and maintained by an intruder alarm company approved by the NSAI (National Standards Authority of Ireland), EQA Ireland, Management Systems Certification Ltd., SSAIB or CerticCS*
> c. *The installer holds a PSA (Private Security Authority) licence; and*
> d. *The alarm is set and working when there is no person at home"*.

The policy schedules from **2013**-**2016** inclusive also include the following statement:

> ***"EXCESS OF €2500 APPLIES IN CASE OF BURGLARY CLAIM"***

The Provider has evidenced that the above excess was applied to the Complainant's policy from **2012** onwards following its underwriter's risk review, which took into account the Complainant's claims history.

It is important to emphasise that both the Complainant and the Provider are bound by the terms and conditions of the policy which include the following Exclusions under the heading 'Theft':

> *"We will not pay for the excess shown in your schedule or for loss or damage:*
>
> - *While your home is unfurnished or unoccupied for more than 60 days in a row,*
> - *Not reported to the police".*

Under **'General policy conditions – all sections'** the policy sets out that the Provider will only make a payment under the policy if the insured keeps to the general conditions, which include:

- *"The answers in any proposal and declaration for this insurance must be true and complete as far as you know and the proposal and declaration form the basis of this contract*
- *You or any person on whose behalf you are making a claim must keep to the terms and conditions of the policy".*

And:

> *You must:*

/Cont'd…

- *Immediately let us know about any event which may give rise to a claim under the policy;*
- *Let the police know immediately if property is lost, stolen, maliciously damaged or vandalised;*
- *Within 30 days of any event, provide all details, documents, proof of ownership and value, information and help which we may need;"*

I note that the Complainant's neighbour reported the theft to the Gardaí on **20 December 2015** and that the Complainant liaised with the Garda assigned thereafter, and therefore I accept that he met his obligations under the policy which required that he let the police know about the event that gave rise to his claim.

The Complainant had advised the Provider that he would be making a detailed list of the items stolen, and for this reason the claim was not registered until almost four months after the burglary was reported. Telephone call recordings were provided in evidence, and I note that in his telephone call to the Provider on **25 February 2016**, the Complainant stated how upset he was about the burglary and that this was why it was *"taking so long"*. The Provider stated during this call that the claim had been *"notified but not registered"* and that a Loss Adjuster might be sent out when the claim was registered. In a subsequent phone call between the parties on **14 April 2016**, the Complainant stated that he would like to request that a Loss Adjuster be appointed, and the Provider agreed. The Provider registered the Complainant's claim during this call, and advised that its appointed Loss Adjuster would contact him. The Complainant stated his wish that the stolen items could be recovered, and that this was why he *"left it so long".*

The Complainant and the Loss Adjuster arranged to meet at the insured property on **22 April 2016**, between 8.30am and 8.45am. The Complainant had appointed a Loss Assessor to represent him by this time who also attended on **22 April 2016**. The Complainant submits that he presented *"a highly detailed dossier of all stolen property"* to the Provider's Loss Adjuster at the property, and made him aware that the recovery of his property was *"a preferable solution"*. The Complainant asserts that he suggested the Provider *"might perhaps be prepared to help jointly fund a notice in [an industry newspaper]"* in the hope that some of the items might be recovered in this way but that the suggestion *"was promptly and flippantly dismissed"* by the Loss Adjuster. The Complainant contends that his dossier also included the boarding pass for his return flight in **December 2015**, and that he was *"dismayed when an additional request was made [by the Loss Adjuster] …. to produce a boarding pass for the outward flight"*. The Complainant describes this as a *"petty"* request, but states that he was able to provide the requested boarding pass.

The Complainant submits that the Provider's Loss Adjuster requested the *"Engineering Code and the Access Log for the alarm to be provided, and furthermore requested that an alarm engineer of [the Loss Adjuster's] choosing could interrogate the alarm system"*, a request that the Complainant submits was *"completely unnecessary as [the Loss Adjuster] personally witnessed the alarm functioning properly and correctly"* during the above mentioned visit to the insured property, along with the Complainant's Loss Assessor. The Complainant expresses reservations about a third party interrogating his alarm, states that its integrity

/Cont'd…

was *"fully maintained"* and that it was witnessed to be in perfect working order by the Provider's Loss Adjuster during his visit.

The Complainant submits that the Loss Adjuster was also concerned about *"the occupancy of the house"*, and that the Complainant provided *"12 months of utility bills"* as well as a record of his attendance at work over a 12 month period to demonstrate that he resided in the house.

It is important to emphasise that the Provider was entitled to establish that the policy conditions relating to occupancy and the security alarm had been met by the Complainant in order to establish that the Complainant was covered under the policy. Provision 7.6 of the Consumer Protection Code 2012 (As amended) sets out that:

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

In order to establish the validity of the claim, the Provider first needed to establish that the alarm fitted at the Complainant's property met the standard set out in the policy, and that it had been maintained in line with the policy. In order to do this, the Provider needed the Complainant to grant access to the alarm so that its nominated alarm inspector could verify that it met the required standard as set out in the policy. The Provider states that its Loss Adjuster contacted the Complainant's Loss Assessor on **6 May 2016**, to request a joint examination of the alarm by the Provider's nominated alarm inspector and the Complainant's alarm technician. The Provider submits that there was no response to this request, and that there was a follow up phone call on **14 June 2016**. The Provider further submits that subsequent efforts were made on **8 July 2016**, **19 August 2016**, **22 August 2016**, **26 August 2016** and **19 September 2016** to contact the Complainant's Loss Assessor regarding the alarm inspection and outstanding claims documentation, and that it tried contacting him by letter, phone, email and SMS.

I note the Complainant's submissions regarding the Provider's wish to inspect the alarm, in particular his "*many grave concerns and legal questions*", his fear that the proposed third party might not be vetted and his concern that that an inspection might cause the alarm to be *"flagged as 'tampered'."* I accept that the Provider was entitled to arrange that the alarm be inspected to ensure that it complied with the required standard under the policy, and I am at a loss to understand why the Complainant did not allow this. The Complainant also submits that he had difficulties getting his alarm technician to attend an inspection, and that he was advised by his Loss Assessor to "*think about offering to pay someone to obtain the alarm codes and meet with the insurer's alarm technician".* In the circumstances, it would have been prudent for the Complainant to take the advice of his appointed Loss Assessor in sourcing another alarm technician, in order to facilitate the Provider's inspection of the alarm.

The Complainant also states that the Provider accepted that the alarm complied with the policy conditions in **2010** when it was fitted, and queries why its compliance was questioned by the Provider in **2016**. The Complainant submits that he:

/Cont'd…

> *"….. paid his premiums in the doctrine of utmost good faith uberrimae fidei, and [the Provider was] quick to take [his] money on that basis – however uberrimae fidei doesn't seem to be reciprocated by [the Provider] when it comes to paying out on a claim*".

It is worth noting here that ***uberrimae fidei*** is generally interpreted to mean **'the utmost good faith'.** It obliges both parties to an insurance contract to disclose all material information in relation to that contract. In this case, it would appear that the Provider took it on 'good faith' that the alarm fitted at the Complainant's property in **2010** complied with the requirements under the policy, which had been previously advised to the Complainant in correspondence issued by the Provider in **March, April and May 2010**, and the Provider was entitled to verify this when the Complainant made a claim under the policy in **2016**. The Complainant submits that:

> *"…. <u>most</u> people are not technically competent, and such specifications are meaningless to most non-specialists. It is therefore most unfair that the onus of compliance rests solely on the policy purchaser where certain policy criteria are to be later strictly enforced in the event of a claim".*

As the Provider had repeatedly set out in correspondence the standard applicable to the alarm required under the policy, I accept that it met its obligations under the Consumer Protection Codes with regard to the provision of information to the Complainant regarding the alarm requirements. While I also accept the Complainant's submission that *"<u>most</u> people are not technically competent*" regarding alarms*,* the alarm was not fitted by the Complainant but by an alarm company. Such a company would be expected to be cognisant of the industry standards and should have been made aware of the required standard under the policy by the Complainant before fitting the alarm.

Regarding the Provider's concerns about the occupancy of the property, I note that the Complainant's statement that *"in order to be fully transparent and co-operative"* he provided utility bills for a twelve month period, along with records of his work attendance for a similar period. The Provider, in its letter dated **10 October 2016**, stated that as the Complainant had *"confirmed"* that his house was not occupied at the time of the reported burglary, that it required its Loss Adjuster to *"establish and verify the occupancy status"* of the property to ensure that it met the general policy condition stating that theft cover would not be in force should the property be *"unoccupied for more than 60 days in a row"*.

The Provider acknowledged receipt of the documentation provided by the Complainant, but pointed out that the work attendance log was not requested as it did not address occupancy of the property. The Complainant states that he would *"strongly argue that it is <u>highly</u> relevant from the point of view of transparency and clarification"* and documented all his leave absences, illustrating when his home was not occupied. While I acknowledge that the Complainant's work attendance records document his attendance and absences from work, they do not demonstrate that he was living at the insured property during that time. The Provider also stated that the utility bills submitted were estimated, rather than consumption-based, particularly those relating to electricity, and that they were of *"limited*

/Cont'd…

assistance". The Provider specified that it required sight of *"consumption based utility bills such as electricity or refuse collection, for a period of six months prior to the loss occurring"*.

The Complainant, in his submission dated **4 April 2018**, states that though he furnished such bills to his Loss Assessor that all of the household bills had not been furnished in turn to the Provider. While I acknowledge that the Complainant might not have been aware of this until much later, errors or omissions made by the Complainant's Loss Assessor are not the responsibility of the Provider. The Provider had requested consumption-based utility bills for the six month period prior to the theft in order to satisfy itself that the occupancy requirements under the policy had been met by the Complainant. The Provider has evidenced that the Complainant's Loss Assessor forwarded ten items to the Provider on **16 May 2016**:

- Six estimated gas bills for the periods **December 2014** to **February 2015**, **February 2015** to **April 2015**, **April 2015** to **June 2015**, **August 2015** to **October 2015** (submitted twice), and **October 2015** to **December 2015**.
- Two bills for domestic water for the periods **January 2015** to **March 2015** and **July 2015** to **September 2015**;
- A copy of the Complainant's work activity report from **November 2015** to **April 2016**;
- A copy of the Complainant's television license dating from **March 2015**;

I note that out of the above mentioned items, only one of them (the bill for domestic water for the period **July 2015** to **December 2015**) offers any consumption-based data for the period requested. In his letter to the Provider dated **8 May 2017**, the Complainant stated:

> *You state that "utility bills when examined were found to be estimated (in particular [gas bills]) rather than consumption based" – however this assertion is disingenuous and selective on your part as [telephone] bills are itemised which clearly shows usage. [Water bills] also showed units used / "consumption".*

Given the number of estimated bills furnished to the Provider by the Complainant's Loss Assessor and the number of items included that did not pertain to the requested period, I accept that it was not unreasonable for the Provider not to accept that a single domestic water bill was sufficient to demonstrate that the Complainant met the occupancy requirements under the policy, particularly as the Complainant submits that other consumption-based utility bills were available. The Complainant submits that the bills furnished to his appointed Loss Assessor included telephone bills, which were itemised and would have demonstrated consumption. Unfortunately, these bills were not included in the items furnished to the Provider by the Loss Assessor, and the Provider is not responsible for the omissions of the Complainant's agent.

On **22 September 2016**, the Complainant made a formal complaint to the Provider regarding the lack of progress with regard to his claim, and the conduct of the Provider's Loss Adjuster. He also refers to the lack of contact from the Provider regarding the matter, stating:

/Cont'd…

> *"Just because I appointed a representative does not mean that my interest in the claim has ceased, or that I desire to suddenly be eliminated from learning of any developments in this case".*

In its response dated **10 October 2016**, the Provider states that its Loss Adjuster had been:

> *".....tasked by us with investigating and managing [the Complainant's] burglary claim which comprises of a significant quantity of valuable possessions"*.

The Provider further states that the enquiries undertaken by its Loss Adjuster were *"both appropriate and fair, relative to the claim detail presented"*, and clarifies that it had received a mandate on **22 April 2016** signed by the Complainant, appointing a named Loss Assessor to represent him, and had communicated with the Complainant through his Loss Assessor from that time on. The Provider points out that it was a *"reasonable expectation"* that its Loss Adjuster would make sure that the policy requirements with respect to the alarm had been met in the event of a burglary, and I accept that this is the case, particularly where there is no record of the alarm sounding during the period when the break-in occurred. I note that the Gardaí later advised the Provider that no alarm was sounding when they attended the scene on **20 December 2015**, and that this account was corroborated by the neighbour who discovered the front window ajar the same day.

The parties have submitted that the insured property was unoccupied at the time of the burglary, and the Provider has evidenced that the Loss Adjuster examined and photographed the suspected entry point when he visited the Complainant's property (a front window on the ground floor of the property). The Loss Adjuster, on receiving a *"dossier"* from the Complainant at the property on **22 April 2016** requested a copy of the Complainant's boarding pass for the outward leg of his trip abroad. The boarding pass for the return flight had been included in the dossier, but not that for the outward journey. The Complainant describes this as a *"petty request"* and contends that the Loss Adjuster was trying to *"scupper"* his claim. The Complainant also raised the issue of the missing alarm fob, which he believed was *"highly significant"*. Though the Complainant states that the missing fob was never referred to again by the Loss Adjuster or the Provider, the Provider has evidenced that in May 2017 *"in relation to the fob [the Provider was] not discounting any scenarios"*. The Provider stated:

> *"The alarm survey will show the history of both setting and un-setting the alarm. Should the missing fob have been used in deactivating the alarm while the insured was [abroad], allowing the alarm technician to review the log would in fact assist the insured in the progression of the claim"*.

In its letter to the Complainant dated **27 June 2017**, the Provider accepts its oversight with regard to contacting one of the Complainant's neighbours. This had been raised by the Complainant in his letter dated **8 May 2017**, when he contended that this neighbour's phone number had been furnished to the Provider's Loss Adjuster by the Complainant's Loss Assessor in **April 2016**. The Provider apologises for this *"genuine mistake"* and notes that contact had since been made with the Complainant's neighbour who *"recalled that no alarm was heard activating (consistent with comments from the Gardaí)"*. As this witness would

/Cont'd…

appear to have confirmed the Gardaí's account that no alarm was heard activating, I consider that the Provider's delay in contacting her did not materially impact on its assessment of the Complainant's claim.

The Provider concluded its letter to the Complainant dated **27 June 2017** with the following:

> *"As I advised you at the outset of my letter, it is an untenable position that we are a year and a half on from your burglary and you have not complied with our request. Therefore, I have to advise you that we will be unable to make any payment to you in respect of your claim. Your claim is declined primarily due to your breach of the above policy condition [that the Complainant must… within 30 days of any event, provide all details, documents, proof of ownership and value, information and help which the Provider might need] and your frustration of our claim investigation".*

Given that the Provider was clear in communicating what was required of the Complainant in order to progress his claim (facilitating a joint inspection of his intruder alarm in order to confirm that it met the standard set out in the policy, and furnishing the Provider with consumption-based utility bills for the six month period prior to the reported burglary), I cannot agree that the Provider's conduct in handling the complainant's claim has been unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant. The Complainant has stated that he furnished relevant consumption-based utility bills to his Loss Assessor, but that these were not in turn forwarded to the Provider. The Provider cannot be expected to bear responsibility for this, and I would remind the Complainant that the Loss Assessor was his agent and not the Provider's. The Complainant in his submission dated **17 June 2019**, stated that the Provider had not offered him any alternative method of demonstrating occupancy. The Provider's position is that an alternative is not necessary in circumstances where consumption-based utility bills are available. In this case, the Complainant has submitted that these bills were furnished to his Loss Assessor; from the Provider's perspective, these bills were therefore available, and thus no alternative method of demonstrating occupancy was necessary. In my view, the Provider was not required to offer an alternative method when the requested information was available from the Complainant's agent, his appointed Loss Assessor. The Complainant has stated that he furnished his agent with itemised telephone bills, and by stating that he gave this information to his appointed Loss Assessor, the Complainant indicated that it was *"available"*. The Provider cannot be held responsible if this information was not furnished by the Complainant's agent to the Provider.

The Complainant also declined to facilitate a joint inspection of his security alarm. This was required by the Provider to ensure that the alarm met the policy standard – a standard that was deemed necessary in **2010** by the Provider so that *"Stealing"* cover could be included on the policy. While I note the Complainant's submission that his alarm technician did not appear to want to be involved in an inspection, this is not the Provider's fault or responsibility. The Complainant's own Loss Assessor suggested that he find another technician so that the inspection could be facilitated, however the Complainant declined to act on this advice.

/Cont'd…

I also note the Complainant's contention that if the Provider accepted that the alarm had complied with the policy standard in **2010** when it was fitted, that it should have accepted that it was still compliant when the claim was made in **2016**. I cannot agree with this; the Provider is entitled to verify that that the alarm meets the standard as set out in the policy in order to establish cover. I do not accept the Complainant's contention that that *"it is most unfair that the onus of compliance rests solely on the policy purchaser where certain policy criteria are to be later strictly enforced in the event of a claim".* The Provider made it clear that the provision of *"Stealing"* cover on the policy was specifically linked to the installation of an alarm of a particular standard at the insured property, and the Complainant was responsible for complying with this condition.

I consider that the Provider gave the Complainant ample time to take the required actions to progress his claim, eventually declining the claim in **June 2017**; over eighteen months after the reported burglary which gave rise to the claim. This was far in excess of the *"30 days"* allowed under the policy, an accommodation which would have been of benefit to the Complainant had he facilitated the Provider's requests. Taking all of the above into account, I have been provided with no evidence that the Provider acted wrongfully or unreasonably in its handling of the Complainant's claim.

The Complainant maintains that the Provider's appointed Loss Adjuster did not handle the investigation of his claim appropriately. It is important to emphasise that the Provider's Loss Adjuster was an agent of the Provider throughout its investigation of the Complainant's claim. The Complainant contends that he felt the Loss Adjuster's interactions with him were *"condescending"* and *"rude"* from the first contact. He further contends that the Loss Adjuster's questioning was *"more like an interrogation"* when he visited the insured property on **22 April 2016**.

The Complainant submits that the Provider's Loss Adjuster was *"hostile from the outset, much in line with [the Loss Adjuster he had initially spoken with by telephone]"*. Having considered the contents of both calls between the Complainant and the Loss Adjuster's office that took place on **15 April 2016**, I cannot find any indication that either member of staff was *"hostile"* to the Complainant. On the initial call, the member of staff listened patiently to the Complainant as he explained that the burglary had been very traumatic for him (the Complainant) and his wife. The Complainant stated during the call that if a site visit could not be arranged for the following Monday (when the Complainant had a day off work) that he would like to arrange an appointment for an evening, as he could leave work at 4pm. The Complainant also stated that he didn't want to *"inconvenience anybody"*. In the second call that day, the Loss Adjuster stated that nobody was available to visit the insured property on the Monday, but that someone could come at 9am on Tuesday. The Complainant explains that he needed to start work by 10am, and so would need to leave the house by 9am. He also stated that he was using all of his days off to visit his wife abroad as she was expecting a baby and he was *"tight on time off"* because of this. The Loss Adjuster tried to ascertain what day would be best for the Complainant, but the Complainant stated that he was only available outside office hours. The Loss Adjuster described this as a *"Catch 22"* as they kept office hours, though he then suggested that an 8.45am appointment might be possible. There was some to-ing and fro-ing between the Complainant and the Loss Adjuster, where they tried to find a mutually suitable day and time for an appointment. The Complainant

/Cont'd…

advised that he would be abroad in the coming weeks, which would limit his availability. Eventually they agreed an appointment for **22 April 2016** to start between 8.30am and 8.45am. The Complainant stated at the end of the call *"You've been most helpful"*.

In his complaint to the Provider dated **22 September 2016**, the Complainant stated that the manner of the Loss Adjuster he spoke with on the above mentioned phone call *"could be considered to be on occasion hostile, arrogant, condescending, and rude"*. He stated that this person *"felt it necessary to reprimand [the Complainant] on a…. time management issue"*. Having considered the call very carefully, I am completely at a loss to understand this assessment on the part of the Complainant. I could detect no trace of hostility, arrogance, condescension or rudeness on the part of the Loss Adjuster.

The Complainant contends that the Provider and its agents *"are highly selective on the content of telephone calls that they decide to record"*. I would emphasise that the Provider is not required to record telephone calls, only to retain a copy of any recordings made.

Regarding the meeting that took place on **22 April 2016**, the Complainant contends that the Loss Adjuster who visited his property was *"condescending"*, *"hostile from the outset"* and, in the Complainant's opinion, *"unprofessional"*. The Provider contends that there was no evidence to suggest that the Loss Adjuster had *"in any way behaved in the manner suggested"*, and that the manner of the Loss Adjuster's enquires was *"appropriate and fair, relative to the claim detail presented"*. The Complainant submits that he made the Loss Adjuster aware that recovery of the stolen property where possible was *"a preferable solution"* for the Complainant, and that he asked whether the Provider might be prepared to jointly fund a notice in an industry newspaper to this end. The Complainant states that *"This suggestion…. was promptly and flippantly dismissed"* by the Loss Adjuster. It is important to note that the Loss Adjuster was tasked by the Provider with *"investigating and managing [the Complainant's] burglary claim"*, and not the recovery of the Complainant's possessions which had been stolen in the robbery, which was a matter for the Gardaí.

The Complainant submits that the Loss Adjuster showed *"unfair bias"* when he expressed concerns about "the professional use of the stolen camera equipment". Given that the policy stipulates that the Provider will not pay for loss or damage incurred while any part of the insured property is *"used for business or professional purposes unless force and violence are used to get into or out of the building"*, I cannot agree that the Loss Adjuster demonstrated bias against the Complainant when he questioned him about his membership of a professional photography association. The Complainant also contends that the Provider's Loss Adjuster tried *"to find an angle based on a deceased policy-holder"* in order to reject his claim, by asking questions about the ownership of both the insured property and the policy holder. The Complainant describes these questions as *"insensitive"* and *"despicable"*. While I acknowledge that the Complainant may have found these questions upsetting, the Provider was entitled to verify that the Complainant was the policy holder.

The Complainant also refers to another example of the Loss Adjuster's alleged *"rude and distressing"* behaviour when he contends that the Loss Adjuster *"departed the scene without any further communication with [the Complainant]"* after the Complainant had tried to get his attention. The Provider rejects the allegation that the Loss Adjuster *"knowingly drove*

/Cont'd…

away as [the Complainant] attempted to have a further discussion with him", stating that the Complainant *"left the property prior to [the Loss Adjuster's] departure"*, and before the alarm technician had arrived. As no independent evidence has been furnished to this office regarding the interaction, I can only refer to the Complainant's submission that it took place after the meeting concluded at *"10.01"***,** and, given that the meeting had finished, I accept that any resulting interaction could reasonably have been caused by a misunderstanding between the parties.

Finally, I note that the Complainant takes issue with the Loss Adjuster's (and the Provider) liaising with his appointed Loss Assessor, rather than with the Complainant himself. As evidenced by the Provider, the Complainant *"irrevocably"* appointed a named Loss Adjuster to *"assist in the compilation and negotiation"* of his claim, stating *"that any information required relevant to this claim and its negotiation may be provided to them by [the Provider]"*. The letter of appointment is signed by the Complainant and dated **22 April 2016**. The Provider has submitted the following:

> *"A mandate, signed by [the Complainant] was received…. On 22 April. In accordance with the terms of your instruction and in line with industry practice, we communicated with you through your appointed representative from that point".*

Given that the Complainant had signed the above mentioned mandate, the Loss Adjuster/Provider was correct in communicating with the Complainant through his representative thereafter, as per the Complainant's expressed wish. I cannot agree with the Complainant's assertion that it was *"outrageous"* that he did not receive communications directly from the Provider or its Loss Adjuster after **22 April 2016**. He further submits:

> *"Just because I appointed a representative does not mean that my interest in the claim has ceased, or that I desire to suddenly be eliminated from learning of any developments in the case".*

The Complainant had the option at all times of seeking updates on any developments in the case from his own representative, who he had appointed to receive *"any information required relevant to this claim"* from the Provider.

The Complainant raises a number of issues in relation to the possible conduct of his own appointed Loss Assessor. Any errors or omissions made by the Complainant's agent are not a matter for this office to consider. Rather, it is the Provider's conduct, and that of its agent(s), that are the subject of this adjudication.

The Complainant also states, in his submission dated **16 October 2019**, that he finds the Provider's primary reason for declining his claim, namely the policy condition that states a claimant must provide all requested information within 30 days, *"completely unacceptable"*. He contends that if the Provider had *"wished to invoke this clause, they should have done so on the 25th February 2016"*. The Complainant further states that had the Provider done this, that he would have accepted the decision *"without any difficulty"*. I cannot agree that the Provider acted wrongfully in not strictly enforcing this condition, given that it afforded the Complainant more time, after an upsetting event, to submit the requested information and

/Cont'd…

allow an inspection of the intruder alarm to take place. Regarding the Complainant's submission that the Provider did not discuss the above mentioned policy condition with him during their communications between **December 2015** and **April 2016**, I accept that the Provider was still awaiting the alarm inspection and requested information, and was willing to process the claim once the outstanding issues were addressed. I would also note that that it is incumbent on policyholders to ensure that they are familiar with the terms and conditions of their policy. Furthermore, the Complainant had the option of liaising with his broker, from whom he could have sought guidance regarding the policy during the claims process.

In light of all of the above, I cannot agree with the Complainant's submission that the Loss Adjuster's *"role in this case was not to 'investigate' the actual facts of the incident, but rather to invalidate a completely legitimate claim on small technical grounds or petty entrapment"* and I further do not agree that the Loss Adjuster's conduct could *"only be construed as bullying and intimidation on a corporate scale"*.

Having considered all the evidence and submissions before me, I have been provided with no evidence to substantiate that the Provider's appointed Loss Adjuster acted inappropriately in its investigation of the Complainant's claim.

For the reasons outlined above, 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

10 January 2020

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

/Cont'd…

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.