



<b><u>Decision Ref:</u></b>	2020-0039
<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
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant holds a home insurance policy with the Provider. Following a telephone conversation with the Provider on **23 April 2013**, the Complainant decided to renew her policy and remove All Risks cover in respect of her engagement ring.

Towards the end of **2016**, the Complainant made a claim under the policy as she believed she had misplaced/lost her engagement ring or that the ring may have been stolen by a third-party who was present in her home the day the ring went missing. The Provider declined the claim as it said that the circumstances giving rise to the claim were not covered by the policy.

The Complainant states that she was misled by the Provider on **23 April 2013** as to the type of cover she would have, in respect of her engagement ring following the removal of All Risks cover.

**The Complainant's Case**

The Complainant states that her complaint arises from the loss of her engagement ring from within her home at the end of **2016**. The Complainant states that she

*"... removed the ring while heavily pregnant and sleeping in bed one evening and the next morning [she] got up and changed the bed sheets, [she] heard the rings drop on the floor [she] put the wash on and came back up to only find the wedding band and not the engagement ring."*

The Complainant states that she then checked the washing machine but could not find the ring. The Complainant states that a plumber dismantled her washing machine in an effort to find the ring but it could not be found. She also searched the house but still could not find the ring.

The Complainant states that she contacted the Provider to make a claim under her policy but she was informed that her claim was declined because she had removed the necessary cover in respect of her ring during her **2013** renewal. The Complainant requested a copy of the transcript of this call and states that

*“... the caller from [the Provider] does mention cover for the ‘ring’ under ‘out of house’ cover which in my mind meant loss of the ring outside of my home when it actually meant I was removing my engagement ring from the cover all together.”*

The Complainant states that she told the loss adjuster this was “... clear mis-selling on their part as [she] did not fully understand this meant [her] engagement ring would no longer be covered for loss inside the home.”

The Complainant states that her husband later reminded her that there was a cleaner in the house on the day the ring went missing. The Complainant states that she submitted an incident report to An Garda Síochána. The Complainant states that the Provider informed her that this made no difference to her claim, as she lawfully permitted the cleaner to enter her house.

The Complainant submits that she “... would never have removed insurance on [her] engagement ring from [her] home cover and [she] believe[s] [she] was misled on the call transcript ...”.

### **The Provider’s Case**

The Provider states that the Complainant contacted its customer care centre on **23 November 2011** to add her engagement ring to her home multiperil policy. The ring was added under the All Risks section which the Provider submits suggests that the Complainant knew the importance of specifying this item for cover inside and outside the home.

The Provider states that the Complainant contacted its customer care centre on **26 April 2013** to discuss her home multiperil renewal. The Provider states the Complainant advised that she wished to cancel her policy as she had sourced a cheaper premium elsewhere. The Provider states the Complainant advised that as money was tight she was going for the lower quote. The Provider states that its call representative offered to review the Complainant’s policy to see if there was anything that could be done for the Complainant. The Provider’s call representative advised the Complainant that she had a ring named under the All Risks section of the policy and asked if the Complainant wished for this item to remain on cover. The call representative advised that the ring was covered inside and outside the home and was costing €60 to have the ring named on the policy.

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The Provider states that the Complainant advised its call representative that she did not think she would need this type of cover. Its call representative then advised the Complainant that cover in respect of the ring was being removed and that it would still be covered if it was stolen from her home. The Provider states that the call representative asked if the Complainant would like to include anything to cover outside the home to which the Complainant answered no. The Complainant was offered a revised premium without the ring being listed under the All Risks section.

The Provider does not accept that the Complainant was misled on the call or that there was mis-selling when removing cover in respect of her ring. The Provider states that the Complainant was advised that her ring was listed as a specific item under the All Risks section of the policy for cover within the home and outside the home. The Complainant responded that she did not need this level of cover.

The Provider states that a revised policy schedule was issued to the Complainant on **26 April 2013**. The Provider states that the revised policy schedule highlighted the difference in the level of cover and also that the Complainant no longer had any items specified under the All Risks section. The Provider states that subsequent schedules issued to the Complainant also stated that All Risks cover was not applicable to her policy. The Provider states that it issued its policy terms and conditions to the Complainant and the onus was on her to read all documentation provided.

The Provider states that it subsequently attempted to contact the Complainant regarding the renewal of her policy on **16 April 2015, 17 April 2015, 14 April 2016, 21 April 2016 and 27 April 2016** but there was no response from the Complainant and the policy was allowed to auto renew each year.

In respect of accidental damage, the Provider points out that the policy states that it will include cover for accidental damage to contents while in the private home as described in the schedule. The policy defines accidental damage as sudden and unexpected damage which is caused unintentionally and is not unavoidable or not the result of a pre-existing or gradually operating cause. The Provider also refers to the exclusions attaching to this type of cover which includes damage to jewellery. The Provider points out that accidental damage bears no relevance to an item that has been mislaid.

In relation to the third party present in the Complainant's house on the day the ring went missing, the Provider states that the terms and conditions document specifically excludes (under Theft or Attempted Theft) contents from the private dwelling house and/or the domestic outbuildings and garages on the same premises and used in connection with the private dwelling house, which results from loss or damage by any person lawfully in the building. The Provider points out that the Complainant initially stated that she thought her ring had been lost within her house. The initial claim was made on **5 December 2016** but the Complainant did not advise the Provider until **13 October 2017**, that there was a third party in her house on the day of the loss. The Provider states that the third party was lawfully granted access to the house and the Complainant's theft claim was declined as there was no forced entry.

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### **The Complaint for Adjudication**

The complaint is that the Provider:

1. misled the Complainant during the telephone conversation which took place on **26 April 2013** concerning the removal of “All Risks” cover in respect of her engagement ring; and
2. wrongfully and/or unreasonably declined the Complainant’s claim in respect of her engagement ring.

### **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 3 February 2020, 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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**Renewal of the Complainant's Policy**

The Provider wrote to the Complainant by letter dated **3 April 2013** in respect of the renewal of her policy and enclosed a number of documents. The Renewal Notice states:

*"Before you renew, please check that the sums insured are adequate to cover current replacement costs.*

...

**NOTES: Only the numbers listed after the Policy Description are applicable to that specific policy.**

**7. Policy ... House Situated at ...**  
**Sums Insured Buildings €211,000 Contents €25,000**  
**The following sections apply: Buildings/Contents, Personal Liability, All Risks."**

The Complainant was also furnished with a Features and Benefit document in respect of the types of cover available under the policy. This documents states:

***"Summary of Primary Covers***

...

*A standard home package includes cover on Buildings, Contents and Liability Protection. All Risks cover can be purchased where there are specific high value items that may be taken away from the home such as jewellery, laptops or cameras.*

...

***Buildings and Contents***

*Summary of Property Insured*

...

*The type of property insured under **Contents** includes: household goods ... and personal belongings ... contained with the Buildings*

...

*Summary of Significant Restrictions – Buildings and Contents*

...

*Malicious Damage and Theft*

*No cover is provided where the loss or damage is caused by any person lawfully in the Buildings.*

...

*Accidental Damage to Contents*

...

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*Loss or damage to jewellery, watches ... is excluded.*

...

### **POLICY DOCUMENTATION**

#### **All Risks**

*All Risks can be included on Specified and Unspecified Valuables, which require greater protection than provided under standard Contents insurances. The All Risks Section provides cover for loss or damage to the specified valuables both in and away from the home, making it particularly important for items such as jewellery ..."*

The Complainant telephoned the Provider on **26 April 2013** to cancel her policy however; during the telephone call the Complainant decided to renew her policy with the Provider but with reduced cover. This resulted in a cheaper premium for the Complainant. The Complainant has provided a transcript of this call which includes the following:-

**Provider's Agent:** *If I could offer you a 10% discount today, would you stay with me at €420?*

**Complainant:** *Oh, like I wish I could, but it's just that, uh, money is so tight at the moment that I'm going for, uh, like the lowest quote.*

...

**Provider's Agent:** *... You do have an item covered outside the home specified in your policy. That's your solitaire platinum engagement ring 4,900 and that –*

**Complainant:** *Oh, I thought that was under, um, I thought that was under the €25,000.*

**Provider's Agent:** *Oh, sorry, no. It's actually on its own. Now, uh, I didn't notice it now and I thought I checked that. Uh, that's why I asked you would you like to include anything. But this is covered inside and outside the home for loss, theft and accidental damage. Now, that's coming to €60 your overall cover premium or €58.44.*

**Complainant:** *Yeah.*

**Provider's Agent:** *All right? Uh, just to let you know, would you like to keep that on the policy?*

**Complainant:** *Well, like I, uh, I don't think I'd need it for outside the home, would I?*

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**Provider's Agent:** *Like it's covered if it's stolen from the home if you wanted, without-*

**Complainant:** *Yeah.*

**Provider's Agent:** *- specifying it, but the extra cover that you have, €58, is covering it outside, say if you lost the diamond or somebody stole it from somewhere else.*

**Complainant:** *Oh. No, no, I don't need that.*

...

**Provider's Agent:** *... So I'll take off the ring then. It's covered inside the home if it was stolen."*

### **The Policy Schedule**

By letter dated **26 April 2013** the Provider wrote to the Complainant and enclosed her policy schedule. The letter states:

*"We recommend that you take a few minutes to check that the details shown on your schedule are correct and that the insurance protection provided meets with your requirements. If you require any amendments please contact us immediately."*

The Complainant's policy schedule states:

***"Covers Operative***

...

3. *All Risks* *Not Insured*

...

***Subject otherwise to the terms and conditions (General & Special) of the Policy.***

***Details of the terms, conditions, exclusions and endorsements for this policy are contained with the policy booklet, which was issued to you at policy inception. A further copy is available on request.***

*Note: it is agreed that this revised schedule is deemed to replace the original and/or subsequent schedules in accordance with your instructions."*

### **The Policy**

The Provider has furnished a copy of the relevant policy document which includes the following, in the *Definitions* section:

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- **“Accidental Damage**

*Damage caused suddenly and unexpectedly by an outside force.*

...

- **Contents**

*Household goods and personal effects of every description ... being the property of the Insured ... and all contained with the Insured’s Private Dwellinghouse as stated in the Schedule.*

*But not:-*

*...Property more specifically insured or unless specifically mentioned.*

...

- **Personal Effects**

*Luggage, clothing and other items designed to be either worn or normally carried on the person and belonging to you.*

**Excluding:**

...

*2. Valuables or money.*

...

- **Valuables**

*Articles of, or containing, gold, silver or other precious metal, jewellery ...”*

Section 1B sets out the type of indemnity offered for *Contents Cover* and states:

*“We shall by payment, or at our option, by reinstatement, replacement or repair, indemnify you in the event of loss or damage to the Contents caused by the contingencies described in Paragraphs 1 to 12, Section 1B Contents Cover subject to the terms, limitations, conditions and exclusions of this Policy.*

...

**5. Theft or attempted Theft**  
*of Contents from the Private Dwellinghouse ...*

**Excluding:**

...

*• Loss or damage by any person lawfully in the building.”*

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### **Claim Declined**

The Provider's loss adjuster wrote to the Complainant by letter dated **20 December 2016** declining her claim stating:

*"... the claim to replace a solitaire ring which you discovered missing from your home, falls outside the cover provided under the policy. The general contents cover on the policy does not extend to the loss or mislaying of an item. We confirm the Accidental Damage to Contents optional extension (endorsement 292) specifically excludes destruction or damage to jewellery."*

### **Analysis**

#### ***The First Complaint***

During the call which took place between the Complainant and the Provider on **26 April 2013** the Complainant advised the Provider that she had been offered a cheaper insurance quote elsewhere. In an effort to retain the Complainant's custom the Provider offered the Complainant a 10% discount on her premium. However, the transcript of the call indicates that this was not enough to persuade the Complainant to stay with the Provider. The Provider advised the Complainant that it could offer a further reduction in her premium if the special cover in respect of the engagement ring was removed from her policy.

The call transcript indicates that the Complainant thought the ring was protected under the general contents cover. The Provider advised that the ring was "*... covered inside and outside the home for loss, theft and accidental damage*" to which the Complainant replied that she did not believe she needed the ring covered outside her home. The Provider then advised the ring is "*... covered if it's stolen from the home if you wanted, without ... specifying it ...*"

The Complainant was not in a position to maintain her then current level of cover. The discussion which took place on the call focused on tailoring the Complainant's policy to an affordable premium. The Complainant acknowledges on the call that money was tight and that she wanted the lowest possible quote. In line with this, the Complainant was offered a reduced premium by way of the removal of All Risks cover from her policy, covering her ring.

The call must be considered in the context of the documentation subsequently issued to the Complainant. On the same date as the call took place the Provider wrote to the Complainant enclosing a number of documents and advised the Complainant to review her policy schedule. This schedule set out the type of cover the Complainant would now be paying for, and indicated that "All Risks" cover was not applicable to the Complainant's policy. The policy document provided further detail as to the applicable type of cover and various exclusions.

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Taking the above matters in consideration, I do not accept that the Complainant was misled during the course of the telephone call when she elected to remove the “all Risks” cover on her ring. I am satisfied that following the removal of that cover, the ring continued to be covered in the way specified, as part of the house contents pursuant to the terms of the policy, when the ring was within the building.

### ***The Second Complaint***

The Complainant made a claim under the policy in **December 2016** for the loss of her engagement ring. Having reviewed the policy schedule and policy document I accept that the Provider was entitled to decline the Complainant’s claim. I accept that the circumstances giving rise to the loss of the Complainant’s ring were not covered by the policy. I am satisfied that the Provider is correct that no benefit is payable for the ring on the basis that it had been mislaid within the house.

It seems that the initial claim was made on that basis in circa December 2016 but subsequently, about a year later in **October 2017** the Complainant advised the Provider that she believed her ring had been stolen. The policy document is quite clear in that cover is excluded in respect of the theft of an item by a person lawfully present in the Complainant’s home. The Complainant states that a cleaner was present in her home on the day the ring went missing however, it seems that this person was lawfully present on the day in question and indeed, there is no evidence that the ring was in fact stolen by this person. Indeed, the Complainant acknowledges during a telephone call with the Provider’s loss adjustor on **13 October 2017** that she was not alleging that the cleaner took her ring and she could not prove the cleaner took the ring.

I am satisfied on the basis of the evidence before me that any claim for “theft” under the Complainant’s policy, specifically excluded loss caused by a person who was lawfully within the building. In those circumstances, I take the view that the Provider was entitled to decline the Complainant’s claim and therefore I do not consider it appropriate to uphold the second aspect of 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.

**MARYROSE MCGOVERN**  
**DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

25 February 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

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