



<u>Decision Ref:</u>	2020-0109
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/unattended
<u>Outcome:</u>	Partially upheld

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

In April 2018, the Complainant took out a travel insurance policy with the Provider. On 3 May 2018, the Complainant flew from Dublin to the Middle East. The Complainant placed her personal possessions in a backpack and kept it above her in the overhead cabin locker. The Complainant could not locate her backpack after landing and reported it stolen.

On 10 May 2018, the Complainant lodged a claim on the travel insurance policy for her personal possessions. On **16 May 2018**, the claim was declined on two grounds: first that the personal possessions were not kept on the Complainant's person and, therefore, were not covered by the policy and, second that the Complainant could not show proof of ownership of the items.

The Complainant's Case

The Complainant states that it is unfair and unreasonable to decline her claim on the policy. The Complainant takes issue with the policy wording which only extends coverage if an insured has their personal possession on their person. The Complainant notes that her backpack was in her eyeline at all times. The Complainant argues that this is misleading and that there is no definition in the policy of what having property on one's person means. The Complainant feels that this allows the Provider to unscrupulously decline valid claims. The Complainant also contends that the Provider's request for evidence of ownership is unfair and unreasonable. The Complainant says that she is not in a position to prove ownership of gifts and old items and that it is not fair for the Provider to refuse evidence of cash withdrawals. In this respect, the Complainant says that the term '*other suitable evidence*' is ambiguous and allows the Provider to decline otherwise valid claims.

The Complainant also raises issue with how her complaint was handled by the Provider including: the failure to respond within the time lines set by the Consumer Protection Code; the failure to furnish information in a valid durable medium; the misnaming of the Financial Service and Pensions Ombudsman and the Provider's refusal to appoint a manager to contact the Complainant. The Complainant also states that the Provider dealt inadequately with her data access request. The Complainant says that all of these amount to customer service failings.

The Complainant seeks to have her claim admitted and processed in accordance with the terms of the insurance policy.

The Provider's Case

The Provider states that its policy does not cover personal possessions unless those possessions are kept on the insured's person or locked in a secure location. The Provider asserts that its policy terms are clear and apply to the insured's circumstances, as her personal possessions were not on her person during the flight. The Provider states that it attempts to be flexible and to consider individual circumstances when applying the terms of its policies. The Provider notes that it has no obligation to exhaustively set out each instance where coverage will not apply. The Provider notes that it cannot accept cash withdrawals as evidence of ownership as it cannot ascertain whether the cash was in fact used to purchase the goods in question.

Second, with respect to the handling of the Complainant's complaint, the Provider accepts that it had some delays and customer service failings in how it processed the complaint. The Provider accepts that it took considerably longer to deal with the complaint, as there were a number of unexpected staff absences due to medium and long-term sickness. The Provider states that there was a misunderstanding in its office in how it handled and received the Complainant's data access request, and the Provider accepts that it enclosed a letter to a different customer when responding to the Complainant on one occasion. The Provider states that it acknowledged the complaint on the same day that it was sent, and that an update was sent on **11 June 2018** and again on **10 July 2018** and that the final response letter was sent on **2 August 2018**.

The Complaints for Adjudication

The complaint for adjudication is whether it was reasonable or correct for the Provider to decline the claim on the terms of the policy and, whether it handled the complaint correctly.

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 12 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, I set out below my final determination.

First, it is necessary to set out the relevant policy terms. Section 5 of the policy terms sets out that an insured is not covered in the following circumstances:

'Personal Possessions unless they are on your person, locked in the accommodation you are using on your journey or they are out of sight in the locked boot or covered luggage area of a locked motor vehicle...

Valuables carried in suitcases, trunks or similar containers unless they are on your person all the time.

Valuables unless they are on your person or locked in a safe or safety deposit box (if one is available) or locked in the accommodation you are using on your journey.'

The account given by the Complainant is that she placed her backpack (containing her personal possessions) in the overhead storage which is commonly used on airplanes. Upon disembarking the plane, the Complainant noticed that it was gone.

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The question, therefore, that must be answered is whether that is covered by the above terms. First, it is the case that the overhead storage is not capable of being locked and so any of the clauses that require that do not apply to the Complainant's circumstances.

In the three extracts set out above from Section 5 of the policy terms, each extract makes use of the phrase "...on your person...". The Provider has stated that the Complainant's claim was outside the scope of the policy as in its interpretation of the above the Complainant's bag was not on her person and therefore it was not covered. Notably, the policy terms and conditions does not include a definition of 'on your person'. The Provider does not include a definition it believes "*it is self-explanatory*". The Complainant has stated that "*it is only self-explanatory if you happen to fall on the correct side of a claim the Provider feels like being 'flexible' with*".

When taking out an insurance policy in respect of any product and/or service, it is not unreasonable for a consumer to expect some certainty to be given by the policy terms and conditions. The Complainant held the belief that by placing the backpack in the overhead compartment, she would be covered as the placing of bags and personal belongings in the overhead compartments is a practice regularly done by most travellers during most short and long haul flights, it is often a requirement that certain luggage be placed there. It is indeed often a requirement that luggage be placed there. While the Provider is under no obligation to exhaustively set out all of the circumstances in which a claim will be declined, a consumer may reasonably expect that most relevant circumstances would be included. The Complainant states that she considers it a "*reasonable requests on a travel insurance policy to tell travellers that their valuable belongings are not covered in the overhead (sic) compartment of a plane*".

Further, I am of the opinion that term:

"Valuables carried in suitcases, trunks or similar containers unless they are on your person all the time"

is potentially confusing.

The inclusion of '...trunks or similar containers unless they are on your person all the time' may result in confusion on behalf of policy holders. The use of the term trunk invokes an image of an older and rather large container. Would this term require policy holders at all time to keep the trunk physically on their person. Further the term 'similar containers' is vague and offers no clear guidance on what containers would or would not be covered.

Had the Provider included in its terms and conditions a clear definition of 'on your person' then the Complainant may have been deemed to have reasonably been made aware that should she stow her backpack in the overhead compartment it may not be considered to have been on her person. Alternatively, the Provider if it is aware that when a consumer is to stow their belongings in the overhead compartment of a plane, that it will not be covered under the policy, then it would be reasonable to include such an important exclusion within its travel insurance policy terms and conditions.

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Chapter 4 of the **Consumer Protection Code 2012** relates to the provision of information given to a consumer by a regulated entity. **Section 4.1** of the CPC states that:

“A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information”.

In applying **Section 4.1** to the above terms, it would appear the information provided in the terms and condition was not entirely clear.

With respect to the requirement to prove the ownership of the items, it is notable that some of the goods were gifts and that, therefore, it is understandable how the Complainant would have difficulty proving this. On the other hand, it is reasonable and fair for an insurance company to require an insured to demonstrate ownership of the items that are being claimed for, particularly items of value. In all of the circumstances I do not find that there was anything improper in the Provider requesting that the Complainant furnish proof of ownership for items of value.

The Provider has accepted that it had some customer service failings in how it processed the complaint. While any complaints that relate to data breaches or data access requests are more appropriately addressed to the Data Protection Commissioner and do not form part of this adjudication, I note the Provider accepts that it should not have furnished the letter addressed to a third party when replying to the Complainant’s data access request.

The Provider also accepts that it delayed slightly longer than it ought to have. The relevant timeline is as follows. On **15 May 2018**, the Complainant claimed on the policy, which was responded to the same day seeking clarifications. On **16 May 2018**, the Provider responded declining coverage, which was responded to the same day with a request for a manager’s contact details. On **21 May 2018** and **23 May 2018**, the Complainant followed up. On **23 May 2018**, the Provider responded stating that it would provide its response as soon as possible. On **11 June 2018**, an updated letter was sent by the Provider stating that it should be in a position to respond in three weeks. On **11 June 2018** and **14 June 2018** the Complainant wrote stating that she would be referring the dispute. On **10 July 2018**, the Provider wrote indicating that it still was not in a position to provide a final response letter. On **2 August 2018**, the Provider gave its final response letter upholding the declinature but recognising some customer service failings set out above.

The CPC sets out the relevant time lines that must be complied with. CPC 10.9 sets out that the complaint must be logged within 5 days, which was done in this instance. CPC 10.9 further provides that an update must be given not later than 20 working days after the complaint was made and must attempt to investigate and determine the complaint within 40 business days. Information concerning the right of appeal to this office must also be given to the consumer.

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In the circumstances of the complaint, the Provider did give an update which was 18 business days after the complaint was received (**16 May 2018 – 11 June 2018**). The Provider did not investigate and decide the complaint within 40 business days but delivered its final response 56 business days after on **2 August 2018**. The obligation on a provider, however, is to provide an update on when it expects to be able to do so, and the Provider wrote 39 business days after the complaint was received being **10 July 2018** setting out that it would furnish its response as soon as possible. I find that there was a breach of the CPC insofar as the Provider should have set out the likely timeframe for the resolution for the complaint as required, but did not do so. It should be noted that it is a technical breach.

The Complainant has included the mis-naming of this Office on the Provider's final response letter as part of her complaint. The Provider's final response letter states:

"If you are still not satisfied, you can then ask the Financial Services Ombudsman (FSO) to review your case. Their address is 3rd floor, Lincoln House, Lincoln Place, Dublin 2. Their telephone number is 18900 88 20 90"

I acknowledge that the letter refers to the previous organisation which ceased to operate, as of 1 January 2018 the Office of the Financial Services and Pension Ombudsman officially opened. However, as the contact details were correct and the referral was being made within 5 months and 15 days of this organisation newly opening I accept that by giving the previous name of the organisation, the Provider did not unfairly prejudice the Complainant, nor did it prevent her from lodging her complaint.

In relation to the other complaints, I find that the Provider did provide the necessary information in durable medium being either letters or e-mails and that as I have said earlier any issues relating to the data access request are not a matter for me to adjudicate on.

As I detailed previously I accept it is reasonable for the Provider to require an insured to demonstrate ownership of the items of value that are being claimed for. Furthermore, I do not believe it was wise for the Complainant to stow valuables such as an iPad or cash in the overhead storage area. I accept that the Complainant did incur a loss of items she might reasonably expect to be covered by the policy.

Due to the lack of a definition for "on your person", a term which the Provider sought to rely on in the declining of the Complainant's claim, and by virtue of the fact that the Complainant would be unable to know with certainty that luggage stowed in the overhead compartment, would not be covered under her travel insurance policy from examining the policy terms and conditions. For this reason, I do not believe it was reasonable of the Provider to reject the claim on the basis that it did. Accordingly, I believe the Complainant is entitled to compensation.

In light of the reasons set out above, I partially uphold the complaint and direct the Provider to pay a sum of €600 in compensation to the Complainant.

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Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €600, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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**

6 March 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.