



<u>Decision Ref:</u>	2020-0237
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/unattended
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a claim made by the Complainant on her travel insurance policy which was declined by the Provider.

The Complainant's Case

The Complainant states that due to ill health she decided to extend her stay at the apartment complex where she was holidaying. As a result, she switched apartments on the same floor.

The Complainant submits that on the same day she switched apartments, she struggled to open the apartment door, so she placed her bag on the floor out of her way. The Complainant states that when the door finally opened, it was caught by the wind and then slammed shut behind her, leaving her bag outside of the door. The Complainant submits that she proceeded to place her other belongings inside the bedroom and used the bathroom, and when she went back to retrieve her bag, which she had left outside the apartment door, it was gone.

The Complainant submits that originally she believed that her bag had been taken when she left it for a few minutes to return to the reception area to retrieve the correct key for the apartment; this is what she originally told the Provider.

The Complainant states that at the time the bag was stolen, she was feeling unwell, and it was not until after she had visited a doctor, taken medication and rested, that she then remembered that she had kicked the bag to move it when she was struggling to open the apartment door. She says that this was the correct reason why the bag was left outside the door and subsequently stolen.

The Complainant states that the Provider did not admit the claim for the stolen bag because it stated that she left the bag in a public place. The Complainant submits that the apartment where the loss occurred was on the fourth floor and it was not accessible to the public, and that the only people around at that time, were cleaners and workmen. The Complainant also submits that the Provider misinformed her that she "*definitely needed the police report*" and it subsequently informed her that a report from an agent of the property was sufficient. She says that this miscommunication delayed the assessment of the claim.

The Complainant has submitted correspondence from a representative of the apartment complex where the loss occurred. The representative states in this correspondence that the Provider contacted her to enquire about the security of the premises and this representative denies that she informed the Provider that the property "*is a public place*". The Complainant submits that the correspondence from the representative of the apartment complex is proof that she did not leave the bag unattended in a public place, which she submits is contrary to what the Provider informed her, at the time when it declined the claim.

The Complainant says that she did not wilfully leave the bag unattended. She says the reason the bag was outside the door when the loss occurred, was of no fault of her own.

The complaint is that the Provider wrongfully repudiated the claim and that its miscommunication unfairly delayed the assessment of the claim. The Complainant wants the Provider to admit the claim for the total cost of the stolen items and to also provide monetary compensation for its miscommunication.

The Provider's Case

The Provider maintains that it was entitled to reject the claim by reference to the terms and conditions of the policy.

The Provider has identified Section 12 of the policy in support of its decision to decline the Complainant's claim. This section provides as follows:

Section 12 – Personal Luggage

What is covered

If, in the course of a Trip, Your Personal Luggage is damaged, stolen, destroyed or lost (and not recovered), We will cover You up to the amount shown on the Summary of Cover table per Insured Person in total under this Policy.

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*We have the option to either pay **You** for the loss, or replace, reinstate or repair the items concerned.*

*Payment will be on the basis of the value of the items concerned at the time they are lost and not on 'a new for old' basis for replacement cost basis. A deduction will be made for **Depreciation**, bearing in mind the age of the items. A copy of the **Depreciation** policy is available on request.*

...

***You** must take suitable precautions to secure the safety of **Your Personal Luggage** and must not leave it unsecured or unattended or beyond **Your** reach at any time in a place to which the public have access.*

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 **17 June 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.

Analysis

The Complainant's luggage was stolen at a time when the Complainant had temporarily left the luggage unattended in the hallway outside her holiday apartment door, on the fourth floor of a building.

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There was some confusion originally surrounding the precise details of this theft as the Complainant initially advised the Provider that the theft occurred when she left the bag unattended in the hall in order to descend to reception to secure a working room-key.

The Complainant subsequently realised that the theft had occurred after she returned from reception, after she entered the apartment, while leaving the luggage in the hall. (The Complainant states that the door slammed shut behind her owing to wind and that when she sought to retrieve the bag five minutes later, it was gone.) This temporary confusion on the part of the Complainant arose as she was unwell at the time in question and she was not in a position to accurately recall the precise details of the event until she was feeling better.

The Complainant's luggage was stolen from outside her apartment door at a time when the Complainant was within the apartment for several minutes (the Complainant referred to "5 mins" in her claim form). I note that liability on the part of the Provider is excluded in the event of a failure to "*take suitable precautions to secure the safety*" of the luggage or in the event that the stolen luggage is left unsecured or unattended at any time "in a place to which the public have access".

It is clear that the Complainant's luggage was left unsecured and unattended at the time of the theft. The relevant issues are therefore whether there was a failure to take suitable precautions to secure the safety of the luggage and also whether the location where the luggage was left constituted "*a place to which the public have access*". The Provider has sought to base its decision to decline the claim, on the second of these two considerations.

From the evidence made available, I must conclude that the location was indeed a place to which the public had access. A significant number of people had access to the location including all other tenants of the building (where there appear to have been 300 apartments in total) in addition to any persons working in the building. The Provider has also supplied this office with a call recording it made to the booking agent of the accommodation wherein it was confirmed that the building in question is not a hotel or an apart-hotel, but rather, it is an apartment building which has a foyer/lobby that is accessible to the public. The Complainant initially, in an email of 28 August 2018, disputed this stating "*in order to get into the building there was a key only available to residents*" before conceding, in an email of 11 October 2018, that "*the public have only access to the commons areas i.e. reception and lobby area...*"

In the course of the phone call with the booking agent of the accommodation, it was noted that there is a reception desk where a receptionist is available to provide keys to guests. It was further noted on the call however that individuals are not required to 'sign-in', other than when requesting a key and that the receptionist "*does not pay attention to everybody that comes through the door*". The agent agreed that "*people can come in and out of the apartments like that, they are not asked who they are*", even though this may not have been officially allowed.

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The Complainant has supplied emails which she subsequently exchanged with this same agent which dispute that the agent ever described the hallway of the fourth floor as a “*public place*”. The emails do however note that the security is “*not very tight*” and that it is “*very easy to sneak in and if you leave something lying around it is very possible that you’ll get it stolen*”.

The totality of the evidence before this office suggests that an individual member of the public, who wished to ascend to the fourth floor, would not have been prevented from doing so by any security personnel or mechanism. The photographs supplied by the Complainant do not, to my mind, contradict this analysis. Additionally, the Complainant, in the sequence of emails exchanged with the agent, focuses on the allegation (as she understands it) that the policy excludes material stolen from a “*public place*”. This is not however an accurate description of the clause in the policy or an accurate description of the rationale for the Provider’s rejection of the claim. The policy excludes thefts of unattended/unsecured belongings from places to which the public have access. The hall outside the Complainant’s holiday apartment was not a public place but it was a place to which the public had access, not least the many fellow tenants and workers in the building. Indeed, ultimately, I am satisfied that the fact alone that the location was accessible to fellow-tenants and workers, is sufficient to render it a location accessible to the public.

Accordingly, I am satisfied that the Provider was entitled to decline the claim on the basis that the Complainant left her luggage unsecured and unattended and beyond her reach in a place to which the public had access. In the course of the call recording, the agent goes on to challenge the contention that the luggage was left unattended for five minutes only, suggesting that the theft was not noticed for several hours and possibly not until the following day. However, this potential factual dispute is of secondary relevance and I am satisfied that the Provider was entitled to decline the Complainant’s claim, even if the Complainant’s bag was unattended for five minutes only.

I must add at this point, that regardless of whether the place of the theft constituted a place to which the public had access, it seems clear to me that, in leaving the luggage unattended in the hallway, the Complainant may also have failed to “*take suitable precautions to secure the safety*” of the luggage as required under the policy. Though this ground was not expressly relied upon by the Provider, it would seem to me that this ground may also have been available to the Provider as a basis upon which to decline the claim.

The Complainant has advanced a further argument that she should be entitled to recover on the basis that the luggage was not ‘deliberately’ left unattended. This argument is based on the fact that heavy winds caused the apartment door to slam shut thereby leaving the luggage unintentionally ‘unattended’. I do not accept this argument. The door may very well have slammed shut due to the wind, but the Complainant chose not to immediately retrieve the bag and in fact waited at least five minutes to do so, during which period she attended to other tasks. Moreover, it is clear to me that the terms of the policy do not require that leaving luggage “*unsecured or unattended or beyond **Your** reach*” be in any way deliberate, for cover to be excluded.

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The final aspect of the Complainant's complaint relates to a suggested delay on the part of the Provider in dealing with the claim owing to the Provider's request for a copy of the police report relating to the incident. The theft in this case occurred on 28 or 29 May 2018 (the claim form refers to 29 May however the 1st call to register the claim was made on 28 May). The Complainant submitted a claim form which was received by the Provider on 15 August 2018. The claim form noted that the theft had been reported to the police.

On 25 August 2018, the Provider decided to seek a copy of the police report and in my opinion, this constituted an entirely reasonable step. A request for the police report was made of the Complainant on 27 August 2018 in the course of a phone call during which the Complainant indicated that she may have retained a copy of the report.

On 4 September 2018, the Complainant provided certain flight booking information which had been requested and also advised at that point, that she had not kept a copy of the police report:

Unfortunately I checked my policy before submitting the claim and it said clearly one report was enough so I disposed of the police report as it was in Spanish and was not deemed necessary when I reported the theft of the bag.

Thereafter, the claim was rejected on 27 September 2018, some 17 working days after she confirmed that the police report was not available. In the circumstances, I am not satisfied that the Complainant has identified any unreasonable delay on the part of the Provider in its handling of the claim.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct falling within the provisions of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainant, I am not in a position to uphold the 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 July 2020

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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.

