



<u>Decision Ref:</u>	2020-0254
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Failure to advise on key product/service features Rejection of claim - theft or attempt theft
<u>Outcome:</u>	Rejected

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

The Complainant's motor vehicle was stolen on **30 January 2019** and this complaint is concerned with a motor insurance policy held by the Complainant with the Provider at that time.

The Complainant's Case

In his original complaint, sent by letter to the Provider dated **4 February 2019** and by email dated **5 February 2019** to the Provider, the Complainant states that on the morning of **30 January 2019**, the Complainant's wife, upon leaving their house, discovered that their car (the vehicle insured under the policy) was covered in frost. The Complainant states that, having cleared the vehicle's windscreen of frost, his wife went back indoors to return the kettle she had used. He states that the car was parked less than 2 metres from the door of the house when his wife went back indoors and that the keys were left in the car. The Complainant states that when his wife returned to the car, it had been stolen.

The Complainant has explained that the location of his house is in a gated enclosure where access can be gained only by means of a fob or by being in possession of a security code. He contends that the nature of the security meant that the car was effectively secured. He then explains how he and his wife called An Garda Síochána and how the member of An Garda Síochána who attended the property explained how unlawful access to the gated enclosure was likely gained by the person/persons who stole the car.

The Complainant states that he telephoned the Provider at 8.19am and answered all questions asked of him about the theft. He submits that he was to receive a call back from the Provider later that day. The Complainant states that when he had not heard anything back from the Provider, he telephoned the Provider again at 12.37pm. He says that he was told that, *"nothing had been noted on the system"* regarding his earlier call. When he explained the manner of the theft, he says that he was told that, (i) his policy would not cover the theft, (ii) he could not appeal that decision and (iii) a claim could not be opened.

The Complainant submits that this information was incorrect. He states that all of the Provider's customer service employees who take phone calls should be properly trained in responding to queries in relation to motor insurance policies and should not issue incorrect/misleading information. The Complainant is particularly aggrieved that the customer service employee who took his call, placed him on hold to consult with a supervisor and yet still provided incorrect information.

The Complainant states that the Provider has not taken into account *"all of the circumstances that surrounded the theft"* and that *"this was a malicious and well planned theft of [our] vehicle"*. Furthermore, the Complainant contends that his motor vehicle insurance policy did not specifically highlight the *"keys in the car' exclusion clause"* in the policy.

By way of letter dated **19 February 2019** to the Provider, the Complainant responded to the Final Response Letter issued on **12 February 2019**. In this letter dated **19 February 2019**, the Complainant states that he does not agree with the decision to deny his claim for the following reasons:

"a) I renewed my insurance claim online in January 2019, the online renewal process does not make any reference to this extremely important exception clauses when the policy is sold.

b) The policy confirmation email does not specifically highlight these exemption clauses

c) The email directs a person to click on the link to access the full policy document which is 42 pages long and the exception clauses are not specifically called out".

The Complainant also states in this letter dated **19 February 2019** to the Provider that it *"seems grossly inappropriate"* that the exemption clause the Provider is relying on is hidden within the 42 page policy document, and that this is an attempt to mislead him. He reiterates the shortcomings he perceives with the Provider's customer service department, namely failing to call him back promptly after he reported the theft and failing to provide him with correct information in relation to his right to appeal the decision declining his claim.

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In the details of the complaint submitted to this Office by the Complainant he reiterates that the Provider has not taken *“into account the specific circumstances of the theft”* and places emphasis on the fact that the car was stolen when it was parked on private property behind electric gates. He also states that the Provider did not *“specifically highlight key clauses where an insurance policy is voided. For example, theft is not covered if the vehicle is left unlocked or/and if the keys are in the ignition.”* clause that excludes coverage if the vehicle is left unlocked and/or the keys are in the ignition.

He states that because the Provider did not do this, he was not aware of this exclusion clause. The Complainant reiterates that he was not called back and that he was provided with the wrong information by the initial representative of the Provider whom he spoke with.

By way of further submissions dated **3 April 2020**, the Complainant states that he *“did not receive the product information document as was acknowledged by [the Provider]”*. He also states that the process has placed a *“lot of stress and financial burden”* on both himself and his family.

Ultimately, the Complainant is seeking €34,000 for replacement of his new car which was stolen.

The Provider’s Case

In its Final Response to the Provider dated **12 February 2019**, the Provider maintained its position in relation to the declinature of the Complainant’s claim. The Provider stated that the policy wording, on page 11 of the policy booklet, states:

“Exceptions to Section 3 and 4

We do NOT cover:

11 theft of Your Car or damage caused by attempted theft where Your Car was not locked and/or the vehicle keys were in the ignition or stored in the vehicle.”

The Provider stated that in view of the above *“it is apparent that the loss is not covered by your policy and we regret to advise that we are unable to make payment on this occasion”*. However, in relation to the customer service aspects of the complaint, the Provider accepted that the Complainant was given incorrect advice regarding whether an appeal of the declinature could be made and, in recognition of this, offered €200 to the Complainant as a *“customer service award”*.

By way of email dated **14 February 2019**, a representative of the Provider re-iterated that it would not be covering the theft of the Complainant’s vehicle.

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In response to the letter from the Complainant dated **19 February 2019**, the Provider sent a letter to the Complainant dated **21 February 2019**. In this letter, the Provider states that its complaints manager conducted a *“comprehensive external review”* of the Complainant’s claim. The Provider states that while it notes the Complainant’s comments in regard to the length of the policy wording, the policy wording needs to be detailed in order to cover all of the different terms and conditions that apply to the cover that was purchased. The Provider states that it is the responsibility of the Complainant to read the policy wording to ensure that it meets his needs. The Provider also states that the requirement not to leave the keys in the car is *“not an unusual or overly onerous policy requirement”*.

The Provider also directs the Complainant to the conditions that apply to the whole policy on page 28, Section 5 of the policy booklet:

“Care of your car

Your car must be covered by a valid Department of Transport NCT test certificate, if you need one by law. You must take all reasonable steps to protect your car from loss or damage, and keep it in an efficient and roadworthy condition, including but not limited to, ensuring that it has sufficient lubricant and oil to operate as prescribed by the manufacturer. The vehicle keys should be removed from the ignition and the vehicle kept locked when not being driven.”

The Provider states that in these circumstances, the theft of the vehicle is not covered under the policy. In this letter, the Provider reiterates that its customer service award of €200 remains open to the Complainant.

In its submissions to this Office dated **3 March 2020**, the Provider states that the Complainant’s policy was inceptioned on **5 January 2012** by telephone and the vehicle which was stolen was added to the policy by telephone on **5 January 2019**. The Provider states that the policy was renewed on **13 January 2019**.

The Provider states that the policy terms and conditions were sent to the Complainant as part of his new business documentation. The Provider states that the terms and conditions were sent via email at the request of the Complainant. The Provider states that there is a cooling off period during which the insured can cancel his cover if the terms and conditions are not in line with his needs.

The Provider states that page 2 of the letter of **5 January 2019** to the Complainant states:

“You’ll find full details of your insurance policy and our terms of business in the attachment. Have a look and make sure they are correct. Let us know if they’re not. See our policy booklet at [website link] with changes outlined in ‘important updates’ overleaf. If you want your documents by post you can email or ring us and we will be happy to send them out to you.”

The Provider states that *“all exclusions on a policy are not called out when a policy is being incepted. If a customer has a query with an aspect of cover they are free to raise this but in the absence of an exclusion being queried it is deemed to be accepted in line with the other terms and conditions of the contract.”* The Provider states that the onus is on the Complainant, as the insured, to ensure that the insurance product he purchased was in line with his needs and to read the documentation the Provider issued him. The Provider rejects the assertion made by the Complainant that it should have specifically flagged the relevant exclusion in the policy to him.

The Provider accepts that during the initial call between the Complainant and a representative of the Provider on **30 January 2019**, the Complainant was poorly advised with regards to his ability to appeal the Provider’s decision to decline his claim. This failure to properly advise the Complainant, also led to the complaint raised by the Complainant not being noted until **12 February 2019** when the declination was reviewed independently by another representative of the Provider.

The Provider apologises for this and has offered €500 in respect of this poor service, an increase from the original €200 offer it made.

The Provider states that the audio recording submitted as part of its evidence sets out the factual circumstances of the vehicle being stolen. In this audio recording, the Complainant states that his wife had *“just popped back inside to grab her bag”* and when she came back outside, the car was gone. The Complainant also confirms in this call that the keys were in the car and there was no forced entry to the vehicle.

The Provider states that the policy wording, on page 11, states:

“Exceptions to Section 3 and 4

We do NOT cover:

11 theft of Your Car or damage caused by attempted theft where Your Car was not locked and/or the vehicle keys were in the ignition or stored in the vehicle.”

The Provider states that at the time of the theft the keys were left in the vehicle which was unattended and the loss is therefore not covered in line with this wording. The Provider further states that the Complainant’s wife returned to the house long enough to enable the thief to enter the vehicle and drive away without being seen and that this is in no way a reasonable safeguarding of the insured’s vehicle and clearly places this claim within the above exclusion. The Provider states that this is not an unusual exclusion in motor insurance and it is reasonable for insurers to expect reasonable safeguarding of the vehicle as set out in the policy wording.

The Provider states that it has complied with the Consumer Protection Code but again acknowledges that it did fail to offer the complaints process in an appropriate way and for this reason it has made the €500 customer service offer.

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The Complaints for Adjudication

The complaint is that the Provider has wrongfully declined to pay the claim made by the Complainant in respect of the theft of his car in the circumstances described above and where the Complainant asserts that the Provider has, *“not acted with due duty of care/considered all the circumstances”*, in so doing. There is also a complaint that the Provider did not provide the Complainant with the appropriate information in relation to appealing the decision to decline the claim.

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 6 July 2020, outlining my preliminary determination 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.

I note that the Complainant’s policy was incepted on **5 January 2012** by telephone and that his policy was renewed on **13 January 2019**. The Provider has identified two clauses in the insurance policy document to justify its decision to decline the Complainant’s claim. I have set out these out above. I accept that both of these clauses specifically exclude cover in circumstances such as the circumstances that arise in relation to the theft of the Complainant’s car, where the keys were left in the ignition of the Complainant’s vehicle.

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The Complainant has stated that the Provider has not highlighted the key exclusion terms in the policy and in this regard I note that the Complainant is under an obligation to read and consider all of the pre-contractual and contractual information specific to his insurance policy, at the time he enters into said policy. I note that had the Complainant read the policy and objected to a specific exclusion clause contained therein, the policy specifically provides for a *"cooling-off period"* wherein the Complainant can withdraw from the policy within 14 days from the inception date of the policy without any penalty being incurred.

Furthermore, I note the general product summary for the insurance policy, submitted to this Office by the Provider. This general product summary is a one page document which concisely and clearly sets out the main features and benefits of the insurance policy as well as stating what the policy does not cover. This general product summary page specifically states that *"theft or attempted theft occurring while the car is unlocked or the keys were in the ignition or stored in it"* is not insured under the policy.

Therefore, on the basis of the foregoing, I cannot accept that the Provider failed to highlight the crucial exclusion clauses in the policy nor do I accept that it was *"grossly inappropriate"* for these exclusion clauses to be part of a 42 page policy document. The reality of modern insurance contracts and the obligation on providers to comprehensively set out all of the terms and condition attached to those contracts, means that lengthy policy documents are often necessary. It would be much less satisfactory if these important conditions were not set out in the policy document.

With regards to the Complainant's assertion that the Provider has failed to consider *"all of the circumstances that surrounded the theft"* and that *"this was a malicious and well planned theft"*, while I sympathise with the Complainant and agree that the evidence suggests that this was a professionally executed and well planned criminal operation, I find no evidence to suggest that the Provider did not give full consideration to the circumstances of the accident. I also note that the circumstances as outlined by the Complainant do not negate the efficacy of the exclusion clauses contained within the insurance document as they relate to *"keys left in the car"*.

In the interests of completeness, I note that the audio recording of the conversation between the Complainant and the representative for the Provider clearly evidences the representative telling the Complainant that *"there isn't any way of appealing"* the decision of the Provider to decline the claim. This provision of inaccurate information by the Provider to the Complainant is a breach of provision 2.2 of the Consumer Code of Conduct 2012 (as amended) (**the CPC**) which necessitates the Provider to act with due skill, care and diligence in the best interests of its customers. In this regard, I note that the Provider has accepted that the initial response from its customer service team was inadequate and has apologised and offered €500 to the Complaint as compensation for the inaccurate advice offered.

Accordingly, while I understand the upset and frustration the Complainant feels as a result of the extremely unfortunate circumstances which led to the theft of his car, I must accept that the insurance policy entered into between the Complainant and the Provider specifically excludes coverage for theft in circumstances where the keys of the vehicle have been left in the vehicle.

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In light of the entirety of the foregoing and bearing in mind that the Provider has made an offer of €500 to the Complainant, which I believe is reasonable in the circumstances, and on the basis that this offer is still available to the Complainant, 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**

27 July 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.**