



<u>Decision Ref:</u>	2020-0418
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Bicycle Insurance
<u>Conduct(s) complained of:</u>	Rejection of claim - theft or attempt theft
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a bicycle insurance policy with the Provider on **24 April 2017**.

The Complainant's Case

The Complainant advises that on **10 October 2017** his bicycle was stolen "*from my third floor apartment balcony*". He states that the bicycle frame was locked to the balcony structure itself and as the thief did not gain entry to the balcony by forcible entry through his apartment, that there "*was no violent entry marks left*". The Complainant reported the theft to his local Garda station and telephoned the Provider on 11 October 2017 to make a claim.

The Complainant notes that the Provider declined his resultant claim, relying in part on the following terms of the '**Sections of Cover**' of the applicable Bicycle Insurance Policy Document [V: 09/17]:

"WHAT IS NOT COVERED: ...

7. *Theft from your home unless:*
 - a. *The bicycle is kept inside the home and any security devices such as door locks are in operation.*
 - b. *Theft from the home involves forcible and violent entry or exit."*

However, the Complainant notes that this 'Sections of Cover' of the Policy Document also states, *inter alia*, as follows:

"WHAT IS NOT COVERED: ...

8. *Theft from any garage, outbuilding, shed, underground car park or communal hallway unless the bicycle has been secured to an immovable object with an approved lock through the frame and any quick release wheels substantiated by a sales purchase or till receipt, remains of the lock or the lock key"*

In this regard, the Complainant sets out his complaint in the **Complaint Form**, as follows:

"[The Provider] declined the claim as the bicycle was not kept inside the apartment and the balcony was not a suitable location for the bicycle. However, a balcony is not defined under the policy document. It would be suitable to secure the bike in a garage, outbuilding, shed, underground car park or communal hallway. It would also be permitted to leave the bike at a train station. [The Provider] are not looking at section 8 of the Terms & Conditions ... The balcony is of a similar status to that of a garage, outbuilding, shed, underground car park or communal hallway. The bike was secured to an immovable object with an approved lock.

Another aspect of the decline was that there was no violent entry marks left, responding to the Terms and Conditions theft from the home involves forcible and violent entry or exit, [but] this is not always evident, as is the situation in my case. Three stories had to be climbed in order to gain access. Not all crimes leave marks that fit into a definition of having to leave damage. For example, access to an underground car park could be made by any number of people with access keys/ codes. A bicycle could be stolen without the mark of a violent entry been left behind.

There was damage to the main entrance from a stone being placed to stop the door from closing which left scrape marks on the ground ... It's possible the person/ persons gained access to the rooftop and climbed down onto my balcony.

The bicycle is not normally kept on the balcony, it is usually kept in the inside hallway of the apartment, however I moved it out on the third floor balcony for short term as I was having guests over.

I received an email [from the Provider] on 20 October 2017 at 2.08 pm requesting receipts and pictures. At 4.41 pm on the same day I received an email declining my claim without giving me fair time to respond. The claim could not have been reviewed properly ...

During the complaints process [with the Provider], my complaint was not addressed at all, just a repetition of the initial decline. [The Provider] has not looked at other interpretations of the Terms and Conditions. I was not given the opportunity to supply pictures and receipts as the claim was declined less than 3 hours after the request. I was never asked outright for proof of physical damage to the building ...

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In summary, it doesn't make sense for the bicycle to be covered at a public train station, an underground car park or communal hallway but for a third floor balcony to be discounted".

In addition, in his email to the Provider at 12:50 on **11 September 2018**, the Complainant submits, *"it would be better to leave the bike in a communal space or car park where access is open to the public (and any number of people) than on a secure third floor balcony with no safe and normal access. This does not make logic sense."*

Furthermore, in his email to this Office dated **26 February 2020**, the Complainant submits, *inter alia*, as follows:

"One of the points towards my complaint was that a balcony is not mentioned or defined in the terms and conditions...My interpretation is that a balcony has the same status as a garage, outbuilding, shed, underground car park or communal hallway. Where a term is not defined or made clear in an agreement it falls to benefit of the person who did not draft the document (in this case, myself) ...

[I note the Provider's] updated terms and conditions from their website. A balcony has now been included in this section. This would be a clear indication that it is [the Provider's] opinion that a balcony should have been included within this section in the first place. The definition of a balcony or what section it falls into wouldn't change between [terms and conditions] documents, just made more clear. In this case, it has been made 100% clear that a [balcony] falls within part 8 and not part 7 (which is where the claim has been declined).

In this regard, the Complainant notes that the 'Sections of Cover' part of a more recent version of the Provider's Bicycle Insurance Policy Document [V: 09/19] has been amended to read, *inter alia*, as follows:

"WHAT IS NOT COVERED: ...

8. *Theft from any garage, **balcony**, outbuilding, shed, underground car park or communal hallway unless the bicycle has been secured to an immovable object with an approved lock through the frame and any quick release wheels substantiated by a sales purchase or till receipt, remains of the lock or the lock key, **unless meeting Security Requirements Where The Bicycle is at Home point B**".*

[Emphasis added to show the amended text]

As a result, the Complainant *"would like the cost of the bike and accessories paid to me. The cost of the bike was €649.99 and the cost of the accessories was €127.97, total cost €777.96"*.

The Provider's Case

The Provider set out its position in its Final Response email to the Complainant on **24 September 2018**.

The Provider noted that the Complainant telephoned to make a new claim on 11 October 2017 as his bicycle had been stolen from the balcony of his third floor apartment. He advised that the bicycle was last seen at 8am on 9 October 2017, so the theft occurred between 08:00 and 23:00 on that day. The Complainant also advised that the last time he had used the bicycle was around 4 October 2017. The Provider requested the purchase receipts for the bicycle and the bicycle lock, along with photographs of the area of the theft and if there was anything left of the lock, photographs of what was left also. Following its claim assessment, the Provider emailed the Complainant, as follows:

"After carefully assessing all the information you have provided, we regret that we are unable to authorise your claim.

Exclusion no. 7, point A states that your Bicycle is not covered for theft from your home unless; "The bicycle is kept inside the home and any security devices such as door locks are in operation".

And also point a) of the 'Security requirements where the bicycle is at the home' section;

"Accidental or malicious damage or theft of the bicycle, whilst at home, shall only be covered in circumstances where the bicycle is:

a) kept inside and security devices are in operation".

Based on the circumstances of the incident you have provided, we feel your claim falls under this exclusion. During the claims process, you advised that the bicycle was kept locked outside the apartment on the balcony".

The Complainant appealed this declinature by way of email on **22 November 2017**.

Following its review of the claim, the Provider emailed the Complainant on **23 November 2017**, as follows:

"I have looked at your file, and have spoken with management about the circumstances of your claim. Unfortunately, it had been decided to maintain the declinature of your claim, for the reasons I will now outline.

Firstly, we consider your balcony to be within your home and therefore governed by exclusion 7 rather than exclusion 8. This is because, unlike a shed or outbuilding, any thief must pass through your flat to reach the balcony: it is not a separate structure. In this case, given the height of the building, I feel it is unfair to strictly apply the 'must be stored inside' rule under exclusion 7a and argue the balcony is outside the building.

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However, it remains governed by exclusion 7b which states the theft must involve 'forcible and violent entry or exit', which is something you have reported is not the case.

This ties into the second reason for your declination. The Policy wording states that 'any unexplained theft' is not covered. While a wide-ranging clause, we would only seek to decline under this section...where it was unavoidable. In this case, we regard the theft of your bike from your balcony to be tantamount to a locked room mystery. Without evidence to suggest the criminals accessed it via your apartment, or anything to suggest an explanation for how they reached the bike's location, we cannot progress the claim".

The Complainant next emailed the Provider some six months later on **21 June 2018** to state that he did not agree with the decision and he requested a further appeal. Following a review by a different appeals investigator, the Provider emailed the Complainant on **2 July 2018** to advise, as follows:

"After carefully assessing all the information you have provided, we regret to inform you that the original declination of your claim still stands.

As part of the appeals process a claims investigator has reviewed your insurance claim and listened to the call which took place on the 20/11/2017.

During this call you [were] asked about the incident where you confirmed the following:

The bike was stolen from your balcony which was on the third floor of the apartments and this was locked from 08:00 to 23:00 on the 09/10/2017. This incident is considered as theft however, the claim would not be covered as your bike was not concealed inside the property where any signs of forced entry was used to gain access to the bike ...

Furthermore, I feel like all necessarily precautions weren't taken out as the bike was left on the balcony from 8am to 11pm. I understand that you live on the third floor which is normally considered to be quite high from the ground however, this does not stop criminals from gaining access somehow".

The Complainant made a complaint to the Provider in relation to this matter by way of its email on 11 September 2018. Following its consideration of his complaint, the Provider, in its Final Response email to the Complainant on 24 September 2018, advised, *inter alia*, as follows:

"Turning to the aspect of your complaint...this being the decision to decline your claim, I am satisfied that this is correct and is to be maintained. I have added below the policy wording from your terms and conditions, in which it states:

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WHAT IS NOT COVERED:

7. Theft from your home unless:

- a. *The bicycle is kept inside the home and any security devices such as door locks are in operation.*
- b. *Theft from the home involves forcible and violent entry or exit.*

9. Theft, accidental damage or malicious damage following abandonment or any unexplained theft.

DEFINITIONS

Damage: caused by violent and external means including vandalism.

Forcible and Violent Entry: entry evidenced by:

- A. *visible damage to the fabric of the building or vehicle at the point of entry; and*
- B. *visible damage caused to an immovable object or approved lock.*

Home: the location where the bicycle is usually kept as stated on your policy schedule which is your permanent domestic residence and is a house, or a flat or room in a communal residence.

GENERAL SECURITY REQUIREMENTS

SECURITY REQUIREMENTS WHERE THE BICYCLE IS AT THE HOME

Accidental or malicious damage or theft of the bicycle, whilst at home, shall only be covered in circumstances where the bicycle is:

- A. *kept inside and any security devices are in operation; or*
- B. *stored within a private garage privately accessed wooden, plastic or aluminium shed within boundaries of the home and you have complied with the following security requirements:*

- *all external doors must be secured by a minimum of a 5 lever mortice deadlock to BS3621 standard or a 5 lever padlock; or*
- *the bicycle must be secured through the frame by an approved lock to an immovable object within the building; or*

- C. *secured through the frame by an approved lock to an immovable object within the building when at your home, in any location which is described as a communal hallway or communal outbuilding.*

The wording from the policy advises the claim will be covered if a theft occurs in the home, but only where there was forcible or violent entry or exit. You have not made any reference to the property being damaged in the assessment and have not advised of this since. If the bike had been stolen from the flat balcony and there had been any damage to the property, damage to the balcony, you have any photos of this or CCTV footage we will of course be able to look at review this again for you.

If the balcony is indeed accessible from the outside then the bike has not been secured within the boundaries of your home. Based on the information you have provided we would not be able to cover the claim, but as I have stated if you can provide the above evidence we will review this again for you”.

Accordingly, the Provider is satisfied that it declined the Complainant’s claim in accordance with the terms and conditions of his bicycle insurance policy.

The Complaint For Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainant’s bicycle insurance 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 **1 October 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below. The Complainant incepted a bicycle insurance policy with the Provider on **24 April 2017**. The Complainants advises that on 10 October 2017 his bicycle was stolen from his third floor apartment balcony. He states that the bicycle frame was locked to the balcony structure itself and that the thief did not gain entry to the balcony by forcible entry through his apartment.

The Complainant reported the theft to his local Garda station and telephoned the Provider on 11 October 2017 to make a claim. Following its assessment, the Provider declined the Complainant’s claim, a decision it has since affirmed a number of times, upon review.

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Like all insurance policies, the Complainant's bicycle insurance policy does not provide cover for all eventualities, instead the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that the Provider declined the Complainant's claim under the following provisions of the '**Sections of Cover**' section of the applicable bicycle insurance policy document [V: 09/17] at pgs. 3-4, as follows:

"B. Theft

If your bicycle is stolen we will replace it. Where only part or parts of your bicycle have been stolen, we will only replace that part or parts

WHAT IS NOT COVERED: ...

7. *Theft from your home unless:*
 - a. *The bicycle is kept inside the home and any security devices such as door locks are in operation.*
 - b. *Theft from the home involves forcible and violent entry or exit".*

In this regard, I note that the '**Definitions**' section of the policy document provides, *inter alia*, the following definitions at pg. 4:

"Home: *the location where the bicycle is usually kept as stated on your policy schedule which is your permanent domestic residence and is a house, or a flat or room in a communal residence ...*

Forcible and Violent Entry: *entry evidenced by:*

- A. *visible damage to the fabric of the building or vehicle at the point of entry; and*
- B. *visible damage caused to an immovable object or approved lock".*

In addition, I note that the '**General Security Requirements**' section of this policy document provides, *inter alia*, at pg. 4, as follows:

"SECURITY REQUIRMENTS WHERE THE BICYCLE IS AT THE HOME

... theft of the bicycle, whilst at home, shall only be covered in circumstances where the bicycle is:

- A. *kept inside and any security devices are in operation; or*
- B. *stored within a private garage, privately accessed wooden, plastic or aluminium shed within the boundaries of the home".*

As a result, in order for there to have been a valid claim in respect of a bicycle stolen from the Complainant's home, the applicable policy terms and conditions required there to have been forcible and violent entry to or exit from the home, or for the bicycle to have been stored within a private garage or privately accessed shed (of certain specifications) within the boundaries of the home. As the Complainant had locked his bicycle to the railings of the balcony at his home, I note that the circumstances of the loss being claimed for do not meet either of these security requirements.

For that reason, it may have been open to the Provider to have considered declining the claim without further consideration, on the basis that the Complainant had diverged from his normal practice of keeping the bicycle inside his apartment; on the particular occasion, because he was entertaining guests, he had moved the bicycle outside, to his third floor balcony, where he locked it. The Provider however in my opinion, took the more reasonable approach of considering the Complainant's third floor balcony to be within his home because, unlike a shed or outbuilding, any potential thief would be required to pass through the apartment to reach the balcony, the balcony not being a separate structure. I am of the opinion that it was reasonable for the Provider to determine that the Complainant's balcony constituted part of his home, as defined in the policy document, and for it to have assessed his claim accordingly.

As a result, exclusion 7 was relevant to the claim assessment. Whilst the Complainant submits that *"there was damage to the main entrance from a stone being placed to stop the door from closing which left scrape marks on the ground"* and he has supplied photographs of these marks and an email from the property management agency confirming same, I am of the opinion that the forcible and violent entry must be to the policyholder's home, in this case the apartment itself, and not to a communal ground floor entry.

I am therefore satisfied that the Provider declined the Complainant's claim in strict accordance with the terms and conditions of his bicycle insurance policy.

I note that the Complainant considers that the theft of his bicycle from his third floor apartment balcony ought to have been assessed by the Provider by reference to a different exclusion, within the **'Sections of Cover'** section of the bicycle insurance policy document as follows:

"WHAT IS NOT COVERED: ...

8. *Theft from any garage, outbuilding, shed, underground car park or communal hallway unless the bicycle has been secured to an immovable object with an approved lock through the frame and any quick release wheels substantiated by a sales purchase or till receipt, remains of the lock or the lock key"*

I remain satisfied however that it was reasonable for the Provider to conclude that the Complainant's balcony constituted part of his home and for it then to have considered his claim under the relevant theft from home policy provisions.

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I note that in his email to this Office dated 26 February 2020, the Complainant submits, *inter alia*, as follows:

“One of the points towards my complaint was that a balcony is not mentioned or defined in the terms and conditions...My interpretation is that a balcony has the same status as a garage, outbuilding, shed, underground car park or communal hallway. Where a term is not defined or made clear in an agreement it falls to benefit of the person who did not draft the document (in this case, myself) ...

[I note the Provider’s] *updated terms and conditions from their website. A balcony has now been included in this section. This would be a clear indication that it is [the Provider’s] opinion that a balcony should have been included within this section in the first place. The definition of a balcony or what section it falls into wouldn’t change between [terms and conditions] documents, just made more clear. In this case, it has been 100% clear that a [balcony] falls within part 8 and not part 7 (which is where the claim has been declined).*

In this regard, the Complainant notes that the ‘Sections of Cover’ wording of a more recent version of the Provider’s Bicycle Insurance Policy Document [V: 09/19] has been amended to read, as follows:

“WHAT IS NOT COVERED: ...

8. *Theft from any garage, **balcony**, outbuilding, shed, underground car park or communal hallway unless the bicycle has been secured to an immovable object with an approved lock through the frame and any quick release wheels substantiated by a sales purchase or till receipt, remains of the lock or the lock key, **unless meeting Security Requirements Where The Bicycle is at Home point B**”.*

[Emphasis added to show the amended text]

I am satisfied that the Provider can only be required to assess an insurance claim under the particular policy terms and conditions in force, at the time of the occurrence of the loss being claimed, as these form the contract of insurance in place between the Provider and the policyholder at the relevant time. As the Complainant’s loss occurred in October 2017, the bicycle insurance policy document in force at that time was V: 09/17, which contained no reference to a balcony.

In any event, given that I am satisfied that the Provider was correct in determining that the balcony constituted part of the Complainant’s home, the section referred to by the Complainant from the more recent version of the Provider’s Bicycle Insurance Policy Document [V: 09/19] is explicitly addressed at point B of the ‘**Security Requirements where the Bicycle is at Home**’ section of this policy document which provides at pg. 4, as follows:

“... theft of the bicycle, whilst at home, shall only be covered in circumstances where the bicycle is: ...

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- B. *Stored within a private garage, privately accessed wooden, plastic or aluminium shed within the boundaries of the home”.*

It is understandable that the Complainant is frustrated with the outcome of his claim, but on the basis of the terms and conditions agreed between the parties, as set out within the policy provisions which were in place on the date of the Complainant’s loss, I am satisfied that the Provider was entitled to decline the Complainant’s claim, for the reasons outlined above. I note that the Provider invited the Complainant to submit details of any damage to the property, damage to the balcony, or photos of this or CCTV footage, and advised that, in that event, it would review the matter further.

Since the Preliminary Decision of this Office was issued the Complainant has indicated his view that the manner in which the Provider drafted the terms and conditions of the policy has created ambiguity as to which section a balcony should be considered under. He also refers to the decision of the Supreme Court in *Analog Devices v Zurich Insurance and Anor [41/03]*, and quotes the Court’s view regarding the principle of “*contra proferentem*”, that

“ ... if the exempting provision is ambiguous and capable of more than one interpretation then the courts will read the clause against the party seeking to rely on it.”

I am conscious also that the Supreme Court in that matter turned its attention to the “natural interpretation” of the contractual clauses taking account of what the intention of the parties was, having regard to the language used. In this instance, I am satisfied that there is no ambiguity in the meaning of the relevant exclusion within the policy agreement, which reads as follows:

WHAT IS NOT COVERED: ...

7. *Theft from your home unless:*
 - c. *The bicycle is kept inside the home and any security devices such as door locks are in operation.*
 - d. *Theft from the home involves forcible and violent entry or exit”.*

I am satisfied that on a natural interpretation of the words, there was a clear intention to exclude cover, in the event of a theft from the policyholder’s home, where there was no forcible or violent entry. Although the Complainant was invited by the Provider to submit evidence of a violent or forced entry, no adequate details were made available, though I note that the Provider has confirmed that in that event, it will further review the matter.

On the basis of the evidence made available to this Office, and for the reasons outlined above, I do not accept that the Provider acted unreasonably in declining the Complainant’s claim and accordingly, in my opinion it is not appropriate to 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.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

20 November 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.