



<u>Decision Ref:</u>	2021-0122
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mobile Phone
<u>Conduct(s) complained of:</u>	Rejection of claim - theft or attempt theft Claim handling delays or issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to a claim made by the Complainant on his mobile phone insurance policy.

The Complainant's Case

On **30 November 2017**, the Complainant purchased a mobile phone insurance policy.

On **27 November 2018** the Complainant contacted the Provider, stating that he had lost his phone and he submitted a claim on his insurance policy (claim no. **35).

Some days later, the Complainant rang the Provider to withdraw the claim in circumstances where he had "*retrieved*" his phone. The Complainant states that he was advised during this call that the claim on the policy had been "*cancelled*".

The Complainant says he was surprised to be told in the course of this call that his insurance policy would also be cancelled. The Complainant took issue with this as he wanted to keep the insurance policy in place. The Complainant says that he was subsequently told that "*the phone would still be covered and would not cancel automatically*". The Complainant says he was not advised to check the workings or condition of the phone, or to check the SIM card in the phone. This, he was advised at a later date, was essential to the phone remaining insured under the insurance policy.

The Complainant states he was away some days later. He says he had not used the phone *“as it was dead and [he] did not have the charger with [him]”*. On returning from this trip, the Complainant discovered that he could not find his phone. He says that he checked with his hotel accommodation who could not locate it either, so he contacted the phone service company again and reported the loss to the Gardaí.

On **10 December 2018**, the Complainant submitted a fresh claim regarding this loss. The Complainant subsequently surmised that his SIM card had been stolen when his phone went missing on the first occasion, in November 2018.

This fresh claim (claim no. **58) was rejected by the Provider on the basis that there was *“no usage”* on the phone and/or due to the fact the *“SIM card was not in the phone”* at the time of the loss.

The Complainant takes issue with the fact that, when he reported finding his phone at the end of November 2018, he was not informed by the Provider that in order for the insurance cover to remain active, he needed to ensure that his phone was operative and that his SIM card was still in place. The Complainant contends that *“surely there is a responsibility”* on the phone service company to fully inform an individual of any necessary steps when making such a *“critical statement such as ‘yes, your phone will remain covered’”*.

The Complainant says he raised a formal complaint on **13 December 2018** and received a Final Response Letter on **7 February 2019**. The Complainant says the Provider was slow to respond to his complaint taking *“well in excess of 40 days to reply to [the Complainant] despite follow ups”*.

The Complainant wants the Provider to replace his Mobile phone.

The Provider’s Case

The Provider states that both claims were denied under the *“Terms and Conditions of the Stay Mobile Extra insurance policy”* although the rejection of the initial claim had not been communicated to the Complainant, before he rang to withdraw the claim. The Complainant was referred to the policy wording, which the Provider states advises of policy *“conditions, restrictions, or exclusions that may apply”*.

The Provider says these policy terms and conditions were issued to the Complainant on 5 December 2017, shortly after the policy was incepted.

The Provider states that the claim notified on 28 November 2018 (**35) was declined because the Complainant did not report the loss of the phone to the Gardaí, within 72 hours as required pursuant to the policy terms and conditions. The Provider states that the *“phone was lost on 23rd November 2018”* but not reported to the Gardaí until *“29th November 2018”*.

The Provider says that the claim reported on 10 December 2018 (**58) was declined because the authorised SIM card was not connected to the network at the time of the incident giving rise to the claim.

The Complaint for Adjudication

The Complaint is that the Provider:

1. Failed to inform the Complainant of “*critical*” information when he first reported finding his mobile phone, in early November 2018;
2. Failed to deal with the Complainant’s complaint within “*40 days*”, as stipulated in the Provisions of the Consumer Protection Code 2012 (as amended).

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 **7 April 2021**, 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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Prior to considering the substance of the complaint, it is useful to set out the relevant terms and conditions of the policy.

Policy Terms and Conditions

The Provider has identified the following provision from the '**How to make a claim**' section of the policy in support of its decision to decline the first claim notified on 27 November 2019:

If your Equipment is Accidentally Lost, Stolen or Maliciously Damaged, You must notify An Garda Síochána or local police authority and obtain a loss or crime number within 72 hours of discovery, (other than where extenuating circumstances prevent you from doing so). You must take all the steps to recover the Insured Equipment and cooperate with the investigations and enquiries of An Garda Síochána or local police authority.

The Provider has also identified the following provision from the '**Conditions precedent to liability for the Company to pay a claim under this policy**' section of the policy in support of its decision to decline the second claim, made on 10 December 2019:

Your Insured Equipment is equipped with Your [phone company] authorised SIM and is connected to the [named] network at the time of the incident or event giving rise to such claim, unless the SIM has been removed from Your Equipment for temporary and legitimate purposes.

The 'Loss' section of the policy provides as follows:

[The Provider] will cancel Your policy in the event that two successful claims are made in any continuous 12 month period.

The Complainant in this matter says that he first lost his phone on Friday **23 November 2018**. The Complainant rang the Provider four days later, at 14:14 on Tuesday the 27th of November 2018. I note that after raising various queries as to his policy cover, as to his claims history, and as to the implications of any new claim, he then reported that he had lost his phone.

In the course of this call, the Complainant was advised that the Provider had a record of him having had a previous claim for damage to a phone in **June 2018**, (the 'damage claim') and that, in accordance with the terms of the policy, a second claim within 12 months would incur a higher excess charge and would result in the cancellation of the policy.

In terms of the details of the loss, the Complainant advised in the course of the phone call that he had lost the phone on "*Friday night*" (**23 November 2018**). He said that his phone may have been "*robbed*" but he wasn't sure, and that he noticed the phone was missing from his pocket, only when he went to use it.

The Complainant was then asked whether he had reported the matter to the Gardaí. When he advised that he had not done so, the Complainant was advised that the policy conditions required the matter to have been reported to the Gardaí within 72 hours of the loss, failing which there might be implications for the claim. The Complainant confirmed that his SIM card had been in the phone when it was lost. A claim form was sent to the Complainant which he was advised to complete and to include details of the Garda report, which would need to be made.

The Complainant reported the matter to the Gardaí on **29 November 2018** and he sent in the claim form on 30 November 2018. However later, on **30 November 2018**, the Complainant called the Provider to advise that he had "*got the phone back*" that day, at some point after his submission of the claim documentation.

At this point, the Provider's agent misspoke and said "*I have cancelled that policy off there*". Upon being queried on this matter, the agent corrected himself to say that he had cancelled the "*claim*".

It would appear from the evidence that the Provider had made a decision to decline this claim before the Complainant rang to withdraw the claim. This decision however had not yet been communicated to the Complainant. Thereafter, the Complainant called the Provider again on Monday **10 December 2018** to advise that he had lost his phone again. After referring to the claim reported in late November and to the fact that he had recovered his phone, the Complainant stated:

And then I had it, but then literally this morning I was down at a hotel and then, well I thought I had it with me but, and then I left and I didn't have it.

The following day, 11 December 2018, the Complainant sought to clarify that the phone had in fact been lost on **04 December 2018**.

In his response to this Office of 13 July 2020, the Complainant suggests that the second loss was noticed on Monday **03 December 2018**. These two dates provided as the date of loss are however inconsistent with the phone call of 10 December 2018, quoted above, during which the Complainant very clearly said that he had lost his phone "*literally [that] morning*".

If the Complainant's phone *was* lost for the second time a week, before the phone call of 10 December 2018, no explanation whatsoever has been provided for the delay of one week in notifying the loss to the Provider. The absence of an explanation here emphasises further the inconsistency between (i) the detail given during the phone call of 10 December 2018 and (ii) the information imparted the following day.

In the circumstances, on the basis of the audio evidence I consider it likely that the loss reported on 10 December 2018, was in respect of a loss apparently noticed earlier that same day. I am unconvinced by the subsequent suggestion that the loss happened a week earlier.

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The second loss claim was ultimately declined by the Provider on the basis that the phone had not been used/connected to the network since 23 November 2018 (the date of the first loss). During a phone call subsequent to the rejection of the second claim (circa 17 December 2018) and upon being advised of the reason for the rejection, the Complainant stated

I even said to yer man, I'm pretty sure in the first place that I hadn't even used it that weekend like, I didn't have my charger with me.

The following exchange also took place during the same call:

AGENT: *It would still be taken into consideration the fact that we can't see anyone using their phone since the first time it was reported missing. If you were to have done anything with the phone with the SIM card in it, then that would show up on our side.*

COMPLAINANT: *Yeah, no I hadn't though, that's the thing, because I didn't even realise, they hadn't said to me, I didn't even know that was a thing, that people robbed SIM cards, like there was a load of mad phone calls to [foreign location] or something. So I can fairly prove that the SIM card was obviously taken out of it and robbed and it was used without my knowledge. I was never told to check that there was a SIM card in it. Nobody ever explained that to me.*

With regard to the first loss claim – the claim notified on 27 November 2018 and formally submitted in writing on 30 November 2018 – I am satisfied, by reference to the terms of the policy, that the Provider was entitled to decline this claim in light of the delay in reporting the matter to the Gardaí. This issue is of limited relevance however, given that the Complainant withdrew that claim before he was informed of the Provider's decision to decline it.

The second loss claim was declined on the basis that there was *"no usage on the device at the time of loss"* (ref: Final Response Letter). The Provider states that, in fact, there had been no recorded usage since before the time the phone first went missing on 23 November 2018. This has not been challenged by the Complainant. Indeed, the Complainant, as is apparent from the phone call quoted above, appears to have taken the view that the SIM card was originally stolen when the phone first went missing on 23 November 2018, and that it remained missing from the moment he recovered the phone on 30 November to the moment the phone was lost again, albeit that he did not realise this at the time. I am therefore satisfied that I should accept the Provider's evidence that the Complainant's phone was not *"equipped with"* the *"authorised SIM"* and was not *"connected to the [phone company] network"* at the time of the loss.

In the circumstances, the condition precedent to cover under the policy is not met unless it is established that *"the SIM has been removed from Your Equipment for temporary and legitimate purposes"*. Given the Complainant's submission that the SIM was stolen, this proviso is not satisfied. As a result, I am satisfied that the Provider was entitled to decline the second loss claim in reliance on the condition precedent.

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In addition to the decision to decline the second loss claim, the Complainant takes issue with the Provider's failure to advise him, in the course of the phone call on 30 November 2018 (when he withdrew the first loss claim), that he should "*check that there was a SIM card*" in the phone which had been recovered.

I do not accept the Complainant's criticism in that regard. Having located his lost phone a week after he had lost it the previous Friday night, I believe that it is reasonable to have expected the Complainant to have carried out at least a cursory check at that time, to establish if the phone was in working condition, or had been in some way damaged during the time when it was out of his possession. I believe the primary responsibility for identifying the need to undertake such a check, lay with the Complainant, not with the Provider.

If the Complainant's account of these events is accurate, any effort to turn on the phone, at any time from 30 November 2018 onwards, would have revealed that the SIM card was missing from it. It seems to me to very surprising that the Complainant recovered a phone on 30 November 2018 that had gone missing seven days previously, without having checked that the phone was working, at any point up to 10 December 2018 (a period of 17 days between the date of first loss and the second loss, and a period of 10 days between the date of recovery and the date of second loss). Even if the date of second loss was 03 or 04 December 2018, it still seems very surprising that the Complainant would not have checked that his phone was working, after recovering it for the first time in 10 or 11 days.

In the course of the phone call quoted above, the Complainant sought to explain matters by stating that he "*hadn't even used [the phone] that weekend*" as he had not brought the charger with him to the hotel. This explanation is repeated in the Complainant's submission to this office of 13 July 2020, when it is suggested that the weekend in question was the weekend beginning Friday 30 November 2018. As already stated however, I am satisfied that the Complainant is incorrect regarding this date, as he reported the loss during a phone call of 10 December 2018 clearly stating at that time that he had noticed the loss "*literally [that] morning*". In those circumstances, the weekend at the hotel was the weekend beginning Friday 07 December 2018.

Insurance policies do not provide cover for every possible eventuality. Rather the cover offered by a policy of insurance, will always be subject to the terms, conditions, endorsements and exclusions that are set out within the provisions of the policy wording. It is the responsibility of a policyholder to familiarise themselves with the content of any insurance policy they choose to incept, so that they can be sure that the policy is suitable for their requirements at any given time.

I am satisfied that the Provider was entitled to decline the claim by reference to the terms of the policy. I am equally satisfied that there was no obligation on the Provider to alert the Complainant to any particular provision in his contract of insurance, over other provisions.

The final aspect of the Complainant's complaint is that there was an unreasonable delay in dealing with his claim/complaint. The claim was submitted on 10 December 2018 with certain further details being provided on 11 December 2018. The claim was declined on 12 December 2018 and the Complainant made his complaint the same day.

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I note that a complaint acknowledgement letter issued within 5 working days on 19 December 2018. Thereafter, a letter issued on 10 January 2019 providing an update on the investigation before a Final Response Letter issued on 7 February 2019.

In my opinion, this constitutes a prompt timeframe within which to fully address a customer complaint and is in compliance with all appropriate Codes. I might also note that the Complainant was advised in the course of the last of the phone calls provided in evidence, that it can take up to 40 working days to resolve a complaint and the complaint was indeed dealt with within this time frame.

In light of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**, I am not in a position 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**

29 April 2021

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.