



<b><u>Decision Ref:</u></b>	2021-0347
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - definition of valuables Claim handling delays or issues Dissatisfaction with customer service Rejection of claim - reasonable care/unattended Disagreement regarding Settlement amount offered
<b><u>Outcome:</u></b>	Rejected

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

This complaint arises from the Provider's failure to fully indemnify an insurance claim made on the Complainant's travel insurance policy. The Complainant states that the Provider was unreasonable in the declining of her claim and that the customer service to her was poor and "*condescending*".

#### **The Complainant's Case**

The Complainant submits that while out for an evening on holiday abroad, her accommodation was broken into and items were stolen. She submits that she left her apartment on **16 July 2019** at 8pm to go for dinner and, before leaving, she had locked all doors and put down the shutters which were galvanized steel shutters. Upon arriving back to her apartment, she discovered the property had been broken into.

The Complainant describes the items taken from her as runners, a pair of sunglasses and cash of €600 (six hundred Euro) of her money, that was in a bag under her clothes at the premises. She then reported the items stolen to the police the following day to get a written report. The Complainant submits that, after making a claim and providing all reports and pictures to the Provider, she was advised she would not be covered for the money and sunglasses. She has submitted that the reasons given by the Provider was that she had not taken reasonable care in minding them.

The Complainant states that there was no safety deposit box in her room to allow her to store the cash and sunglasses. She further submits that when she telephoned the Provider, the Provider's agent was "condescending" and submitted:

*"When I rang was obviously upset but the girl on the phone was very condisending (sic). I was told that many of their clients walk around with €600 (six hundred Euro) in their pocket, when I questioned why I'd have that kind of money on my person at night."*

The Complainant states she could not have done any more than she did that night before leaving for dinner. She further contends that she was not happy with the settlement offer of €81 (eight one euro) and states *"It's an insult to be offered €81 (eighty one Euro) for my runners as they are deemed not valuable"*.

### **The Provider's Case**

In the Provider's final response letter, it reiterated its decision not to pay the claim in full, submitting that it is required to assess any insured person's claim by reference to the terms and conditions of the policy. The Provider submitted that, whilst it sympathised with the Complainant regarding her financial loss, her policy is very specific about how one must exercise reasonable care and it requires specific safety measures to be implemented by the insured (i.e. the policy will not cover loss, theft or damage to valuables or money left unattended at any time, unless deposited in a hotel safe or safety deposit box).

The Provider stated it does not arbitrarily select which items, conditions and exclusions to apply in any particular case. It applies the terms, conditions and exclusions of the policy in a fair and balanced way for all customers at all times and based on the presenting facts.

The Provider has submitted that the initial claim was for cash of €600 (six hundred Euro) sunglasses valued at €92.50 (ninety two Euro and fifty cent) and runners worth €90.00 (ninety Euro).

The Provider contends that, as shoes/runners are not specifically listed under the valuables definition in the policy, there are no particular security requirements and they can be assessed under the definition of personal baggage. The Provider states that it offered settlement in the amount of €81 (eighty-one Euro) in respect of the runners, which was €90.00 less wear and tear depreciation at 10%.

The Provider states that the prescription sunglasses and cash were excluded from the cover in this claim, as the Complainant confirmed that at the time of the loss, the items were left unattended and were not deposited in a safe or safety deposit box available at the premises. The Provider contends that the policy clearly and expressly states that it will not pay for the

*"loss theft of or damage to your valuables or money left unattended at any time unless deposited in a hotel safe or safety deposit box."*

## **The Complaint for Adjudication**

The complaint is that the Provider failed to accept and indemnify the Complainant's full insurance claim and that it provided poor customer service and was condescending in its discussion with the Complainant.

## **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. Recordings of telephone calls have been furnished in evidence and I have considered the content of these calls.

A Preliminary Decision was issued to the parties on **3 September 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that within the terms and conditions of the policy document, the following is stated at page 14 in the definition section:

***PERSONAL BAGGAGE:***

*Suitcases, holdalls, haversacks and the like, and their contents including clothing as usually carried by travellers for their own use; also, infants' pushchairs but not tents, dinghies and other items not usually packed as baggage.*

***PERSONAL MONEY:***

*Your cash, currency, banknotes, cheques, postal end money orders, travel tickets, passports comment travelers checks, held and owned by you.*

/Cont'd...

**VALUABLES:**

*Cameras, photographic and video equipment, and associated equipment of any kind: your hardware and software; computer tablets; satellite navigation equipment; games consoles (PlayStation, Gameboy, Nintendo, etc), accessories and games; personal organizers; mobile telephones; televisions; portable audio equipment (DVD, CD, mini disc, MP3 players, iPods, etc) and all associated discs and accessories; smart phones, spectacles; prescription sunglasses; telescopes; binoculars; jewellery; watches (including smartwatches); furs; letter articles; perfumes; precious stones and articles made of or containing gold, silver or other precious metals."*

At page 20 of the Policy Document, it concerns the Section 6 "PERSONAL BAGGAGE" and states

**"WE WILL NOT PAY:**

...

*2. if you do not exercise reasonable care for the safety and supervision of your personal baggage and money.*

*[...]*

*14. Loss, theft or damage to your valuables or money left unattended at any time or unless deposited in hotel safe or safety deposit box."*

[My underlining for emphasis]

On **30 July 2019**, the Provider received the Complainant's claim form. This form set out that cash, prescription sunglasses and branded runners were taken from the Complainant's room while on holidays. The claim form also stated that the items were in the kitchen and bedroom of the apartment when the incident occurred. On the claim form, which has been submitted to evidence to this office, the Complainant had marked "yes" in the column which confirmed there was evidence of purchase for the items. For "incident details" the Complainant input

*"after returning home from dinner and drinks we found the apartment was broken into. All our clothes and belongings were thrown around the place. We then rang the local police."*

The claim form also includes the police report which contained pictures of what appears to be the window of the premises which appears to show a break-in entry.

On **22 August 2019**, the Complainant telephoned the Provider to check whether the claim form had been received and advised that it had been delivered by hand to the Provider. The Provider's agent advised that her claim was in queue for processing and she would hear from the Provider as soon as possible after **27 of August 2019**.

On **29 August 2019** the Complainant telephoned the Provider seeking an update regarding her claim, and the Provider's agent confirmed that a settlement offer had just been issued and should be received by the Complainant shortly. On the same day, the Provider issued the settlement letter with proposed settlement of €81.00.

/Cont'd...

The letter calculated the settlement as follows: runners were valued at €90.00 less wear and tear depreciation at 10% which equaled €81.00. The letter made reference to the “*Exclusion under Baggage*” section of the policy document and the requirement for a safety deposit box. Reference was also made to the fact that prescription sunglasses under the policy document are listed amongst items to defined as valuables.

On **16 September 2019**, the Complainant telephoned the Provider stating that she was not accepting the settlement and she was advised by the Provider's agent that somebody would return her call to discuss her claim. On **19 September 2019**, a Provider's agent telephoned the Complainant regarding her claim.

I note that during this call, the Complainant again stated that she was rejecting the settlement offer, stating that she did not have a safety deposit box at her accommodation. The Provider's agent stated that even where there is no deposit box available, the items are only covered if “*they are on your person*” or in a “*safe or safety deposit box*” as per the terms of the policy document. A relevant section of the telephone call is as follows:

Complainant:            *“who walks around with €600 money on them? For a meal?...no one”*

Provider's agent:        *“...if it's not secured in a safety deposit box, it is not covered.”*

During the call, the Provider's agent reiterated the wording of the policy document and the requirement of a safety deposit box. The following exchange then occurred:

Complainant:            *“how can you get people to walk around with €600 on them; on their person?”*

Provider's agent:        *“From our experience, we do have people that would carry a large quantity of cash”*

Complainant:            *“well from my experience I don't”*

Provider's agent:        *“and that's totally fine”*

The Complainant further indicated that she had only earned the money for the holiday and stated that she was forced to return home to Ireland early because of the theft. She also stated: “*Don't tell me your money is meant to be on you, this that and the other, because that's xxxsocks*”. The Complainant also stated that her sister had advised her about the cover, stating that she was advised by her sister to pay for the “*platinum cover*”.

On the same day, the Provider sent a further letter to the Complainant which reiterated the wording of the policy documents concerning valuables, personal money, personal baggage and the requirements to exercise reasonable care for the safety and supervision of personal baggage and that certain unattended items had to be deposited in a hotel safe or safety deposit box, in order to be covered.

/Cont'd...

On **20 September 2019** the Complainant telephoned the Provider seeking to speak with the Provider's agent who had previously discussed her claim. During this call, the Complainant stated she wished to lodge a formal complaint and/or appeal the matter. The Provider's Agent stated that he would give the file to a senior officer of the Provider and the said officer would reassess the claim.

By way of email on **20 September 2020**, the Provider contacted the Complainant and stated that if she was unhappy with the settlement offer, she should outline the basis of her appeal and provide any supporting documentation, so that the Provider could revisit her claim.

I note that on the same day, the Complainant sent the following email:

*"I am unhappy with the amount offered in compensation as it only covers the runners and not the cash and the sunglasses. I sent in all documentations needed including pictures to show how we were broken into. I've sent in wage slips showing I get paid in cash and also receipts for both my runners and sunglasses. I told your coworker I wasn't accepting the offer she proceeded to tell me that because my money and sunglasses weren't in a safety deposit box I wasn't entitled to anything back. We didn't have a safety deposit box in our room!! Then she told me that I should have had the money and my sunglasses with me at all times. I was out for dinner at 8 in the evening... why would I have sunglasses?? Then I told her that I would never walk around with €600 on me and that who would walk around with this kind of money?? She then went on to tell me in a very degrading manner that "plenty of her clients/customers walk around with that kind of money on them". Now I don't know if she finds that acceptable way to talk to customers but I don't think it is. I left my apartment locked from within with steel shutters pulled down fully. I didn't ask to get robbed and now this way I'm being treated I'm feeling robbed again. I had to book flights 4 days early from my holiday which I paid for, not any insurance company!!!! I'm just annoyed at the fact that I'm fighting to get paid back for a service I paid for... it was advised to get the platinum cover which I did but I'm still no better off. I'm just so angry at the whole situation."*

On **26 September 2019**, the Provider wrote to the Complainant stating that it had received her recent appeal submission. In the letter, the Provider expressed its sympathy to her following her ordeal but *"it did not pick and choose which terms, conditions and exclusions apply or don't apply to a claim and that these apply to all insured persons in equal measure at all times"*. The Provider also stated:

*"we are sorry if you felt our staff member was unsympathetic to your plight, but there is no easy way to deliver our message without it coming across as a further blow; particularly in the context of a horrible event such as you have encountered. It would in hindsight have been more appropriate for our claim handler to simply tell you about the policy exclusions and leave it at that."*

/Cont'd...

Finally, the letter concluded

*“we are dismayed you think you're not getting what you paid for, but with every respect, the decisions made to date in respect of your claim, have been entirely based on the policy you purchased. It is with much regret we must inform you, despite your appeal, our original proposal remains.”*

On **27 September 2019**, the Provider's agent telephoned the Complainant. During this call, the Complainant indicated that she wished to make a formal complaint and would be making a complaint to this Office. The Complainant stated that she was also raising a complaint about *“how she was spoken to”* during an earlier call.

On the same day the Provider wrote to the Complainant stating that it registered her dissatisfaction as a complaint and would investigate the matter in accordance with its protocol. The letter further stated that in accordance with the Consumer Protection Codes 2012 (the “CPC 2012”), the Provider would update the Complainant in due course regarding the investigation of her complaint.

On **23 October 2019** the Provider wrote to the Complainant to advise that its investigation of her complaint was ongoing and that it would be in touch with her within 20 business days.

On **15 November 2019** the Provider issued its final response letter. In this letter the Provider stated as follows:

*“We have listened to your call with our claims handler on **19 September 2019** we do not agree with your assertion that you “were spoken to in a degrading manner” .*

*We found our claims handler kept an even tone throughout and tried to explain why we had made the decisions that had been previously communicated to you.*

*In regards to the specific comment you have taken issue with: at 3 minutes and 50 seconds you pose the question:*

*“how can you get people to walk around with €600 on them; on their person?”*

*By way of reply, our claims handler replied:*

*“From our experience, we do have people that would carry a large quantity of cash”*

*Later in the call, our claims handler continued to try and explain our position and you stated:*

*“Don't tell me your money is meant to be on you, this that and the other, because that's xxxocks”*

/Cont'd...

*In reply, and again with an even tone, or claim handler replied:*

*“OK, but that is in the terms of your policy and I can understand that...”*

The letter goes on to state:

*“We would add that it was evident upon listening to the call, you are very unhappy with the decision we had previously made with regard to the claim. We contend our claim handler was polite in the context of a challenging encounter. At times during this call, our agent did speak across you and we are very sorry for that.*

*In this regard, we take your perception of the call very seriously. The fact you felt you were spoken to in a degrading manner is an important issue and one which we must take steps to address for future similar circumstances. We intend to provide additional training for our whole team in respect of highly difficult messages we are duty bound to deliver.”*

The letter further reiterates the Provider’s position as put forward in the letter of **26 September 2019** specifically that it was partially declining cover pursuant to the policy documentation. The Provider concludes by stating that if the Complainant remained dissatisfied with its response and wished to pursue the matter further, she could use this letter as its final response to the complaint, to refer the matter to this Office.

### **Analysis**

There are two elements to the complaint, namely that (i) the Provider failed to accept and indemnify the Complainant’s full insurance claim and (ii) that the Provider provided poor customer service and was condescending in its discussion with her. In respect of the first complaint, I have reviewed the policy document which states:

*“WE WILL NOT PAY:*

*...*

*2. if you do not exercise reasonable care for the safety and supervision of your personal baggage and money.*

*[...]*

*14. Loss, theft or damage to your valuables or money left unattended at any time or unless deposited in hotel safe or safety deposit box.”*

Accordingly, as it does not appear to be in dispute that the Complainant’s sunglasses were prescription sunglasses, I am satisfied that the Provider was entitled to refuse to indemnify her for the cash of €600 (six hundred Euro) and the sunglasses. I accept that prescription sunglasses are clearly defined as “valuables” under the policy document. The policy document is clear in stating that to be covered, when unattended, the items must be placed into a hotel safe or safety deposit box.

/Cont’d...



Turning to the complaint concerning the customer service the Complainant received, this is in relation to the specific call between the Complainant and the Provider's agent on **19 September 2019**. Having listened to a full recording of this call, I am satisfied the Provider's agent did not speak in a condescending way to the Complainant. Regarding the Provider's agent stating "*From our experience, we do have people that would carry a large quantity of cash*" I note that this response was given by way of reply to an express question from the Complainant.

When the Complainant stated that she does not carry this amount of money on her person, the Provider's agent stated "*and that's totally fine*", which I am satisfied was polite and acknowledged the Complainant's position. I do not accept that the Provider's agent used a condescending tone and I note that she remained clear in her explanation that the claim was being rejected based upon the terms of the policy document. Therefore, I do not consider it appropriate to uphold this second aspect of the complaint.

I note that since the preliminary decision was issued by this Office, the Complainant has been in communication with the Provider to advise of her acceptance of the claim settlement amount offered in the Provider's letter of **29 August 2019**, and indeed I note the Provider's confirmation that this amount was paid by cheque on 7 September 2021.

Accordingly, for the reasons outlined above, I am satisfied on the basis of the evidence before me, that it is not appropriate 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

30 September 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—**

/Cont'd...

- (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.**

