



<b><u>Decision Ref:</u></b>	2021-0477
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Contents
<b><u>Conduct(s) complained of:</u></b>	Disagreement regarding Settlement amount offered Complaint handling (Consumer Protection Code) Failure to process instructions in a timely manner
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint arises from the Provider's failure to fully indemnify an insurance claim on the Complainant's house insurance policy. The Complainant states that the Provider has not accepted the total amount of her claim, and has failed to pay the total loss, submitted after a break in at her property on **22 February 2015**.

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

The Complainant states that her home was damaged and items stolen in the incident on **22 February 2015**. The Gardaí were called and a subsequent claim was submitted to the Provider. The Complainant says damage to the internal rooms in the house and to furnishings were not all apparent to her when the Gardaí called to the property. The Complainant states that she was "*unwell*" and "*on medication*" and could not list all items that were immediately missing, "*or assess the overall damage and loss*" at the time.

The Provider requested receipts for items of jewellery and validation of electrical items which the Complainant listed in her insurance claim as missing. The Complainant says the jewellery pieces were expensive ("*circa €8000 to €10,000*") and given to her as gifts and she does not have the requested documentation. The report taken by the gardai who visited the property after the theft did not seem to include all of the property and furnishings damaged.

The Complainant is very annoyed that the Provider has not paid “a reasonable sum”, to date. She says that she feels the Provider “[has] hold my good character into question and I'm not prepared to accept this accusation, whether it be by yourself, or your assessors.”

The payment requested by the Complainant to finalise the claim was “€12,000” in her submission dated 25 September 2017. it was not acceptable to the Provider.

### The Provider's Case

The Provider states in its final response letter of two December 2016 “the burden of proving that a loss was caused by an insured cause of loss rests with the [Insured].” the Provider goes on to assure the Complainant that is not the intention of it or its agents to cause “insult or question [the Complainant's] integrity.”

The Provider further submitted that the rear door of the property was damaged and an interim payment was made by the Provider at the time of the incident, to assist with the repair being carried out as soon as possible.

The Provider submitted that the claim was notified to it on 2 April 2015, which was 35 days after the break-in was reported to an Garda Síochána. It also says that during the site inspection the Complainant advised that she found the burglary at the insured property upon her return on 7 March 2015.

The Provider has stated that whilst it is accepted that the Complainant may not have been in the position to itemise to the investigating garda officers all the items missing/ stolen in the immediate aftermath of a burglary, a decision regarding the outcome of the claim settlement offered regarding the items stolen/missing was based on the fact that no evidence of ownership of the stolen/ missing items was provided to the Provider.

On 2 December 2016, the Provider issued its Final Response Letter in circumstances where the Complainant had indicated her dissatisfaction with the settlement proposal of **€3,635** offered to her in settlement of the claim, which she described as “insulting to say the least, and a slur on my integrity”. The Provider explained that no accusations of dishonesty had been made against the Complainant but the loss adjusters on behalf of the Provider were required to follow due process in order to confirm the cause, sequence of events, the extent of damage, and to request validating documentation for items claimed for in order to agree settlement terms. The Provider referred in that regard to its obligations under the Consumer Protection Code to endeavor to verify all claims, prior to making a decision on the outcome.

The Provider pointed out that the 2 attending Gardaí who visited the Complainant's property in the aftermath of the break-in, confirmed the damage to the rear door and accompanied the Complainant to the basement and upstairs area. The Gardaí confirmed that the Complainant had not reported or referred to flooding in the hallway and basement from the shower being left on, or to any spraying water in the ground floor kitchen, smearing of blood onto the wall in the master bedroom, malicious smearing of paint on the living room curtains as a consequence of malicious damage by intruders and damage to the alarm system. The Provider also pointed out that the Gardaí had observed that they did not observe or note any such damage when they visited the property. The Provider advised in those circumstances that it was not in a position to deal with the damage to the Complainant's property, apart from the damaged rear door. The Provider pointed out that the Gardaí noted the report of the theft of an IPAD Mini, [Philips], 32" TV, 2 gold necklaces and 1 silver necklace. The damage to the building including the blood smearing was not however, reported to the Garda Scenes of Crime, who attended the following day.

In addition, the Provider pointed out that certain variations had been noted both in the date of loss and in the list of stolen items, between what was originally advised to the Provider, to its Loss Adjusters and to the Gardaí.

The Provider pointed out that because the Complainant had not satisfactorily substantiated any of the loss of her contents items (in accordance with the conditions of her policy) it had agreed, in the absence of any validating documentation, and in an effort to help progress her claim, to settle the claim based on the information provided to the Gardaí who inspected the property shortly after the incident occurred. As a result, the Provider explained it could only settle the content items on "*entry level models*" due to lack of any corroborating documentation.

### **The Complaint for Adjudication**

The complaint is that the Provider has failed to accept and indemnify the Complainant's full house 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.

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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 **2 November 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 the policy document of the Complainant's house insurance states:

*"Contents*

*The household goods and personal effects belonging to you (or for which you are legally responsible) belonging to members of your household and domestic employees permanently residing with you, all in private house and domestic outbuildings .*

*Money is included up to a maximum of €650 (six hundred and fifty euro). Cover for this item is an all risk basis as defined under Section 2 – All Risks Cover.*

*Any one high value item is covered for not more than 10% of the contents sum insured and the total of these items is covered for not more than 50% of the contents sum insured unless details have been advised to us and are listed on the schedule.*

*Home Office equipment i.e. Personal computers, printers, facsimile, telephone answering machines and the like, is included for amount of €3810 (three thousand eight hundred and ten euro) in any one period of insurance.*

*Excluding:*

*Property otherwise insured.*

- *Motor vehicles, (other than mechanically propelled lawn mowers), marine craft, caravans and trailers, aircraft or parts, keys or accessories of, on or in any of them.*
- *Animal and livestock*
- *Deeds, bonds, securities for money, manuscripts, certificates, bills of exchange, promissory notes and documents of every kind unless specifically mentioned."*

At page 21 of the policy document, it states:

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*“Terms and Conditions*

*Claims – Your duties and Our Rights*

*What You Must do*

*Tell us immediately of any loss, damage or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all the necessary documents and information to support any loss and forward these to us, together with a completed claim form comment within 30 days of first notifying us of the incident.”*

[My underlining for emphasis]

The Provider has submitted that at the time of loss in 2015, the Complainant's policy covered contents for the selected amount of **€50,000** (fifty thousand euro).

The Provider has submitted that the claimant did not select “All Risks” (I.e. “specified items”) and no items were specifically listed as high value items on Complainant's policy.

I note that the Complainant notified the Provider of the claim on **2 April 2015**. On the same day the Provider appointed a loss adjusting firm to deal with the claim on its behalf. The notes concerning the claim notification taken by the Provider state that the Complainant was away for the weekend and there was a break in with damage to the door, alarm and floorings (water damaged as the water was left on). The items taken were noted as a 42 inch Sony television, a laptop, camera, jewellery, and mobile phone. It further stated that the repairer for the door was appointed.

I note that a loss adjuster, on behalf of the Provider, attended the property for site investigation on **21 April 2015**. The Provider had submitted that the Complainant advised the loss adjuster that she left the property on the evening of **5 March 2015**, and upon her return on **7 March 2015** she discovered the burglary at the insured property. This sequence of events was later corrected by An Garda Síochána who confirmed that Gardaí attended the Complainant’s property on **25 February 2015**. The Garda statement from the attendance that day stated the Complainant reported the burglary as having occurred between Monday, **23 of February 2015** and Wednesday, **25 February 2015**. This is what is contained in the official Garda report.

The site inspection report by the Provider’s loss adjuster on **21 April 2015** stated that intruders had removed jewellery and electrical items from the Complainant's property. This site inspection report included a detailed breakdown of buildings reserve and contents and all risks reserve. This included items such as the white gold necklace, white gold ring and Sony television which the Complainant had notified as stolen from the property. The risk assessment from **21 April 2015** also flagged that the Complainant could not substantiate or vouch the items claimed. On **21 April 2015**, a loss assessor was appointed by the Complainant to act on her behalf.

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On **21 April 2015**, the Provider also notified the Complainant that the next steps required to be submitted within 30 days in respect of the claim, were as follows:

- Claims experience letter
- Engineer's report
- Estimate of repairs
- Garda Pulse ID Number
- Photographs of Complainant wearing the stolen or missing jewellery
- Supporting documents or receipts for damaged or stolen items
- Please marry stolen item to supporting documents. photos of jewellery worn, valuations any receipts for stolen
- Report from builder who assessed damage after flooding of basement and kitchen.

This document was signed as "*received and understood*" by the loss assessor on behalf of the Complainant.

Following an assessment at the property on **24 April 2015**, the Provider appointed a glass repairer in relation to the damage to the back door and it was agreed that the work would be carried out on **9 June 2015**.

On **4 June 2015** the Complainant's loss assessor sent the loss adjuster a claim estimate of €12,016.38 (twelve thousand and sixteen euro and thirty eight cent) for "Buildings" and €8869.00 (eight thousand, eight hundred and sixty nine euro) for "Contents". On the same day, the loss adjuster sent an email to the loss assessor pointing out that supporting documentation previously requested was still outstanding.

It is noted from the file that the parties engaged in an exchange of correspondence whereby the Provider continuously sought certain supporting documents it required in order to progress the claim. Accordingly, on **20 August 2015** the loss assessor gave the Provider the following information:

- The items of jewellery claimed by the Complainant were gifted to her from a previous partner and the Complainant would not be in a position to provide proof of ownership because she was no longer in contact with the said partner.
- In regard to the electrical items stolen, receipts could not be located as they were paid for in cash.
- Claims information letter from the Complainant's previous home insurance provider.
- A letter from the Complainant's builder which detailed the damage caused to the property by the water damage. The Provider submitted that this letter was not dated, and the letter did not stipulate when the insured property was inspected by the builder.

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The **20 August 2015** letter also outlined that the Complainant had been ill, and this was the reason for the delay in providing the information required. In this regard I note that the Complainant has provided medical notes from her GP stating that she suffered from stress and depression. Though these notes predate the claim as they are from 2012 and 2013, I accept that the Complainant had ongoing issues with illness thereafter.

An email from An Garda Síochána dated **6 October 2015** described their attendance at the property as follows:

*“on the 25/02/15 I, accompanied by [Garda’s name], attended the residence of the Complainant at the above address. The Complainant reported a burglary had occurred at her house between the 23/02/15 and 25/02/15. I noted damage to the rear door which was forced open. [Garda’s Name] accompanied the Complainant to the basement and upstairs area.*

*The Complainant reported the following items taken; 1 x pad mini, 1 x Philips 32” black colour TV, 2 x Gold Necklaces, 1 x Silver Necklace.*

*The Complainant did not report or refer to flooding in the hallway and basement from the shower being left on and spraying of water in the ground floor kitchen. I, nor [Garda’s name] observed or noted any damage of this description.*

*The Complainant did not report refer to smearing of blood onto the wall on the master bedroom. I, nor [Garda’s name] observed or noted any damage of this description.*

*The Complainant did not report or refer to malicious smearing of paint on the living room curtains as a consequence of malicious damage by intruders. I, nor [Garda’s name] observed or noted any damage of this description.*

*The Complainant did not report refer to damage to the alarm systems, wiring or the panel being pulled of the wall [sic]. I, nor [Garda’s name] observed or noted any damage of this description.”*

I note that the Complainant, her loss assessor, and an agent of the Provider attended a meeting concerning the claim on **18 November 2015**. A typed memorandum of this meeting has been supplied in evidence to this Office by the Provider. During this meeting, the loss assessor drew the Provider's agent attention to the poor quality of the work on the replacement door at the Complainant's property. The Complainant again described that her jewellery had been stolen and she was not in a position to provide receipts or pictures of same.

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Regarding the blood on the walls, the Complainant said she had not looked around the property thoroughly when the Gardai were present, and it was only afterwards that she told the investigating Garda about additional issues she discovered since the initial visit. This included additional items stolen, the paint on the curtains and the issue with the alarm pad. The Complainant also stated that she paid someone in cash to clean the blood off the carpets and the curtains. The Complainant claimed that when she contacted the investigating Garda about these additional matters, she was informed that the report was finalised and, per the wording memorandum of the meeting, the Complainant stated the Garda told her *“there is no point in telling [the Gardai] now”*.

The Complainant also confirmed that despite advertising online, the house had not been available for short term rentals for about one and a half years.

Any complaint against the Garda Síochána, included in the above recital of the memorandum, is not a matter for this Office to comment on or decide upon. It is noted however, that this was the reason given by the Complainant as to why the additional items were not reported as stolen.

On **4 January 2016** the loss assessor telephoned the Provider querying an update on the claim. The Provider indicated that it was awaiting a Garda report, regarding the differences between what was reported to the Provider and was reported to the Gardai. The Provider then called the Complainant and reiterated this position regarding the Gardai. Again, the Complainant stated that the property had not been rented for a while and that when she checked the Internet she noted that the advertisement of a property contained incorrect details so she would not be able to be contacted in any event regarding any perspective rental. The Complainant further stated that she gave a list of all the items that she had not initially reported to the investigating Garda, however, she added that the Garda replied by stating that report was already submitted and would not be amended notwithstanding these additional items. Finally, the Complainant advised that she was not happy with the quality of the door repairs carried out by the Provider's repairer.

On **26 January 2016**, the loss assessor contacted the Provider stating that the water damage reported included also damage to the plasterboard walls at low level and that the timber skirting needed to be replaced. The loss assessor again raised the issue of the work carried out in respect of the door stating that the property door did not close properly and that the security lock did not engage due to the door or frame being warped. The loss assessor advised that the door should be removed and replaced, and the Complainant would organise a contractor to carry out this work.

On **2 February 2016**, the Provider contacted its authorised repairer regarding the works carried out on the door, with a view to having a re-inspection carried out before any repairs were organised by another contractor. An email was sent on the same day to the loss assessor advising them about the re-inspection of the door.

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Following an email on **8 March 2016** from the loss assessor which indicated that the Complainant was not consenting to the use of the same repairer for the door, the Complainant contacted the Provider by phone on **18 March 2016**. The Provider has submitted a note of this call, in which the Provider's agent advised the Complainant that its authorised repairer would have to inspect the door before any works were carried out by another contractor. An email on the same day was sent to the Complainant reiterating this advice and again raising a query as to why the property was being advertised as available to rent on the internet. On **21 March 2016**, a new door replacement contractor was appointed who in turn contacted the Complainant seeking to find out when to call to the house. Following some failed attempts to attend the property when the Complainant was not home, on **6 April 2016** the door replacement contractor attended the property, and it was agreed that the work done by the first contract contractor was substandard and the door would be required to be replaced.

After the loss assessor emailed on **9 May 2016** querying the claim settlement proposals, the Provider replied by way of email on **10 May 2015** stating that it was prepared to offer settlement terms in respect of the damaged door and only in terms of the items that were reported to the two attending Gardaí. It further stated that the items reported to the Gardaí were an iPad Mini, 32-inch television and three items of jewellery. The Provider again stated It required validating or substantiating documentation for the contents, as previously requested by its agent.

There is correspondence throughout **May 2016** between the parties concerning the Provider's requests for supporting documentation from both the Complainant directly and her loss assessor. On **26 May 2016**, the loss adjuster on behalf of the Provider agreed with the loss assessor's quote of €1320 (one thousand, three hundred and twenty euro) plus VAT for the replacement door. It was also agreed on **27 May 2016** that an interim payment of 70% could be issued with a 30% retention to be provided, after the door replacement had been completed.

On **7 June 2016** the loss adjuster emailed the loss assessor with the Provider's settlement proposal letter for the jewellery, offering:

- Replacement of items of jewellery by way of a "Gemcard" in the amount of €1050 (one thousand and fifty euro).
- Cash alternative amounting to €850 (eight hundred and fifty euro).
- A split between "Gemcard" and cash.

On **16 June 2016** the loss assessor sent the following email to the loss adjuster:

*"Further to your recent proposals issued on 7th June 2016, without going into detail just now, we note that you excluded a number of items that were claimed by us along with large deductions of value and items allowed.*

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*Please contact us urgently to discuss the reasoning behind this as the insured has confirmed that she will be handing matters over to her legal advisor immediately should we not receive a fair and reasonable settlement based on all items that have been stolen and damaged."*

On **17 June 2016**, the loss assessor was telephoned by the loss adjuster to discuss the settlement offer. During this call the loss adjuster advised that the settlement was based on what was reported to the Gardai on the day of the loss.

The loss assessor stated the offer was unacceptable to the Complainant and she wanted a settlement based on what was submitted in the claims papers. Furthermore, the loss assessor stated that the Complainant intended to pursue legal action on the matter. The loss assessor also stated that it is often the case that what is reported to the Gardai is different from what is claimed, as the person insured can be distraught at the time of the loss.

On **21 June 2016** the loss adjuster emailed the following settlement proposal:

<i>"Item</i>	<i>Settlement</i>
<i>Buildings</i>	<i>€2396 (two thousand three hundred and ninety-six euro)</i>
<i>Contents</i>	<i>€699 (six hundred and ninety-nine euro)</i>
<i>Jewellery</i>	<i>€840 (eight hundred and forty euro)</i>
<i>Gross settlement</i>	<i>€3935 (three thousand nine hundred and and thirty-five euro)</i>
<i>Less access</i>	<i>€300 (three hundred euro)</i>
<i>Net settlement</i>	<i>€3635 ((three thousand six hundred and thirty-five euro)</i>
<i>Less balance outstanding</i>	<i>€718.80 (seven hundred and eighteen euro and eighty cent)</i>
<i>Less payment already made</i>	<i>€1048.74 (one thousand and forty-eight euro and seventy-four cent)</i>
<i>Payment now due</i>	<i>€1867.46 (one thousand wight hundred and forty-six cent)"</i>

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I note that the letter went on to say:

*“as per our previous email we have been instructed by [the Provider] to issue settlement proposals based on what was reported lost and or damaged to the Gardai on the day of their visit to [the Complainant’s] home. As previously outlined, as we have no original supporting documentation, settlement is based on the lower end of the price scale.*

*In this regard the gardai were advised and noted damaged the rear kitchen door which had been forced open and consequent theft of 2 Gold Chains, Philips 32” TV, IPAD mini and a silver chain on the date of their call out following the break in. Please note that if you are dissatisfied with the settlement offered to you comment you can opt to register a complaint. You can phone us, email us or write to us with your complaint.”*

On **18 July 2016** the last assessor emailed the loss adjuster seeking explanation for the items which were claimed in the Complainant's claim which were not included in the Provider's settlement offer. The loss assessor received a reply from the loss adjuster stating that all information requested was set out in the email of **21 June 2016**. Following reminder letters from the Provider seeking the Complainant's position as regards to the settlement offer, on **30 September 2016** a complaint letter was sent by the Complainant regarding the Provider's settlement offer. In this letter, the Complainant stated it was nearly two years since the break-in to her property and the matter had not been resolved. She also stated that:

*“...after nearly 80 calls to [Provider's agent] and 3 meetings with [Provider's assessors], they have come with attached figure which I find insulting to say the least, and a slur on my integrity.*

*Just to recap at the time of the incident I had come back after illness and was very traumatised at the time and was on medication. The Gardai were called and it was a couple of delays after this that I came across more damage to the property as illustrated in the attached document and loss of further belongings. I discussed this with Messrs [Provider's agent and loss assessor] on a number of occasions. My doctor is willing to confirm this.”*

It is noted that there was further correspondence between the parties regarding the Provider's requests for outstanding documentation and acknowledgement of the Complainant's complaint. On **2 December 2016**, the Provider issued a final response letter to the Complainant confirming that the claims settlement offered was correct based on the information on file. In this letter the Provider states the following:

*“... I would like to assure you that it is not the intention of [the loss adjuster] or [the Provider] to cause insult or question your integrity and I can fully appreciate that the theft has caused significant upset to you at a difficult time. I'm sorry to learn that the [loss adjuster's] settlement offer has offended you.”*

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The letter went on to say:

*"I would like to stress that no accusations of dishonesty have been made against you and as you will understand [Loss Adjuster] acting on behalf of [Provider] are merely following due process like we must do in any claim, where we must confirm the cause, sequence of events, the extent of damage, request validation documentation for items and agree settlement terms where an Insured has validated their loss where they have suffered loss or damage. Indeed the Consumer Protection Code 2012 demands that we must endeavour to verify all claims prior to making a decision on their outcome.*

*Your insurance policy booklet sets out the detailed terms and conditions of your insurance. Your insurance policy provides cover when damage occurs to the property, but only in certain specified circumstances. It will not cover every possible cause of loss or damage and will only do so within the terms and conditions of the policy and where a loss is not excluded by those terms. In order to be covered by the policy, the damage must result from one of the causes of loss that are outlined in your insurance policy booklet, e.g. storm, theft, flood, etc.*

*The burden of proving that a loss was caused by an insured cause of loss rests with you, the Insured. As per your policy booklet under the Terms and Conditions section you must "tell us immediately of any loss, damage or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to us, together with a completed Claim Form, within 30 days of first notifying us of the incident". We are also entitled to "receive all necessary assistance from you or any other person indemnified by this Policy".*

*From discussing the matter with our loss adjuster, we understand that no substantiating documentation has been presented to date to help validate your claim which is a condition of your policy. I also understand that the water damaged carpet may have been disposed of.*

*The two attending Gardaí who visited your property in the aftermath of the break-in have confirmed they noticed damage to rear door and accompanied yourself to the basement and upstairs area. The Gardaí further confirm that you did not report or refer to flooding in the hallway and basement from the shower being left on and spraying water in the ground floor kitchen, smearing of blood onto the wall in the master bedroom, malicious smearing of paint on the living room (sic) curtains as consequence of malicious damage by intruders and damage to the alarm system. They also confirmed they did not observe or note any of the previously mentioned damage caused to your property. Therefore we are unable to deal with the damage to your property apart from the damaged rear door.*

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*The Gardaí have noted that you reported the theft of an iPad mini, Philips 32" TV, 2 gold necklaces and 1 silver necklace. I also note that the damage to the buildings including the blood smearing was not reported to the Garda Scenes of Crime who attended the following day.*

*Please note that we are not in any way casting aspersions about yourself or how your claim has been presented but merely stating facts of what the two attending Gardaí have noted in their records when they called to your property, there has been variations in the date of loss and the list of stolen items between what was advised to [Provider], [Loss Adjuster] and the Gardaí.*

*Prior to [Loss Adjuster] making our offer, I advised both your Public Loss Assessor and yourself of what information we required, what items we could cover and the rationale for our loss adjuster's forthcoming settlement offer in our email exchanges back in May 2016 where we could only deal with claim on the items reported to the guards and that can be validated.*

*From reviewing your file I note that [Loss Adjuster] first made a settlement offer to your Public Loss Assessor on 7 June 2016. This offer issued was in respect of the Buildings was to replace the rear kitchen door of your property and to redecorate the kitchen. The Contents offer was in respect of 32" TV, iPad mini, 2 Gold chains and a Silver necklace. The total combined offer was €3,635.00 net of your €300.00 policy excess. We have already issued an interim payment in the sum of €1,048.74 for repairs to your damaged rear kitchen door and can arrange for payment of the outstanding amount of €1,867.46 (excluding an outstanding balance of €718.80 which will be held on file pending from yourself receipt of final invoices/receipts and photographs or possible reinspection and we are satisfied that the agreed building works have been completed and the agreed costs have been incurred), subject to your acceptance.*

*Regardless of the above, you have to date, not satisfactorily substantiated any of the loss of your content items which would be a condition of your policy before we can issue payment. Thus we agreed in the absence of any validating documentation and in effort to help progress your claim to settle your claim based on the information provided to the Gardaí who inspected your property shortly after the incident occurred. As a result we could only settle the Content items on entry level models due to lack of any corroborating documentation.*

*If you could provide any corroborating documentation, that you may possess at all, we would gladly review that element of your claim.*

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*Please understand [Provider] and [Loss Adjuster] have acted in good faith and have attempted to assist as best as possible in dealing with your claim. We regret that you feel that we taken [sic] a particular stance, but there are a number of issues that remain outstanding in this case and we have simply been trying to assist in bringing this matter to a conclusion. It has always been our intention to try and progress your claim within the terms of your policy conditions.*

*Given the nature of your complaint I wish to assure you that the matter has been reviewed thoroughly, however I have found no grounds upon which to uphold your complaint. Whilst I empathise with your ordeal, I am entirely satisfied that [Loss Adjuster's] offer is in order.*

On **12 December 2016** a revised estimate for the Complainant's claim was sent by the loss assessor amounting to €15,154 (fifteen thousand euro, one hundred and fifty four euro). This was broken down into:

- €8285 (eight thousand two hundred and eighty-five euro) claim for the Premises
- €6869 (six thousand eight hundred and sixty nine euro) claim for the contents.
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After reviewing the updated estimate, Provider confirmed on **20 December 2016** that its position regarding the claim settlement had not changed from its final response letter of **2 December 2016**, quoted in detail above.

The Provider has submitted that on **3 April 2017**, the Complainant contacted it by telephone stating that she received the renewal of her home insurance policy which had indicated that her claim was noted as finalised. The Provider submitted that it advised the Complainant that because it did not receive a reply to the settlement offer accordingly the file had been closed for the time being. The Complainant requested a copy of the file regarding her claim. This was duly sent to her, and the claim was reopened by the Provider. The Complainant issued a further letter on **11 July 2017** whereby it stated that, since the telephone conversation of **3 April 2017**, there had been no contact from either the Complainant or her loss assessor. After further contact between the parties, on **5 October 2017** the Provider received a letter from the Complainant which stated that she would accept an offer of €12,000 (twelve thousand euro). The Provider again reiterated that its position remained as set out on **2 December 2016**.

The Complainant has submitted that she did not have an “*opportunity to actually go around the house until later*” after the property was broken into. She stated that she had “*numerous [one hour] long conversations*” with [the loss adjuster] over a two-year period and “*did not seem to be getting anywhere.*”

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The Complainant has submitted that she came to the conclusion that *“the [Provider] did not believe [her]”* and she became so frustrated that she reduced the claim. She stated that the following items were not covered in the Provider’s settlement offer in her submission document to this Office:

- iPhone – the Complainant submitted this item was taken and was a present from her sister;
- Laptop - the Complainant submitted this item was taken and was a present from her ex-partner;
- Jewellery – The Complainant submitted her necklace and rings were taken and were presents from her ex partner;
- Bedroom – The Complainant submitted her lamp was taken and there was blood on the walls which she did not notice until later;
- Ground floor - The Complainant submitted the ground floor was “soaking wet” and suffered damage.

The Complainant stated that she had requested that the third-party accommodation provider remove the advertisement from the internet for her property prior to the incident/robbery. I accept that the Complainant was not leasing the property out at the time of the incident, as there was no evidence offered by the Provider or otherwise, that the property was leased or available to be let.

The Complainant made a complaint to this Office in **March 2020**.

In her email of **12 September 2017**, Complainant made the following accusation against the Provider:

*“no wonder [the loss adjuster] have not being taking my insurance seriously as you have certainly not helped matters by not dealing with my claim in a professional manner. I've never listened to such waffle from you about what you were going to do over the years and in the end it would appear that you did little or nothing to finalise my claim. You should receive an award for giving me false promises over the years and wasting your company's time and money, not to mention your company's reputation.”*

I do not accept the Complainant’s submission that the Provider acted unprofessionally. It is noted from the Provider's letter dated **2 December 2016**, that it acknowledged the difficulty associated with having to deal with an insurance claim after the property had been broken into and the traumatising aspect this entails. I further note the following from the Complainant's policy document which made clear her obligation:

*“[you are] required to produce, at your own expense, all the necessary documents and information to support any loss and forward these to us, together with a completed claim form comment.”*

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Accordingly, although the Complainant's claim has continued over a considerable period of time, I accept that the Provider has been very clear in seeking the required documentation for the items the Complainant stated were taken from her house. The policy document requires that any claim for such items must be supported by this documentation but the loss assessor and/or the Complainant were unable to provide the said documentation throughout this process.

Neither do I accept the Complainant's submission that her *"good character had been called into question"*. The Provider was entitled pursuant to the policy terms to seek the supporting documentation. I do not accept the Complainant's contention that the Provider failed to indemnify her insurance claim in circumstances where she failed to provide any supporting documentation.

In this regard, it is also noted that the Provider has stated *"If you could provide any corroborating documentation, that you may possess at all, it would gladly review that element of your claim."*

In those circumstances, I do not consider it appropriate to uphold the Complainant's complaint that the Provider has failed to accept and indemnify her in respect of her full insurance claim. In the absence of supporting documentation, I consider the Provider's position to have been reasonable and if the Complainant is not in a position to produce the supporting documentation, she will need to decide whether or not to accept the settlement proposal put to her by the Provider.

However, it is noted that from **18 November 2015**, the Provider was on notice of the Complainant's issue regarding the work done on her door by a contractor who was employed by the Provider. This was a particularly urgent issue because the Complainant raised her concern with the lock on the door which, it goes without saying, raised a security concern which had particular resonance in light of the age of the Complainant and the previous break-in.

In this regard, the Provider must comply with following section of the Consumer Protection Code 2012:

*"2.10 ensures that any outsourced activity complies with the requirements of this Code"*.

Though I acknowledge that (i) the door was eventually repaired with no extra cost to the Complainant and (ii) some of the delay in having the door re-inspected was not due to the fault of the Provider, ultimately I am satisfied that the initial works were substandard and it took several reminders from the Complainant to have this issue rectified.



Having regard to the particular circumstances of this case, in particular the failings on the part of the Provider with respect to the outsourced repair of the door of the Complainant's property, I consider it appropriate to partially uphold this complaint and to direct the Provider to make a compensatory payment of €500 (five hundred euro) to the Complainant.

Insofar as the remainder of the Complainant's claim is concerned, and her desire to recover benefit payments from the Provider in respect of the items claimed for in the form of contents, including jewellery, I am satisfied that, in the absence of vouching documentation to verify the specific nature and value of the Complainant's losses, the Provider is not in a position to advance the matter any further. I take the view that there has been no wrongdoing by the Provider in that regard and this aspect of the matter is not upheld.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

3 December 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—

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- (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.**

