



<u>Decision Ref:</u>	2022-0210
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Van
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a **Van Insurance Policy** with the Provider. The policy period in which this complaint falls, is from **19 August 2017** to **18 August 2018**. This complaint concerns the Provider's failure to admit and pay the Complainant's claim after his van was stolen.

The Complainant's Case

The Complainant says that at approximately **16:30** on **2 May 2018**, his van was stolen while he was at work.

The Complainant says he was unable to carry the key to his van on his person for health and safety reasons, as the key might have caused injury to him in the event of a fall. He says that for this reason, he had put the key to his van in the cab of the excavator machine, in which he was working. The Complainant says that he stepped out of the excavator to assist a co-worker and it was during this time that he saw someone driving away in his van. He says that the van was parked reasonably close to the excavator.

The Complainant reported the incident to An Garda Síochána on **2 May 2018** and subsequently included evidence of this to the Provider, as part of his claim papers.

Following its assessment, the Provider wrote to the Complainant on **25 May 2018** to advise that it was not in a position to indemnify his claim, as he had left the key to his van unsecured.

In his letter to this Office dated **15 November 2018**, the Complainant submitted that:

“The facts of the matter are...that I was on a building site operating an excavator and had the key to my van in the cab of the excavator with me. To have had the keys on my person would not have been best Health & Safety practice as in the event of a fall or trip I could have been injured by the key”.

In his email to this Office of **20 January 2020**, the Complainant’s Representative submitted that:

“ ... [the Provider] in our view has taken an unreasonably narrow view in regard to securing the keys. The keys were in the cab of the excavator that [the Complainant] was operating and yes he was hopping [in] and out of the cab during the course of his work. If [the Complainant] had had an option to lock the keys away in an office I might accept the declining of the claim but in this case the excavator cab was [the Complainant’s] office”.

Similarly, in his email to this Office of **30 January 2020**, the Complainant’s Representative further submitted that:

“ ... I am still of the view that the cab of the excavator that [the Complainant] was operating on the day could have been viewed as the equivalent of an office desk and the immediate vicinity of the excavator as his office and as the key was in the excavator it was in a secure place.

... I feel the line taken by [the Provider] is unreasonable and a little compromise could go a very long way in satisfying [the Complainant’s] dissatisfaction at the result of his claim”.

The Complainant seeks for the Provider to admit his claim in full.

The Provider’s Case

The Provider says that the ‘Incident Description’ provided in the **First Notification of Loss (Broker Use Only)** form states that the Complainant:

“left keys of the van in the ashtray of the digger, got out of the digger and seen one guy robbed it”.

Following its claim assessment, the Provider wrote to the Complainant on **25 May 2018** to advise that it was not in a position to indemnify his claim, as it says that he had left the key to his van unsecured.

In this regard, the Provider notes that the ‘General Conditions’ section of the **Van Insurance Policy Document** provides at pg. 15, as follows:

“Duty to take care

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Any person claiming cover under this Policy must take all reasonable steps to prevent any incidence of accident, injury loss or damage. You must keep Your Van in a roadworthy condition. While unattended, Your Van must be left locked. The ignition key must never be left with Your Van. You must allow us to examine Your Van”.

In addition, Section 2, ‘Loss of or damage to Your Van’, of this **Policy Document** provides at pgs. 22 - 23, as follows:

“What is NOT covered under this Section

We will NOT pay: ...

14. for loss or damage caused by theft or attempted theft if the keys (or keyless entry system) are left unsecured, or left in (or on) Your Van while it is unattended”.

The Provider says that the **Van Insurance Policy Document** states that for a claim to be valid the keys must not be left unsecured. The Provider says that the van key was by definition not secured, in that the key was placed in an excavator that was left open and was not in any way protected from the risk of loss. The Provider says that no effort was made to protect the key or to prevent a thief from taking it, in that no care was given to ensuring that a person could not simply walk up to the excavator and help themselves to the key. The Provider says it therefore follows that if no effort was made to protect the key, it was by definition unsecured.

The Provider says it is using the ordinary meaning of the term “unsecured” and it does not consider this to be an ambiguous term that needs its own definition in the **Policy Document** as it is an everyday word. In this regard, the Provider notes, for example, the Merriam Webster dictionary definition of “unsecured” is “not protected or free from danger or risk of loss”. The Provider says that its use of the term “unsecured” in this context is absolutely in line with that definition. The Provider maintains that the Complainant did not protect the key from loss, which it says was absolutely proven by the fact that it was taken by a person without difficulty and without that person having to overcome any barrier or obstacle.

The Provider says that any alternative definition of “unsecured” that would, in the circumstances of this complaint, render the key secured would not be a reasonable definition.

In its **Formal Response** to the complaint investigation by this Office in **November 2019**, the Provider notes that at no stage in its handling of his claim or complaint up to that date, had the Complainant ever expressed any confusion or alternative understanding of the requirement to secure the key. He had not asserted that placing the keys in the excavator constituted securing them, nor had he contended that it was unreasonable for the insurer to require him to do so.

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In response to the Complainant's Representative's suggestions in his email of **20 January 2020** that *"in this case the excavator cab was [the Complainant's] office"* and in his later email of **30 January 2020** that the excavator can be *"viewed as the equivalent of an office desk and the immediate vicinity of the excavator as [the Complainant's] office"*, the Provider says that the immediate vicinity in this scenario is in the open air with no means to secure anything. The Provider also says that if it accepts the comparison of the excavator to a desk, then it has to imagine that the keys were left on the desk and the desk itself was unattended and in the open air; so, once more, the keys were not secured.

The Provider says there has been no coherent or compelling evidence or particulars concerning how the Complainant secured his keys from theft as he is required to do.

In response to the Complainant's contention that he was unable to secure the key in one particular manner, namely, that he was unable to carry the key to his van on his person for health and safety reasons, the Provider says that the requirement in the contract is simply to not leave the key unsecured as this greatly increases the risk of theft. The Provider notes that keeping the key about his person is one of the several options that the Complainant could have taken to secure the key. It says, for example, that he could have entrusted it to a colleague, locked it in a building, or simply had the excavator he left the key in locked, and entrusted that key to a colleague.

The Provider says if, as the Complainant claimed, it is contrary to health and safety practice to carry an item as small as a key in one's pocket, though it notes that no evidence of this requirement has ever been made available to it, the onus is clearly on the policyholder to find an alternative method of securing the key, not on the insurer to waive a contractual requirement simply because it is inconvenient to the policyholder to comply with it.

In response to the Complainant's Representative's comments in his email of **20 January 2020** that the Provider *"has taken an unreasonably narrow view in regard to securing the keys"*, the Provider says it has taken an ordinary and logical view to the matter. The Provider notes that the policy requires that the keys be secured and it says it is plainly evident from the circumstances of the theft that the key was not in fact secured when stolen.

Accordingly, the Provider is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of his **Van Insurance Policy**.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably declined the Complainant's 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 including recordings of telephone calls furnished in evidence and considered by this Office.

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 June 2022**, 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, 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.

I note that the Complainant's van was stolen on **2 May 2018** while he was at work. The Complainant says that he had placed the key to his van in the ashtray in the cab of the excavator machine in which he was working. The Complainant says that he stepped out of the excavator to assist a co-worker and that it was during this time that he saw someone driving away in his van.

The Complainant's **Van Insurance Policy**, like all insurance policies, is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. I note in that regard that Section 2, 'Loss of or damage to Your Van', of the **Policy Document** provides at pgs. 23-24:

"What is NOT covered under this Section

We will NOT pay: ...

14. for loss or damage caused by theft or attempted theft if the keys (or keyless entry system) are left unsecured, or left in (or on) Your Van while it is unattended".

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Having considered the evidence available, I am of the opinion that it was reasonable for the Provider to conclude from the circumstances of the loss, as reported by the Complainant, that when he left the key to his van in the excavator and then left that machine unattended and unlocked, that he had left the key to his van unsecured.

In this regard, I do not share the Complainant's Representative's view that the excavator the Complainant left the key to his van in, can be considered the equivalent of an office desk and the immediate outdoor vicinity of the excavator, his office.

In addition, I accept the Provider's position that keeping the key about his person was just one of several options the Complainant could have taken, to secure the key to his van.

I am satisfied that in accordance with the insurance terms agreed, the onus was on the Complainant as the policyholder, at all times to ensure that he had not left the key to his van unsecured. I take the view that when he left the key to his van in the excavator and then left that machine unattended and unlocked, that it cannot be said that the Complainant had taken reasonable measures to ensure that the key to his van was secure.

As a result, I am satisfied that the Provider was entitled to decline the Complainant's claim, in accordance with the terms and conditions of his **Van Insurance Policy**.

Having regard to all of the above, I take the view that the evidence does not support the complaint that the Provider wrongfully and/or unreasonably declined the Complainant's insurance claim.

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
Financial Services and Pensions Ombudsman (Acting)

24 June 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.