

**Ombudsman determination**

**CIFO Reference Number: 16-000400**

**Complainant: [The complainant]**

**Respondent: [Company X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.<sup>1</sup>

The complaint relates to a claim on a contents insurance policy following the theft of a number of items.

**Background**

[The complainant] lives in a property with an annexed flat for household staff. [The complainant's] housekeeper, [redacted for anonymisation purposes] was resident in the annexed flat at the time of the following events:

On 28<sup>th</sup> December 2015, [the complainant] returned to the property to find that a number of valuable items, worth approximately £48,000, had been stolen. [The housekeeper] had vacated her flat, and was later found to have left the island with her partner.

[The complainant] reported the incident to the [jurisdiction 2] Police. [The housekeeper] was suspected of committing the theft and was apprehended along with her partner upon their return to the island. However, she did not have any of the stolen items on her person and so the police were unable to bring any charges against her.

The police had no further lines of enquiry, and so the investigation was closed. The property had not been broken into by force or ransacked, and [the housekeeper] was the only individual, other than [the complainant], who had access to the property. [The complainant] subsequently submitted a claim to [Company X] for the stolen contents.

[Company X] concluded that, on a balance of probabilities, the items had been stolen by a member of [the complainant's] household, likely [the housekeeper]. The insurance policy excludes cover for damage caused by

*'malicious wilful or deliberate acts by you or any member of your household', which includes 'domestic employees which permanently live with you'.*

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<sup>1</sup> Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

The balance of probabilities test is a judgement as to which version of events is more likely than not to have occurred, taking into account all the circumstances of the case and the available evidence. One does not need to be satisfied 'beyond all reasonable doubt', which is a higher threshold generally reserved for criminal matters.

CIFO will apply the balance of probabilities test where evidence is missing, incomplete, or conflicting, which is the case in this matter.

The case handler who initially reviewed this case looked at the circumstances of the break-in, and determined that [the housekeeper] was the most likely cause of the loss for the following reasons:

1. There was no evidence of a forced entry, and [the housekeeper] was the only individual who had access to the property other than the homeowners themselves;
2. The property had not been ransacked, suggesting that the perpetrator knew where the valuables were located (this was knowledge which [the housekeeper] would have possessed); and,
3. Items which [the housekeeper] had previously expressed an interest in, whose value would not be immediately apparent to a thief, had been taken.

The case handler considered two alternative explanations: that the property was unsecured and was entered by a passing opportunist, or that the theft was conducted by professionals who were able to cover any traces of a break-in.

The case handler set aside the first explanation, because leaving the property unsecured, even inadvertently, would have been a basis to exclude the claim in any event.

The second explanation was considered insufficient to discount the specific nature of the items stolen and [the housekeeper's] abrupt departure from the island coinciding with the theft.

Having concluded that [the housekeeper] was, on a balance of probabilities, responsible for the loss, the case handler assessed whether this would be excluded under the policy terms and conditions.

The case handler considered that [the housekeeper] met the policy definition of a domestic employee, and that she was a member of [the complainant's] household.

The case handler therefore concluded that [Company X] had not been unreasonable to exclude the claim under the policy.

[The complainant] disagreed with the case handler's findings, and so the case was escalated to me for a final decision.

## **Findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

[The complainant] has highlighted the lack of evidence against [the housekeeper] which meant that she was released by the police without being charged. However, I understand that the police suspected [the housekeeper] of a criminal act of burglary, and so they would need to meet a much higher evidence threshold before charges could be brought.

This lack of evidence does not preclude me from making a judgement on the balance of probabilities in this case, which is a claim against an insurance company and not [the housekeeper].

[The complainant] has argued that [redacted for anonymisation purposes], who was [the housekeeper's] partner at the time and now her husband, would also have had access to the property, and that [the housekeeper's husband] was not his employee or a member of the household.

While I understand that [the housekeeper's husband] may have had access to the annexed flat where [the housekeeper] lived at the time, I would not expect him to have had access to the main property if he was not employed for housekeeping duties like [the housekeeper].

It appears that [the housekeeper's husband] was with [the housekeeper] when they left the island, and also when they were subsequently arrested upon their return.

I consider that if [the housekeeper's husband] was responsible for the theft, then it could only have been possible with the involvement of [the housekeeper]. The specific items which were stolen, and the lack of any ransacking or a forced entry, suggests that the thief had access to and intimate knowledge of the main property. On the balance of probabilities, I consider that this access and knowledge could only have been provided by [the housekeeper].

The policy excludes cover for damage caused by

*'malicious wilful or deliberate acts by you or any member of your household',*

and I consider that [the housekeeper's] actions in this scenario would still fall within this clause.

I conclude that there are two versions of events which, on balance, are most likely to have occurred: [the housekeeper] stole the items personally, or [the housekeeper] enabled her partner to steal the items. Regardless of which version of events is more plausible, [the housekeeper] would have caused the loss in both instances. I therefore cannot conclude that [Company X] have acted unreasonably in denying the claim.

[The complainant] has also questioned whether he would enjoy the same 'balance of probabilities' approach if the matter was taken to court. [The complainant] may wish to consult with legal counsel on this point, as I am unable to offer any advice in this regard.

## **Decision**

My final decision is that I do not uphold this complaint.

## **Next steps for the complainant, [redacted for anonymisation purposes]**

You must confirm whether you accept this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **6<sup>th</sup> December 2017**. The determination will become binding on you and [Company X] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 6<sup>th</sup> December 2017, please contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise you and [Company X] of the status of the determination once the deadline has passed.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 2<sup>nd</sup> November 2017