



<u>Decision Ref:</u>	2018-0061
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Farm & Livestock
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's decision to decline cover for a claim submitted by the Complainant under his policy of insurance, for storm damage caused to his cattle shed.

The complaint is that the Provider has incorrectly or unreasonably refused to admit and pay the claim in question.

The Complainant's Case

In July 2016, the Complainant went about building an extension on to his cattle shed and he noticed that the shed was "twisted".

He submitted a claim to the Provider in respect of storm damage to the shed but this was declined, on the basis that there was no evidence that the damage had been caused by a storm.

The Complainant submits that the Provider's decision to decline the claim is unfair and dishonest and is an "unreasonable failure to honour the insurance cover which was sold", to him.

The Complainant submits that he has held farm, quarry, tractor, construction and employer's liability insurance cover with the Provider, for over 25 years, and that he has never made a claim previous to this.

The Complainant points to the Final Response Letter received from the Provider and submits, in respect of the “excuses made to decline the claim”, that the letter appears to suggest that the damage had happened gradually over time or from faulty workmanship and submits that these issues were not raised with him on site by the Loss Adjuster. The Complainant strongly denies that there were any issues with the workmanship involved in the construction of the shed - he points to the fact that the shed was, in the main, built by himself and his son, and that he himself has been in construction for most of his life and that there is no way that he would have attempted to stand six steel pillars that were twisted, in the construction of the shed.

The Complainant submits that the Loss Adjuster agreed with him, on site, that the ground around the shed had not slipped.

The Complainant submits that the Loss Adjuster did not tell him that he saw no evidence of any storm damage to the shed.

The Complainant submits that Loss Adjuster told him that he would expect that the sheeting on the shed would have been blown off by the storm, and that he suggested to the Loss Adjuster that the shed was probably full of bales at the time.

The Complainant submits that the only thing that could have twisted the shed was a storm.

The Complainant submits that, prior to his insuring the shed, it was inspected by a representative of the Provider before it could be insured and that if it was structurally unsound, the Complainant questions why the Provider allowed him to insure it.

The Provider's Case

The Provider notes that the Complainant's complaint relates to the declination of a claim due to no operation of a recent insured peril. It submits that the Complainant registered a claim for alleged storm damage to his cattle shed, on the 20th July 2016. The Provider says that he discovered the damage to the shed on the 04th July 2016 when he was about to start work on an extension, to the rear of the shed.

The Provider submits that the Complainant was not able to relate the damage to any recent storm event.

The Provider submits that the Loss Adjuster who carried out an inspection of the shed on the 26th July 2016 found no evidence of any storm damage to the shed. The Provider submits that, to date, the Complainant has not submitted any evidence to support his claim that a recent storm was the cause of the damage to the shed.

The Provider notes that the Complainant put this shed on cover, at the time of policy renewal on the 20th July 2010. The Provider submits that its local office sales representative did attend the Complainant's property on the 08th July 2010 and viewed the general condition of the shed before placing it on cover but submits that its sales

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representatives are not engineers and that they would not be qualified to comment on the total construction of the shed.

The Provider submits that, upon inspection, the Loss Adjuster found the construction of the shed to be poor and he advised that, should the twisted trusses not have been pointed out, they would not have been noticed prior to this claim. The Provider submits that the Loss Adjuster found no evidence that the damage to the shed was as a result of an insured peril and that, therefore, it does not fall to be covered under the policy.

The Provider says that it remains fully satisfied that the steel pillars of the cattle shed could not have been twisted by storm winds and says that this is reinforced by the fact that the galvanised roof seemingly remained intact. The Provider says that the Complainant only discovered the problem in July of 2016 when he was working near the shed but he has no recollection of a preceding storm and it submits that, in any event, quite enormous forces, well in excess of storm wind speed, would be required to twist steel pillars which the Provider submits were salvaged, in 2003, from a previous shed.

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 08 March 2018, 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. Whilst all submissions received since the Preliminary Decision was issued have been considered in detail, these submissions do not

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raise any error of law or error of fact such that I consider it appropriate to alter the outcome of my Decision.

No claim form was submitted by the Complainant but the Provider submits that the claim was registered with the Provider on 20th July 2016.

The Loss Adjuster, appointed by the Provider carried out an inspection of the Complainant's shed on 26th July 2016.

The Loss Adjuster's Report, dated 05th August 2016 states as follows:

Description of Property:

The Insured farm building comprises a mono pitch, cattle shed of steel pillar and concrete block construction clad under box profile sheeting. [The Complainant] advises that the shed was constructed in 2003 and it seems that some of the steel pillars were salvaged and re-used from another shed. [The Complainant] advised that has [sic] been involved in the building trade and that he undertook the majority of building works while also employing tradesmen such as block layers when necessary.

Usage of Building:

The Insured farm building is utilised as a cattle shed however, [the Complainant] also advised that the shed was previously used for storing straw.

Circumstances/Discovery:

On or around 04th July 2016 [the Complainant] was excavating to the rear of the shed as he intends to extend the size of the farm building when he noticed that a number of the steel uprights and trusses of the shed have twisted. [The Complainant believes that this was caused during a previous storm event, however, he is unable to identify when it may have occurred. [The Complainant] suggested that it may have occurred when the shed was last full of straw but he was unable to recall when this may have been (it seems to have been a number of years ago – the shed is currently used for cattle.)

Cause:

Alleged storm.

Although we were able to observe that a number of the steel uprights and trusses do appear to be somewhat distorted, we were unable to identify any evidence of a recent storm event.

We fail to accept that the steel beams were subject to wind of such force that it twisted these but yet left the profile steel roof and side sheeting in place.

On the 05th August 2016, a letter of declinature issued to Complainant from the Loss Adjuster, advising that, "*following our inspection of the damage to the cattle shed and consideration of the circumstances surrounding this incident, we are unable to identify any evidence of damage caused by a recent storm event or any other event for which your*

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policy will come to your assistance. Taking the above circumstances into account, we must now formally repudiate your claim on Insurers behalf."

By letter dated the 16th of August 2016, the Complainant contacted the Provider to make a complaint about the declinature of the claim.

On 29th August 2016 the Provider issued its Final Response letter to the Complainant, to advise that his complaint had not been upheld.

The letter stated that:

Firstly as you are no doubt aware any insurance policy purchased by an insured is subject to a number of terms and conditions and is restricted to certain defined insured perils outlined in the policy document which must operate prior to consideration by us of any request for payment. You will appreciate that our policy whilst providing a wide range of covers does not cater for any damage which is due anything happen [sic] gradually over time or faulty workmanship carried out on your property.

In this regard I would respectfully refer you to your Policy wording.

EXCEPTIONS

The Company will not Indemnify the Insured against:-

1. Loss or damage caused by, or resulting from:

- (a) wear and tear, depreciation, moth, vermin, or any process of cleaning, dyeing, repairing or restoring, mechanical or electrical breakdown, or derangement, atmospheric or climatic conditions or any other gradually operating cause;*
- (b) delay, confiscation or detention by order of any Government or Public Authority.*

On review of the file of papers I note that [the Loss Adjuster] carried out an inspection of your property on the 26 July 2016, during the course of his inspection he advised you that he saw no evidence of any storm damage to the property. [The Loss Adjuster] advised that there was no movement in the roof or wall cladding which would have occurred should the steel trusses have been affected in storm conditions. He noted that the steel trusses are twisted but if this had resulted from a storm the sheeting would have expected to have blown off also. You have provided no evidence to support your claim that this was caused by a recent storm.

On review of the policy details here I can confirm that [name] the local office representative in our xxxxxx branch did visit your property as part of a review of your policy here with us on the 08 July 2010. It was on this day that having viewed the general condition of the cattle shed that he confirmed that it could be added to your farm multiperil policy. The cover offered was fire, lightning, explosion and storm. I must point out that a local office representative would only view the visual condition of a shed and discuss the valuation of same with the customer before granting cover. I have discussed the condition of the shed with loss adjuster [Name] and on review of the photographs of the shed from the

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inspection carried out by him it is clear that unless pointed out the twisted trusses would not have been noticed prior to this claim."

Analysis

The Complainant has submitted that he has paid a substantial amount of money to the Provider, over the past 25, or so, years, in premia and has never submitted a claim before the one. He has submitted that there is no argument between the parties but that the shed is damaged.

Whilst I appreciate that it is frustrating for the Complainant to find himself in the position he has, ultimately, the amount of premia paid and the number of claims made does not have a bearing on the assessment of whether this particular damage/loss falls to be covered under the Policy of Insurance which is in place, and this can be determined only by reference to the terms and conditions relating to cover, as set out within the Policy and Schedule of Insurance.

Policy Cover

The "*Farm Multiperil Schedule*", issued on 22nd July 2015, provides details of the cover relevant for the Period of Insurance, from the 20th July 2015 to 19th July 2016. The cattle shed in question was insured for the sum of €15,000, in respect of "*Fire, Lightning, Explosion and Aircraft*". "*Endorsement 109*" is stated to apply, which provides that the cover under the Policy extends to include Loss of or damage to the insured property, from "*Storm or Tempest*" (subject to exceptions).

I note the Complainant's comments, which he made to the Provider, within his letter of the 11th August 2106, that "*to be fair, I don't see how it matters what storm damaged the shed...*" However, it is the case that, for cover to apply under a policy of insurance, when damage or loss occurs, the onus is on the policyholder to prove that the damage or loss in question was **caused by an insured peril**. So, in this instance the onus was on the Complainant to show that the damage to the property was caused by a storm, or some other peril which was covered by the Policy. Despite the Complainant's suggestion to the contrary, the issue of causation is, therefore, a very important one.

"Caused by the Insured Peril"

As previously indicated, in order for cover to apply to the loss sustained, the Provider must be satisfied that the damage occurred as has been suggested, i.e., directly as a result of storm damage.

The Complainant has submitted, in this regard, that "*the only thing that could have twisted the shed is storm.*"

I don't accept that the steel could not have been caused to buckle or twist, for any other reason. I note, for example, from the Loss Adjuster's Report, that some of the steel which

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was used in the construction of the shed, in 2003, was taken from a previous shed, and the Loss Adjuster's suggestion that this steel may have been compromised.

I am satisfied that the Loss Adjuster was not unreasonable in concluding that *"Steel trusses had twisted but if this had resulted from storm you would expect the sheeting to have blown off. One upright pillar to the front of the shed does not support the roof. Also as some of the steel pillars were salvaged. No evidence of storm damage."*

In circumstances where the Complainant cannot state with any degree of certainty how the damage to the shed occurred, I am satisfied that the Provider was entitled to rely upon the findings of the Loss Adjuster, in making its decision to decline the claim, on the basis that it had not been established that the damage was caused by an insured peril.

In relation to the Complainant's contention that the shed was inspected by a representative of the Provider before it could be insured and his query as to why, if it was structurally unsound, he was allowed to insure it – it is not clear from the evidence before me that the damage to the shed had become evident at the time that the shed was inspected and insured in 2010; the Complainant himself only became aware of the damage in July 2016 when he began work on the area.

Having examined all of the available evidence in detail, and for the reasons outlined above I do not find that the Complainant's complaint can be upheld.

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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES

30 May 2018

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) in accordance with the Data Protection Acts 1988 and 2003.