



<u>Decision Ref:</u>	2018-0064
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim - freezing or escape of or overflow of water or oil
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant had a house insurance policy for a property in Thurles, for which the Respondent was the underwriter. The Complainant made a claim under the policy for damage that occurred to the property on the 2 January 2011 which was reported to the Respondent on 25 January 2011. Damage was caused to the property due to escape of water from a kitchen sink feed pipe in the first floor apartment.

Having reviewed the claim the Respondent issued a settlement offer to the Complainant on the 30 June 2011 for the sum of €3,961.16 gross. The Respondent didn't receive a response to the offer and issued a reminder to the Complainant on 26 September 2011. This letter advised that the Complainant had 14 days to respond or his file would be closed. No response was received from the Complainant.

On 22 July 2014 the Complainant wrote to the Respondent confirming his acceptance of the settlement offer which had issued on 30 June 2011. The Complainant states that he signed the acceptance form and returned it in 2011; the Respondent has no record of receiving this acceptance. A fresh acceptance form was issued on 8 September 2014. Thereafter the Respondent received a signed acceptance from the Complainant. A cheque for €2,368.98 as part payment of the claim and a settlement letter issued to the Complainant on 11 September 2014. This cheque was not cashed. The Respondent subsequently increased its offer to €4,761 in May 2015.

The Complainant says that the Respondent has failed to pay him the full amount of the loss that he has suffered.

The Complainant's Case

In October 2014 the Complainant wrote to the Respondent claiming an additional €2,580 for six months loss of rental income at €430 per month. The Respondent replied requesting a copy of the tenancy agreement, name of the property agent and the reason for the late request for loss of rent. The Complainant sent a rent book to the Respondent and sought for this additional element of the claim to be admitted.

By letter dated 8 December 2014 the Complainant raised issue with the settlement offer made, the failure to pay loss of rent and the failure of the Respondent's home repair specialist to undertake the works. In relation to the settlement offer the Complainant set out that he had paid his contractor €7,934 to do the works.

In relation to the Respondent's home repair specialist the Complainant states that a letter from the Respondent's agent dated 25 January 2011 states that a home repair agent would do the work. The letter states that the "*Home Repairer will carry out the agreed repairs to your property to the highest standard*". This letter also named the nominated Home Repairer to deal with the claim. The Complainant states that the delay in settling this claim was due to the failure of the Home Repairer to turn up to do the job requiring the Complainant sending repeated reminders to the Home Repairer and eventually requiring the Complainant to hire a separate contractor, to do the works. The Complainant by letter of 18 September 2017 refutes the Respondent's suggestion that it was his duty to request the home repair specialist to draft and price the works required.

The Complainant states by letter of 28 November 2014 that he sent numerous letters to the Respondent's office requesting an update on the status of his claim with no response.

The Complainant wants the Respondent to admit his claim for €19,677.07, that being €9,671.82 for repair works, €5.25 for registered post and €10,000 compensation for delay, neglect and breach of contract.

The Respondent's Case

The Respondent states that it wrote to the Complainant on the 5 February 2015 pointing out that he had accepted the settlement offer on 3 September 2014. This letter requested confirmation of contact details for the tenant at the time of the loss, how long it took the contractor to do the work, the invoice from the contractor showing the amount paid and VAT number, a complete copy of the rent book as the one submitted was not a complete copy and also an explanation as to why the loss of rent issue only arose on the 13 October 2014.

In relation to the amount of the settlement offer the Respondent stated that it reviewed the settlement offer taking into account the contractor's quotation and it then offered a revised settlement of €4,761 net of the policy excess of €1,000.

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In relation to the Home Repair specialist the Respondent states that for the Home Repair specialist to undertake the works the repairer would draft and price the works required and then submit same to the loss adjuster for approval, then this would be submitted to the Complainant as an option to resolve the claim. However, the Respondent states that this did not happen and the Home Repair specialist confirms he was never engaged to do the work.

In relation to the loss of rent the Respondent states that the Complainant did not claim for loss of rent in 2011 and that element of the claim first arose in October 2014. The Respondent at this time sought documentation to support the claim. The Respondent states that the Complainant provided a rent book which did not contain sufficient details to validate the claim. The Respondent stated that it was willing to review a claim for reasonable loss of rent, once it received the additional information required.

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 30 May 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.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

There was a significant delay of three years in this matter where the Complainant appears not to have contacted the Respondent. The Complainant states that he sent numerous letters to the Respondent during this time however no evidence of these letters has been

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furnished to this Office. The delay is very significant as it hindered the Respondent in investigating the complaint; the Respondent was also entitled to have closure on a file. This is not a situation where the Complainant has claimed that he was unwell for a period of time or that there were other factors which impeded him from progressing his claim.

In relation to the Home Repair specialist I note that the Complainant submitted a quote from his own contractor on 12/4/2011 just months after the claim was made, suggesting that the Complainant intended to use his own contractor since that time. I also note that a cash settlement was agreed with the Complainant in 2011; this cash settlement would not have been made if the Home Repair specialist was being engaged. In my opinion, the Respondent suggested by letter dated 25 January 2011 that the Complainant use the Home Repair specialist but the Complainant never confirmed that he was using the Home Repair specialist and the evidence suggests that he never engaged the Home Repair specialist. In circumstances where the Complainant produced a quote from a contractor in April 2011 and where the contractor confirms that work commenced in June 2011 and finished in July 2011, I do not accept that the confusion about the Home Repair specialist caused the delay. Accordingly, on the basis of the evidence available, I do not accept that responsibility for the delay in processing this claim lies with the Respondent.

In relation to the loss of rent, the Complainant must understand that the Respondent is entitled to seek documentation to support the claim the Complainant is making. This includes full rent books and proof of tenancy rather than an incomplete photocopy as was supplied. In this regard, I note that if this aspect of the claim for rent had been made in 2011, proof of tenancy would have been much easier to establish. However as stated above, this delay was not the fault of the Respondent.

The Respondent, in a letter dated 3 August 2017 has made an offer of €6,051 to the Complainant to include loss of rental income. I consider this to be a very reasonable settlement in the circumstances and it will be a matter for the Complainant to make direct contact with the Respondent, if he wishes to accept that offer. In that event, he should make contact with the Respondent expeditiously, as the Respondent cannot be expected to hold that offer open indefinitely, particularly given the delays to date, in relation to a loss which occurred more than 7 years ago.

On the basis of the evidence before me, I do not believe that the Respondent acted wrongfully. Rather, in my opinion, the Respondent has dealt with this matter at all times in a reasonable fashion. On the basis that the Respondent has made a settlement offer available to the Complainant which is very reasonable, and remains open to him to accept, I do not believe that it is necessary or appropriate to uphold this 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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

5 July 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.