



<b><u>Decision Ref:</u></b>	2018-0065
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - flood
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant had a house insurance, rented property, policy for a property at “74 CG” for which the Respondent was the underwriter. The Complainant brought a claim under the policy for damage that occurred to the property on the 27 December 2010 which was reported to the Respondent on 30 December 2010. Damage was caused to the property due to the escape of water.

A preliminary report was sent to the Respondent on 19 January 2011 confirming the circumstances of the loss. In the loss adjuster’s preliminary report the loss adjuster noted that the Complainant advised that he was not occupying the risk address on a permanent basis. The Respondent refused the claim due to the failure to prove occupancy of the property at the time of the damage. A formal declinature letter was issued to the Complainant dated 30 June 2011.

The Complainant states that he lived in the property and also in the adjoining property at the time of the loss.

There was a substantial delay in this matter between June 2011, when the formal declinature letter issued, and October 2014 when the Complainant made renewed enquiries about this claim.

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

The Complainant states that the Respondent failed to reply to his letters dated 13 October 2014, 12 December 2014 and 19 January 2015 and failed to take account of his letter dated 26 August 2015 and letter to the loss adjusters dated 28 March 2011. The Complainant states that the Respondent fails to refer to correspondence from him when it does not suit its case.

The Complainant is unhappy with the actions of the loss adjuster when he inspected the damage in 2011. The Complainant states that the loss adjuster wrote out a statement about the damage and asked him to sign it, without informing the Complainant that he was appointed by the Respondent and was acting on behalf of the Respondent. The Complainant makes the case that it was not honest for the loss adjuster to write out a statement and ask him to sign it.

By letter dated 13 October 2014 the Complainant states that the statement of 10 March 2011 was misinterpreted by the Respondent. The Complainant states that:

*"Your statement in your letter of September 25<sup>th</sup> that 74 CG was last occupied in August 2008 is incomplete.*

*This should read "last occupied by a tenant who departed in August 2008". I occupied the property since that date, and when the tenant in the adjoining property at 75 CG left in 2009, I resided in both 74 & 75 as one property.*

*I have enclosed a copy of my letter to Mr E of [X], dated 28 March 2011 in which I informed him of the common garden and pathways of 74 & 75 CG. Furthermore this letter also sets out in some detail my daily activities in 74 & 75 CG, demonstrating that I lived in both properties.*

*The sentence in the statement of 10 March 2011 that "there is currently no occupant in 74 and I live in number 75 CG on a permanently" is obviously unfinished as it does not read properly. The reference to "no occupant" means no occupant by a tenant. However it was occupied by myself since August 2008. The other sentence which states "I live permanently in 75" does not preclude me from living in 74 at the same time, which I did, as these are adjoining properties with common gardens and pathways."*

The Complainant states that he lived in both 74 & 75 CG at the time of the loss. He states that these properties are semi-detached houses sharing a garden and with no boundary wall.

The Complainant wants the Respondent to admit the claim and to make a settlement to include building repair costs of €83,000, contents €25,000, compound interest for seven years €102,461 and damages of €80,000

### **The Respondent's Case**

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The Respondent states that on 10 March 2011 the loss adjuster met the Complainant and took a statement in relation to the occupancy of the property. This statement was signed by the Complainant, an extract of which reads as follows:

*“There is currently no occupant in no. 74 CG and I live in number 75 CG permanently. I intend to set up an office in the near future at no 74. At the time of the loss there was nobody occupying the property. I last had tenants occupying the property in 2008 approximately in August. There has been no permanent resident since. I live permanently at no 75 and check the property every day.”*

In refusing to admit the claim the Respondent relies on the statement of 10 March 2011 and the following policy terms;

1. *Changes that may affect your insurance*  
*You must tell us immediately if there are any changes that may affect your insurance, such as the following;*  
*Your buildings becomes unoccupied or does not contain enough furniture for normal living purposes*
  
13. *Unoccupancy*  
*In any accommodation forming part of the building is unoccupied for 40 days in a row or more, you must make sure that:*
  - a. *the gas and water are turned off at all mains and that the water and heating systems are drained; and*
  - b. *you visit the premises at least once every seven days.*

The Respondent declined the claim under the terms of the policy on the grounds that the premises had been unoccupied for more than 40 days prior to the loss date.

The Respondent states that a declinature letter issued in June 2011 and that for more than three years it received no correspondence from the Complainant until a letter dated 24 September 2014 in which the Complainant sought an update on his claim; in reply the Respondent forwarded the declinature letter.

On the 2 October 2014 the Complainant sent the loss adjuster a letter requesting a copy of the statement dated 10 March 2011, and this was issued to him. On the 12 December 2014 the Complainant wrote to the loss adjuster stating he had received no reply to his letter dated 13 October 2014. The loss adjuster states that it has no record of receiving this letter and a letter dated 18 December 2014 issued in response.

## **Decision**

During the investigation of this complaint by this Office, the Respondent was requested to supply its written response to the complaint and to supply all relevant documents and information. The Respondent responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Respondent's response and the evidence supplied by the Respondent. 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.

Following the consideration of additional submissions from the Complainant, to which the provider elected not to respond, the final determination of this office is set out below.

At the outset, I note the delay in this matter between June 2011, when the claim was denied and October 2014 when the Complainant made renewed enquiries about this claim. This delay is regrettable but there is no evidence before me that this delay was the fault of the Respondent.

The first issue in dispute is whether the Complainant resided at 74 CG at the time the loss occurred. I note however, the concerns raised by the Complainant in relation to the manner in which the statement of 10 March 2011 was taken and the possible lack of disclosure by the loss adjuster. Indeed, the Complainant in a letter dated 19 January 2015 articulated a specific complaint about the behaviour of the loss adjuster *"When you inspected the damage done in respect of my above claim. You wrote out a statement about the damage and asked me to sign this. You should have told me at that time that you were appointed by the insurance company, and that you were acting in the insurance company's interests"*.

It is clear from the evidence available however, that on 19 January 2011 when the loss adjuster originally made contact with the Complainant in relation to his claim, that letter advised the Complainant that:-

*"We are writing to you in our capacity as chartered loss adjusters appointed by [the Respondent] to handle the above mentioned claim on their behalf..."*

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Notwithstanding the Complainant's continuing dissatisfaction, I am satisfied that the loss adjuster made clear its position at that initial time, and I do not accept that any of the action on the part of the loss adjuster in any way calls into question the Respondent Provider's decision to decline the claim, in circumstances where it had formed the opinion that the property had not been occupied at the time of the incident giving rise to the loss, for the reasons which are outlined below.

I note in that regard that the "buy to let insurance schedule" dated 02/09/2010 clearly refers to the property as a "buy to let" rather than a primary residence. Secondly, the insurance schedule notes that the Complainant's address is Cork City, though the Complainant has at all relevant times maintained that this was his office address. If the Complainant was residing at No. 74, he should have informed the Respondent of this development, at renewal of the policy. Further, while the Complainant contends that he lived in No. 74 & 75 CG, he has not supplied utility bills dated prior to the damage occurring, to support his contention that he lived in the property as his primary residence at the time the damage occurred. (Bank statements, TV licence, electricity bills or refuse bills would prove his case that he resided in the property). In the circumstances I do not consider that it was unreasonable for the Respondent to reach the decision that the property was not occupied at the time of the loss.

The second issue in dispute is in relation to the failure of the Respondent to reply to correspondence. I note that the Respondent replied to the Complainant's letter dated 12 December 2014 stating that it had not received the letter of 13 October 2014. The Complainant wrote again on the 19 January 2015 complaining of the loss adjuster's behaviour in taking the statement in 2011. I understand the Complainant is not happy that the Respondent has not replied in detail to each individual point he has made in correspondence and in particular the failure to address his explanation that he resided in No. 74 at the relevant time. On the basis of the evidence available however, I consider that it was reasonable for the Respondent to decline the claim in 2011 for the reasons outlined above, and in my opinion the issues raised in the subsequent correspondence in 2014 were dealt with adequately, and did not go so far, as to call into question the Respondent's decision to refuse the 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  
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.**