



<b><u>Decision Ref:</u></b>	2018-0087
<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 - fire
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant's claim under his Farm Multiperil Policy arising from damage allegedly caused during a chimney fire was declined by the Insurer. The Insurer declined the claim on the basis that policy conditions had not been complied with.

**The Complainant's Case**

The Complainant held a Farm Multiperil Policy with the Insurer. The Complainant claims that he suffered a chimney fire at his home on the 12<sup>th</sup> of January 2015 which, he states, gave rise to damage. The Complainant maintains that, following the fire, a crack to his chimney stack was apparent which was "*not noticeable*" prior to the fire.

The Complainant made a claim on his policy which was ultimately declined by the Insurer by reference to a failure on the part of the Complainant to provide "*evidence of an insured peril in operation*" and also by reference to a claim that the Complainant had prejudiced the Insurer's position by carrying out permanent repair works. The Complainant maintains that the repair works were carried out following the attendance on site of the Insurer's Loss Adjustor and, further, that the works were carried out in order to mitigate further, potentially costly, damage.

The complaint is that the Complainant made a claim on his insurance policy which, he maintains, was improperly declined by the Insurer.

### **The Provider's Case**

The Insurer maintains that it was entitled to reject the claim by reference to the terms and conditions of the policy. Specifically, the Insurer maintains that there was a failure on the part of the Complainant to provide "*evidence of an insured peril in operation*".

The Insurer also relies on a claim that the Complainant had prejudiced the Insurer's position by carrying out permanent repair works.

### **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 28 June 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.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

### **Policy Terms and Conditions**

Scheme A of the Policy provides cover in respect of the following:

*LOSS OF OR DAMAGE TO FARM DWELLING HOUSE AND/OR CONTENTS CAUSED BY:-*

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*(1) Fire, Explosion, Lightning, Thunderbolt, Earthquake.*

The Insurer has identified General Condition 4(a)(iv) set out below from the policy in support of its decision to decline the Complainant's claim:

*The Insured shall*

*(iv) upon any defect or danger being brought to his notice, forthwith arrange for such defect or danger to be remedied and in the meantime shall take such temporary precautions to prevent accidents as the circumstances may require but so far as practicable no alteration or repair shall without the consent of the Company be made to any premises after any occurrence covered by this Policy until the Company shall have had an opportunity of making an inspection.*

*The Company shall at all reasonable times have free access to inspect any property and the Insured shall facilitate the Company in every way requested.*

In addition to the foregoing, Condition 5 of the Policy dealing with claims is also relevant:

*(a) In the event of any occurrence which may give rise to a CLAIM UNDER THIS POLICY:*

*(i) The Insured shall forthwith notify the Company in writing with full particulars*

*(ii) ...*

*(b)*

### **Chronology**

In the first instance, it will be useful to set out a chronology of the events giving rise to the claim and subsequent developments, referencing, where appropriate, documentary evidence provided by the parties.

The Complainant states that, following the fire on the 12<sup>th</sup> of January 2015, his chimney stack developed a crack which had not been "noticeable" beforehand. The Complainant further states that, upon discovering this crack, he engaged a neighbour to "seal the crack with silicone". The Complainant maintains that this prompt action was taken to "mitigate any more serious damage". The Complainant retained a 'Public Loss Assessors' company (hereinafter the 'Complainant's Representative ') which "attended" the Complainant "in the days after" the incident. It is unclear precisely when this took place and whether the 'attendance' took place at the Complainant's home. The matter was eventually reported to the Insurer on the 5<sup>th</sup> of February 2015 by the Complainant's representative.

Subsequently, on the 17<sup>th</sup> of February 2015, the Insurer's Loss Adjustors attended the Complainant's home for an inspection at which the Complainant's Representative also attended. The Insurer maintains that its Loss Adjustor expressed concerns to the

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Complainant's Representative as to the source of the damage in circumstances where the damage looked "*historical in nature*" and in circumstances where the cracking to the chimney stack was aligned with the side of the chimney stack which contained a flue (the kitchen flue) which had *not* been in use for some time. The cracking was *not* on the side of the chimney stack which contained the flue which the Complainant maintained had been on fire (the sitting room flue). The Loss Adjustor's 'Site Investigation Notations' support the foregoing.

The Insurer also maintains that, in the course of the inspection of the 17<sup>th</sup> of February 2015, the Complainant's Representative advised the Loss Adjustor that the temporary silicone repairs to the chimney stack had been carried out by a builder, as opposed to by a neighbour. The Complainant's Representative concedes, in her email of the 11<sup>th</sup> of March 2015, that she made this mistake. The Insurer further states that its Loss Adjustor was advised that there would be a builder's report forthcoming which, it was presumed, would address the nature and extent of the damage and, in particular, the condition of the respective flues. On this basis, the Insurer states that its Loss Adjustor did not conduct or arrange for a CCTV investigation of either flue on the 17<sup>th</sup> of February 2015.

At the end of the inspection of the 17<sup>th</sup> of February 2015, the Complainant signed a form provided by the Loss Adjustor which included the instructions, ticked in manuscript, that the Complainant would need to "*submit repair/replacement estimates or invoices*" and that he would also need to "*supply copy of repairer/experts report*". The Loss Adjustor's notes also expressly record that the Complainant was advised to revert with details as to the extent of the period for which the kitchen flue had been redundant as "*this looks to be the flue which has caused cracking to the stack*".

On the day following the inspection, the Loss Adjustor sent a letter to the Complainant and to his representative seeking, amongst other matters, a copy of the builder's report and details of the period of inactivity of the kitchen flue. A follow-up email was sent to the Complainant's Representative on the 5<sup>th</sup> of March 2015 and a further request was made by telephone on the 10<sup>th</sup> of March 2015.

On the 11<sup>th</sup> of March 2015, the Complainant's Representative emailed the Loss Adjustor advising of its earlier mistake in stating that a builder had carried out the initial repair works and providing the correct details of the individual who had carried out the temporary silicone repairs, namely the Complainant's "*neighbour/friend*". The Complainant's Representative also clarified that the kitchen flue had been redundant for approximately 9 years. The Insurer's Loss Adjustor responded to this correspondence by way of its email of the 1<sup>st</sup> of April 2015 advising that, in light of concerns as to the source of the damage (which the Loss Adjustor felt appeared to be the kitchen flue which had not been in use for 9 years), the Loss Adjustor may need to undertake a CCTV inspection of the flue. The Loss Adjustor emailed again on the 8<sup>th</sup> of April 2015 requesting that the Complainant arrange for the carrying out of a CCTV survey of the sitting room flue "*in order to establish if this liner is damaged*".

The Complainant's Representative reverted on the 16<sup>th</sup> of April advising that the permanent repairs had already been carried out as the Complainant "*had no option* [but]

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to proceed with repairs" "as he needed heat for the house". The Complainant's Representative highlighted that there was no request for a CCTV survey from the Loss Adjustor in the course of the inspection of the 17<sup>th</sup> of February 2015. It was further indicated that "the flue was relined in the living room and the stack was rebuilt and relined". This was later qualified (on the same day) to clarify that the work completed comprised the rebuilding of the stack and the relining, recapping and plastering of same; it would seem that the sitting room flue did not need to be relined below the level of the stack.

Thereafter, the Loss Adjustor made a number of efforts to contact the builder who had carried out the repair works. Contact was eventually made on the 20<sup>th</sup> of May 2015. A 'Contact Note' provided by the Insurer records as follows:

*He confirmed that he has completed his work in knocking and rebuilding the chimney stack. Stack was taken just below roof level and re-built. Flue liners were replaced to one side – to the side the crack was evident.*

*There was no need to go replacing the liners to a level below where he was rebuilding the stack. [Builder] unable to confirm what dates he started and finished until he checks his diary. He will text me this information this evening.*

A subsequent note based on a text message received confirmed that the works were carried out from the 18<sup>th</sup> to the 31<sup>st</sup> of March 2015.

A subsequent 'Contact Note' relating to a phone conversation of the 3<sup>rd</sup> of June 2015 between the Loss Adjustors and the Complainant's Representative details as follows:

*Spoke to [Complainant's representative]*

*Advised her we have spoken with builder who has confirmed dates the work was carried out and also that there was damage to one side of the chimney only. The damage we noted during our inspection was on the redundant side of the chimney and so this does not provide us with enough evidence that the chimney was damaged during a recent chimney fire.*

*[Complainant's representative] said she was very surprised to learn the builder had told us chimney had damage to only one side and thinks that perhaps there might have been a mix up. [Complainant's representative] is to speak with builder and get him to provide written confirmation as to what condition he found the chimney in and what work he did.*

*Also asked [Complainant's representative] for details of who carried out the immediate repairs after the chimney damage was allegedly discovered in January 2015.*

*[Complainant's representative] admits telling the Insured that he could go ahead and start the repairs following our inspection despite us not giving her the go ahead*

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*to do so. Reminded [Complainant's representative] that we had made specific requests for details on who carried out temp repairs, sought builder's report and we had discussed the damage on redundant side of stack when we were on site so she would have known we had concerns regarding liability.*

An email of the same date to the Complainant's representative requests the written confirmation from the builder as promised. This written confirmation is provided on the 8<sup>th</sup> of June 2015 in the form of an email from the builder dated the 7<sup>th</sup> of June stating as follows:

*I wish to confirm that I replaced flue liners from beneath roof level on the active flue servicing the fire.*

The Loss Adjustor responded to this indicating that the email was of no use as the builder "doesn't mention what condition the active flue was in before he commenced work". A further email ensued from the builder which included the following:

*Damaged flue removed from active flue and new liners put in*

Thereafter, the Insurer's Loss Adjustor wrote to the Complainant's representative on the 26<sup>th</sup> of June 2015 reiterating the view that the damage to the chimney stack was not caused by a "recent chimney fire".

The Loss Adjustor went further to state that:

*The most significant damage noted to the stack is historic and in our view can only have happened when the particular flue that the cracking aligns to was in use. This was not within the last 9 years.*

The Loss Adjustor, in rejecting the claim, also relied on the claim that the Insurer's position had been prejudiced in circumstances where the rebuilding of the stack had occurred "prior to demonstrating that the active flue had been damaged".

The Complainant's representative responded to this correspondence by way of letter of the 3<sup>rd</sup> of July 2015 emphasising that the repair works were carried out in order to mitigate further damage and highlighting that no CCTV was requested in the course of the inspection of the 17<sup>th</sup> of February 2015. The letter notes that:

*After the passing of time after the inspection and in the absence of any other request made on the day our Client proceeded to repair the damaged stack as he was concerned the winter may get more severe like last year.... Our Client figured all queries were now addressed.*

The Insurer issued its Final Responses Letter on the 23<sup>rd</sup> of July 2015. This letter reiterates the reasoning previously forwarded on behalf of the Insurer and reaffirms that, given the nature of discussions had between the parties and the nature of the documentation and information requested, it was clear that the issue of liability remained to be determined.

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On this basis, the Complainant's Representative was wrong to direct the Complainant to proceed with the repairs, not least as no such clearance had been given by the Insurer.

A final letter was sent by the Complainant's representative dated the 10<sup>th</sup> of August 2015 which takes issue with the manner in which the Complainant described the temporary silicone repairs. Certain other matters were also included which are not of central relevance to this finding.

Subsequent to the making of a complaint to this office, further correspondence issued from both parties to which I have also had regard.

### Analysis

The Complainant states that he suffered damage arising from a fire on the 12<sup>th</sup> of January 2015. Notwithstanding a requirement to report any occurrence that may give rise to a claim "*forthwith*", the matter was not reported to the Company until the 5<sup>th</sup> of February 2015. It is not entirely clear why there was this delay in reporting, particularly given that the Complainant's Representative attended with the Complainant "*in the days after*" the incident. However, the Insurer has not sought to rely on this policy requirement and so I need not consider the matter further.

The next matter that I will turn to is the temporary silicone repairs. The Complainant's Representative, in its letter of the 10<sup>th</sup> of August 2015, seems to take issue with the manner in which the Insurer has addressed this issue.

I am not entirely sure that the Complainant's Representative has accurately reflected the Insurer's position on this matter but, in any event, I accept that the Complainant was acting within his rights in carrying out the temporary silicone repairs. Indeed, the Complainant was probably *obliged* to carry out this work insofar as the damage represented a "*defect or danger*" which required the undertaking of "*temporary precautions*" (as described in the policy) in order "*to prevent accidents*".

In reality, there are two real but connected issues in this complaint. The first is whether the Insurer was entitled to demand a CCTV investigation of the site at the late stage in the proceedings that it did in fact seek same. The second and principal issue is whether the Complainant did in fact prove that he suffered damage by reason of the operation of an insured peril and whether the Insurer was entitled to decline cover by reference to a failure to prove same. This second issue is inextricably linked with the question of whether the Complainant was entitled to carry out the permanent repair works at the point in time that he did so and whether the Insurer could rely on a claim to have been prejudiced in its ability to investigate matters by virtue of the timing of those repairs.

It seems to be common case that the Complainant's Representative mistakenly advised the Insurer's Loss Adjustor that a builder had carried out the temporary silicone repairs. The Insurer maintains that, because of this, there was no need to carry out or to schedule any CCTV inspection on the 17<sup>th</sup> of February 2015. The Insurer states that this was because a report from the builder would be produced which would, presumably, address the nature

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and extent of the damage to the flue(s) prior to initial temporary repair. It is clear that such a report was requested and I have no doubt that the furnishing of same was assured.

This seems to me to have been a reasonable course of action for the Insurer to follow. It is apparent from later correspondence (the Loss Adjustor's email of the 8<sup>th</sup> of April 2015), that the Loss Adjustor was prepared to accept an expert report commissioned by the Complainant addressing the findings of a CCTV survey. I have no reason to doubt that the Insurer would have accepted a report from the builder who carried out the temporary repairs if indeed a builder had in fact carried out those repairs. Accordingly, I do not criticise the Insurer for failing to seek a CCTV investigation on the 17<sup>th</sup> of February 2015 in light of what it had been advised by the Complainant's Representative.

The Complainant's Representative ultimately communicated her error on the 11<sup>th</sup> of March 2015 following which, on the 1<sup>st</sup> of April 2015, the Loss Adjustor intimated that it may now need a CCTV survey. The permanent repairs however were carried out in the interim, between the 18<sup>th</sup> and the 31<sup>st</sup> of March 2015.

The terms of the policy state that no permanent repairs should be undertaken without the consent of the Insurer until the Insurer "*shall have had an opportunity of making an inspection*". In this case, clearly the Insurer *did* have the opportunity of making an inspection prior to the works. However, the same policy provision also requires an insured to "*facilitate*" the Insurer "*in every way requested*".

I accept that in this case, such facilitation extended to the provision of the builder's report that had been promised. In light of the failure to provide the builder's report, I accept that the Insurer was entitled to revisit the question of a CCTV inspection.

The period of time from the date of communication of the Complainant's Representative's mistake to the date on which the CCTV inspection was first suggested – a period of 3 weeks- is longer than ideal but I do not believe that it represents a period of such unreasonable length such as might disentitle the Insurer to insist on the survey. In any event, it is clear that the works started within 1 week of the notification of the mistake which created a difficulty in terms of establishing the cause or extent of the problem.

Of more significance is the fact that the Complainant's Representative appears to have informed the Complainant that he could proceed with the permanent repairs. It is clear that from the date of the inspection on the 17<sup>th</sup> of February 2015, the Loss Adjustor had certain reservations and concerns as to the cause of the crack to the chimney stack. Equally, the Complainant was expressly instructed to "*submit repair/replacement estimates or invoices*" thereby clearly indicating that the Insurer was not yet agreeing to indemnify the Complainant for any repairs. In such circumstances, it is unclear how the Complainant's Representative could advise the Complainant to proceed with the repairs in the absence of consent from the Insurer.

Ultimately, the primary consideration is whether the Complainant established that he had suffered loss arising from the occurrence of an insured peril. In this case, the Complainant did not produce the builder's report which was initially promised which might have dealt

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with the matter. Thereafter, the builder who undertook the permanent repairs provided conflicting reports as to the nature of the damage he was met with, his first (oral) communication seemingly entirely at variance with the Complainant's version of events. I am not satisfied that his subsequent (email) communications went in any way far enough to meet the threshold of proving a loss resulting from the occurrence of an insured peril—indeed the cause of loss is not addressed at all.

In such circumstances, I accept that the Company was entitled to deem that the Complainant had failed to prove the suffering of a loss arising from the occurrence of an insured peril. Equally, the Company was entitled to request the carrying out of further inspections to investigate the matter and, in circumstances where those further inspections were rendered impossible by virtue of the acts of the Complainant, the Insurer was entitled to rely on the prejudicing of its position as a further ground for declining the claim.

Had those permanent repairs not yet been carried out, the Complainant would have been at liberty to produce, and the Insurer would have been required to accept (subject to certain criteria being met), proof (by way of CCTV survey for example) that the damage to the chimney stack was the result of the occurrence of an insured peril. In the event no such proof was provided nor capable of being procured.

For the reasons outlined above, I do not 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

24 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,

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(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*.

