



<u>Decision Ref:</u>	2018-0097
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Retail
<u>Conduct(s) complained of:</u>	Rejection of claim - fire Claim handling delays or issues Poor wording/ambiguity of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant had a retail insurance policy with the Provider for the period 31 March 2014 to 31 March 2015 for a takeaway restaurant premises. The complaint relates to a claim on the policy following a fire in the restaurant on 24th August 2014. The claim was declined on the grounds that there was a breach of clause (h) and (k) of the Deep Fat Fryer Warranty in the policy. The relevant Deep Fat Fryer Warranty clause is:

It is a condition precedent to the liability to the Company that:

(h) all flues and extract ducting are free from contact with combustible material and do not pass through or are not contained within combustible floor or ceiling voids or combustible roof space.

(k) internal surfaces of the ducting and the extraction fan be cleaned at least once a year, preferably by specialist contractors.

The Provider has advised that the Complainant has two separate policies with the Provider in respect of the premises that was the subject of the fire; a Property Owners Policy and a Retail Policy.

The Provider states that a claim was made under the Property Owners Policy which was accepted and paid. It is the claim under the Retail Policy which is the subject of this dispute.

The Complainant's Case

The Complainant states that its contractor, A.G. has informed the Provider that it cleaned the ducting in the restaurant and that this is evidenced by invoice of the 22nd of May 2014.

The Complainant states that this proves compliance with clause (k) of the Deep Fat Fryer Warranty.

Referring to clause (h) the Complainant states that the policy makes reference to "*combustible*" without defining what is and what is not combustible, the Complainant states that all materials are combustible if the temperature is high enough. Given the Provider's interpretation of combustible as "*able to catch fire and burn easily*" the Complainant states that in light of how little damage was caused to the rear roof area, it cannot be deemed to be combustible as it clearly did not burn easily.

The Complainant states that on completion of the repairs to the restaurant the Provider carried out a survey of the premises and following the survey the Provider returned to full cover on the same terms and conditions and with the same Deep Fat Fryer Warranty. The Complainant states that the property was reinstated in the same manner as it was at the time of the fire and the ducting follows the same path to extraction. The Complainant states that in theory, if another fire occurred in the same circumstances, the Provider could argue that the Complainant was again in breach of warranty and would again decline a claim, albeit they surveyed the premises and, by implication, accepted that it was compliant to allow them to go on cover. The Complainant states that it is unfair to decline the claim yet to reinstate cover on the same basis. The Complainant accepts that the wording of the policy changed to incorporate the requirement of a collar and that a collar was fitted.

The Complainant would like the Provider to admit the claim.

The Provider's Case

The Provider states that clause (h) and (k) of the Deep Fat Fryer Warranty were conditions precedent to liability and that they were not complied with based on two reports of an independent company appointed by the Provider (hereafter the Provider's Fire Investigator Company). The Provider states that they took account of the evidence supplied by the Complainant and having taken into account this evidence the Fire Investigator Company concluded in a report dated 21 October 2014 that the damage to the flat roof was the result of fire spreading from the duct which was enclosed within a combustible roof space, and the cause of the fire, was the result of the escape of heat and/or flames which ignited grease or fat deposits, that had accumulated on surfaces below and behind the fryer.

In relation to the cleaning of the ductwork, the Provider states that the cleaning carried out by staff was not sufficient to comply with clause (k) which requires the "internal surfaces" of the ducting be cleaned and that it would not have been possible to clean the

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internal surface of the ducting without specialist chemicals. The Provider states that a statement taken from the Complainant on 2 September 2014 confirms that no external company came in to clean the ductwork. The Provider states that the cleaning regime carried out by the Complainant's contractor, A.G. was inadequate. The Provider notes that a further statement of A.G. dated 21 November 2014 was provided by the Complainant in December 2017, the Provider states that this statement is general in nature and does not relate directly to the Complainant's property.

In relation to clause (h) the Provider states that burning of timber joists and timber plywood is clearly visible where the ventilation ductwork had been installed before removal by the Fire Brigade.

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 12 July 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.

As the Deep Fat Fryer Warranty is a condition precedent to the liability, if there is a breach of the Warranty, the insurer is discharged from liability, even if the breach was not material to the risk.

Looking at Clause (h) of the Deep Fat Fryer Warranty, it states: all flues and extract ducting are free from contact with combustible material and do not pass through or are not

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contained within combustible floor or ceiling voids or combustible roof space. Having considered the Provider's Fire Investigator Company report, dated 18 September 2014, I consider that the photos at page 12 show a short distance between the duct and timber joists, this photo clearly shows the timber joists to be black and burned. I consider that it was not unreasonable for the Provider to find timber to be a combustible material that catches fire easily and that the duct should not have passed so close to the timber joist in order to comply with clause (h).

Based on the evidence of black joists in the photos I cannot accept the conclusions of the report of R.K dated 18 September 2014 which states that *"there is and was no fire or smoke damage within the roof void"* and *"above the joists are all entirely stain free from any effect whatsoever of smoke or flames."* Further down this report states that *"any of the slight fire damage caused to the roof surface..."* slight fire damage is fire damage and this is inconsistency with the report stating that there was no fire or smoke damage to the roof.

The report of A.G. dated 5 September 2014 states that *"looking at this area after the fire there is very little heat damage to the timber"*, I consider that *"very little"* heat damage confirms that there is some heat damage to the timber. The heat damage to the timber is evident from the photos. I further note that this report contains a lack of certainty as it states that *"the plywood board could be Fire Retardant Treated [FRT]"* and *"there may have been some kind of sleeve"* and the duct *"may also have been varnished"*. [My emphasis]

I also consider the conclusion of the report, that, the *"duct was sufficient distance from the fire not to be affected severely"* by the use of the word *"severely"* confirms that the duct was affected to some extent by the fire.

Further, I note that the Dublin Fire Brigade report of 4 September 2014 states, among other things, *"we discovered signs of fire and smouldering timber"*.

Clause (k) requires that the internal surfaces of the ducting and the extraction fan be cleaned at least once a year, preferably by specialist contractors. The Provider's Fire Investigator Company's report dated 18 September 2014 states that:

"we observed significant quantities of burnt grease and fat deposits inside and outside the ductwork and behind the fryer. The grease and fat deposits inside the ductwork appears to have accumulated over a long period of time. These deposits enabled the fire to develop and spread more quickly."

This is supported by the photo of burnt grease/fat deposits removed from inside the extractor duct.

A statement taken from the Complainant on 2 September 2014 records that *"no external company comes in to clean the ductwork"*, while I accept that the Complainant and her staff cleaned the outside of the hood, canopies, grease trap and pan filters, these are not the *"internal surface"* of the ducting which the warranty requires to be cleaned.

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Recordings of telephone calls between the Complainant and the Provider have been provided in evidence. The Complainant, during one of these telephone calls to the Provider's agent makes the case that clause (k) states the ducting should be cleaned "preferably" by a specialist contractor, and that there is no obligation to get it cleaned by a specialist contractor. I accept this point, but the issue here is not who cleaned the inside of the ducting but whether or not it was actually cleaned on the internal surface.

I accept the Provider's evidence that due to the way the duct was built it was not possible for a person to clean the "internal surface" of the ducting properly without special chemicals or special equipment.

I note that the report of 18 September 2014 from R.F states that:

"the extent of the residue within the section of the vertical galvanised ducting, that I observed, appeared to me to be consistent with there having been only a very thin deposit of ignite-able material on it before the outbreak"

This statement is not supported by photos. I note that the invoice from A.G. dated May 22nd 2014, states "*cleaned excess grease*" and "*cleaned steam manifold*". The statement from A.G. dated 21 November 2014 appears to confirm that A.G. cleaned the internal duct system, this statement contradicts the statement made by the Complainant that no external company cleaned the ductwork.

In circumstances where the Complainant's statement was made before the claim was refused, and where she implied in telephone conversation that no external company cleaned the ductwork, and given the very general nature of the report from A.G. I consider that the internal surface of the ducting had not been cleaned or had not been cleaned sufficiently.

I also note that the Dublin Fire Brigade report of 4 September 2014 identified as the likely source of ignition "*grease in ventilation system*".

In relation to the Complainant's issue with the Provider inspecting the premises and confirming cover despite the premises being reinstated the same as before the fire, I believe that it is the Complainant's duty to ensure compliance with the terms of the Warranty. In particular, compliance with the terms of the Warranty which require structural issues that cannot be checked on visual inspection such as all flues and extract ducting are free from contact with combustible material and do not, pass through, or are not contained, within combustible floor or ceiling voids or combustible roof space. This is a structural issue which the Provider on inspection could not confirm. Further, I note the Complainant's acceptance that the policy now requires that a collar be fitted and that a collar was fitted.

For the reasons set out 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

7 August 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*.