



<u>Decision Ref:</u>	2018-0098
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Claim handling delays or issues Failure to process instructions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Provider is an Insurance Broker, which acted on behalf of the Complainants in the inception of an Insurance Policy, over their property. The Policy in question is a “Self Build Direct” policy, which had an inception date of 28th July 2014 and an expiry date of 28th July 2016.

The Provider subsequently facilitated an extension of the insurance cover, between the Insurer and the Complainants, for a period of three months, up to 28th October 2016.

The Complainants’ complaint is that the Provider failed in its duty to act in their best interest at all times, so as to ensure that they had continuity of self-build insurance cover to completion of their house. They say it failed to invite a further extension of cover with the Insurer, prior to 28th October 2016.

The Complainants’ Case

The Complainants submit that it is important to note that they had preliminary discussions, by telephone, with an employee of the Provider, prior to the inception of the Self Build Policy, in 2014. The Complaints submit that they were informed, at that time, that the Self Build Policy would cover a period of two years, and that should they require an extension of cover, this would not be a problem.

They submit that they were told that that the Provider would contact them in writing, to give them the opportunity to extend cover. The Complainants submit that this did happen, prior to the initial Policy expiry date of 28th July 2016, and that they received a letter from the Provider dated the 29th June 2016, in this regard.

The Complainants submit that they replied to this letter and were subsequently requested to pay a premium of €472.50 for a 3 month period. The Complainants submit that they advised the Provider that this premium was excessive, and ultimately it was reduced to €250.00.

The Complainants submit that they forwarded a cheque for €250.00, and received a receipt from the Provider, dated 14th September 2016.

The Complainants submit that they did not receive any letter, or phone call from the Provider, in advance of policy expiry date, on 28th October 2016 to give them the opportunity to extend cover for a further 3 months. The Complainants submit that this was *"not in accordance with their precedent, and is unfair to us"*.

The Complainants submit that they wrote to Provider on 10th November 2016, requesting an extension of 3 months, to 28th January 2017, and enclosed a cheque €250.00 to cover the premium charge. On the 11th November 2016 the Provider replied to them, stating that *"your request to extend cover is refused"*. The Complainants submit that the cheque was returned even though their cheque had been accepted on 14th September 2016, for extension from 28th July 2016.

The Complainants submit that the Provider wrote to them on 11th November 2016 and offered a new policy with a different underwriter. The Complainants submit that *"this was never what we requested or deserved"* and that they already paid €1,900.00 in premium charges to the Insurer, through the Provider.

The Complainants submit that they wrote to the Provider again, on 18th November 2016, repeating their request for an extension of cover, enclosing cheque for €250.00 and advising that it was imperative that they have insurance cover in respect of the house, as it was at an advanced stage of completion. The Complainants submit that they also lodged a complaint with the Provider.

The Complainants submit that they informed the Provider, in a phone conversation, and subsequently in writing, on 08th December 2016, that a water leak had occurred in the house.

The Complainants submit that they are deeply disappointed with the manner in which they have been treated, in particular their being left without cover from 28th October 2016 on a self-build house, which, the Complainants submit, was then at its most valuable.

The Complainants believe that as the Provider is their Broker, and they are its customers, that it should have acted in their best interest at all times, so as to ensure that they had continuity of self-build insurance cover to completion of house.

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The Complainants say that they believe that the Provider acted in breach of its Terms of Business, dated 05th of March 2013, insofar as it failed to record phone conversations which the First Complainant had with an employee of the Provider, prior to the inception of the Policy, in 2014.

The Complainants submit that the reasons offered by the Provider as to why these calls were not recorded, in its letter dated 29th December 2016, namely, that the conversations which took place pre-date the installation of its voice recording system or that calls were made or received via the employee's mobile phone, are not satisfactory.

The Provider's Case

The Provider notes that the dispute with the Complainant arises out of Self-Build Insurance Policy, which was placed by the Provider, on the Complainants' behalf, on 28th July 2014.

The Provider submits that cover under the policy was due to expire on 28th July 2016 *i.e.* 24 months after policy inception and that the proposal form stated that *"Should the work take longer than the period stated, Insurers approval is required for extensions of cover and will be subject to an appropriate additional premium."*

The Provider submits that it received a letter from the Insurers, for the attention of the Complainants, dated 27th June 2016. It submits that this letter contained a reminder of the policy expiry date and it also stated that, in order for Insurers to consider extending the period of cover, the Policyholder must first complete and return an Extension of Cover Questionnaire, prior to the expiry of cover.

The Provider submits that following this, it wrote to the Complainants, by letter dated 29th June 2016, advising them of same and enclosing the Extension of Cover Questionnaire.

The Provider submits that an extension period was subsequently agreed by the Insurers, for the period, 28th July 2016 to 28th October 2016. The Provider submits that whilst there was initially some dispute over the premium amount, arising from the cover extension period, that this was eventually agreed at €250.00.

The Provider submits that some time subsequent to the expiry of the extension period, on 11th November 2016, it received a cheque (in the sum of €250) from the First Complainant and a letter requesting a further 3 month extension. The Provider submits that it emailed the Complainants' Insurers, to enquire whether it was possible to extend the cover further. The Provider submits that the reply which it received was that cover had already expired and that an extension was not possible. The Provider submits that it wrote a letter addressed to the First Complainant on the 11th November 2016, informing them of the Insurer's position and returning the cheque to them.

The Provider submits that the First Complainant wrote to it again, by letter dated 18th November 2016, and again enclosed a cheque for €250, which it subsequently returned to the Complainants.

The Provider submits that on 30th November 2016, one of its employees discussed the matter with the First Complainant and again explained the position to him, including why an extension of cover to the Policy was not possible. The Provider submits that it was also explained how the property may be insured under a new and separate policy should the Complainants wish to pursue this option. The Provider submits that it had first advised the First Complainant of the option of this new policy, in writing on 11th November 2016.

The Provider submits that the complaint before this Office relates to an assertion by the Complainants that an opportunity was not afforded to them to extend policy cover, contrary to the precedent set by the Provider, prior to the expiry of the original policy period. The Provider denies this and submits that it was originally upon receipt of a letter from the Complainants' Insurers, prior to the policy's expiry that it wrote to the First Complainant.

The Provider submits that it did not write to the Complainants prior to the expiry of the three month extension period, as it did not receive any communication from the Insurers regarding a further extension. The Provider submits that it is also not known by it whether an extension to the extension period would even have been permitted by the Insurers, had it been requested before the three months had elapsed.

The Provider submits that it did notify the Complainants of the date that cover would expire, in a letter dated 06th September 2016, 7 weeks prior to the expiry date.

The Provider submits that notwithstanding the above, the type of policy in question is a fixed term self-build policy, which does not have a renewal date, and thus falls outside of the legislative requirements concerning the renewal of insurance policies, namely, Statutory Instrument No 74/2007 — Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007.

The Provider submits that on Friday 02nd December 2016, the First Complainant informed it that a pipe had burst in the property, on Sunday 27th November 2016. The Provider submits that it subsequently received formal notification of a burst pipe from the Complainants and that it did, as a matter of course, notify the insurers for the Complainants, and it was advised that, as cover had expired on 28th October 2016 and the date of loss was 27th November 2016, the claim did not fall for consideration under the policy.

The Provider notes that the Complainants specifically stated they wanted it to extend cover from 28th October 2016 to 28th January 2017, but it submits that it was not in a position to do so, as it was not their insurer.

The Provider points to its letter of 11th November 2016, to the Complainants, in which it advised that:

"Your current Insurers are unable to extend the policy any further as the 3 month extension expired on 28/10/2016.

There is another product which we can use to obtain a quotation for you in the meantime and then once the house is completed in full and owner occupied we can change the policy over to a standard household policy.

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To enable us to obtain a quotation we will need the attached proposal form to be completed in full and returned to us.

Please note that all cover under the above policy has expired with effect from 28/10/2016, as per previous schedule issued to you."

The Provider submits that this evidences that it did offer the Complainants an opportunity to have it source a quotation on their behalf, as soon as the Complainants had advised it that they wished to have cover in place for the property. The Provider submits that this offer was not taken up by the Complainants, however.

The Provider says that it rejects the matter complained of by the Complainants for the following reasons:

- The Provider submits that the conduct complained of is unreasonable and unjust - the proposal form for an extension, which was completed by the First Complainant states that Insurer's approval is required for extensions of cover. It submits that the Complainants were aware of this, as they had already applied for one policy extension, previously.
- The Provider submits that it is unable to extend an insurance period and that only insurers can provide this.
- The Provider submits that it has no Consumer Protection Code obligations concerning the offer to facilitate an application to Insurers on the Complainants' behalf to further extend a policy extension.

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 Complainants were 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.

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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.

A number of submissions have been received from each of the parties since the Preliminary Decision issued. All submissions received have been considered in detail, and are reflected in the Decision outlined below, however, these submissions do not alter the outcome of my Preliminary Decision.

I would note at the outset that the Provider is an Insurance Broker, *i.e.*, is a financial service provider that receives and transmits orders in certain insurance products and provides advice in relation to those products. I note that the Provider has previously submitted that the Complainants' Insurers may have been a more appropriate Respondent to the within complaint, in circumstances where the core of the Complainants' complaint is that they were left without insurance for a period of time. The Provider says that as a Broker, it is not in a position to remediate this. The Complainants have submitted, however, that they believe that as, *"[the Provider] are our Brokers and we are their customers that they should have acted in our best interest at all times, to ensure that we had continuity of self build insurance cover to completion of house."*

The dispute arises out of a self-build policy of insurance, which was placed by the Provider, on the Complainants' behalf. The inception dated of the Policy was 28th July 2014.

The Complainants' complaint is that the Provider, as their Insurance Broker, failed in its duty to act in their best interest at all times, so as to ensure that they had continuity of self-build insurance cover to completion of their house. They contend that it failed to invite a further extension of cover, prior to 28th October 2016.

(I note that a separate entity (i.e. another broker, which is not the Provider) administered the Self Build Insurance Product on behalf of the Insurer and had delegated authority in this regard. For the purpose of the within Decision, and for ease of reference, I use the term "Insurer" when referring to either of these entities.)

I have had regard to the *"Self Build Direct Insurance Proposal Form"*, which was completed and signed by the Complainants and is dated 25th July 2014.

This Proposal Form, at Question 16, asked the Complainants to identify the date from which cover was required. They stated 28th July 2014.

The Form contained a note, in relation to this date, as follows:

"This will be the date from which the insurance contract of 24 months will commence...Should the work take longer than the period stated, Insurers approval is

required for extensions of cover and will be subject to an appropriate additional premium.” [my emphasis]

The Policy was put into place and I note that the Insurer’s “Self Build Direct” Schedule of Insurance, furnished to the Complainants, identified the period of insurance as running from 28th July 2014 to 28th July 2016.

The Provider submits that, almost two years later, it received a letter from the Insurers for the Complainants, addressed to the Complainants C/o the Provider, dated 27th June 2016, which was a reminder that the policy expiry date was approaching. The letter stated that in order for the Insurers to consider extending the period of cover, the Complainants needed to first complete and return an Extension of Cover Questionnaire, prior to the expiry of cover.

I have had regard to the letter which was received from the Insurer by the Provider. It is addressed to the Complainants, C/O the Provider, and it states:

“Dear [Complainants],

We are writing to you in relation to the above policy which relates to the construction of your Private Dwelling. You will be aware that cover on your policy terminates when your home reaches practical completion or reaches the expiry date stated on your policy document, whichever comes first.

In order for Insurers to consider extending this policy further you must complete and return the enclosed Self Build Direct Extension of Cover Questionnaire prior to your policy expiry date on the 28th July 2016.

If we have not received the enclosed Questionnaire prior to the expiry date we will presume you do not wish to extend the policy and it will automatically lapse on the expiry date.”

Following this, the Provider wrote to the Complainants, by letter dated 29th June 2016, informing them of this, as follows:

Dear Complainants

[Policy details]

In respect of the above numbered policy, the policy terminates when your home reaches practical completion or reaches the expiry date stated on your policy document whichever comes first.

In order for Insurers to consider extending this policy further you must complete and return the enclosed Self Build Questionnaire prior to your policy expiry date on July 28th 2016.

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If we have not received the enclosed Questionnaire prior to the expiry date we will presume you do not wish to extend the policy and it will automatically lapse on July 28th 2016.

We trust you find this in order but should you require any further details or have any queries, please do not hesitate to contact me.

I have also listened to the audio recording, dated 01st July 2016, when the First Complainant rang to confirm that, further to receipt of the above letter, he would indeed need an extension of cover as works had not completed on the property. I have set out, below, excerpts from the conversation which took place. I have used the letter "C" to denote the Complainant, and "P" to denote the Provider:

C: You wrote to me there, em...

P: Yeah, the self build policy, wasn't that the one?

C: That's correct, absolutely, yeah.

C: Well, yes I probably would need an extension, for a period...

...

P: What I will do, I will get a quote from them. I think the maximum amount of time that they actually give on those policies is 6 months; so will 6 months be sufficient for you?

C: Well I'm actually hoping, I would be hoping that that the build would be finished by the end of September....

...It has moved well but waiting for people is the problem.

P: So, what are we now? July. So, July August, Sep, Oct. So, if I look for a four month one, do you think would that suffice, or will I...I can get a quote for six and you can look at it then?

C: Yeah, 3 to 4, whichever would be the cheaper, d'ya know, would probably be ...

P: ...Would be enough

C: ...Yeah. I wouldn't like to have a big bill now for the...for, you know ...

P: I know, I know. Right I'll see if they can give me a quote. Now, I sent you out a form but I don't know will they give me a quote without sending that form back, but I'll clarify.

C: Well, I can fill it up. I would be interested in filling it up and to see what's involved.

P: Well, you fill that up so and send it back to me. Wait 'til we see now, ok, so we have until the 28th, that policy you have doesn't expire until the 28th July, so we have a couple of weeks anyway, okay. So if you fill that out and get it back to me if you can next week and in the meantime I will send them an email and see if they can get working on it for me.

C: I'll definitely do that.

...

The questionnaire was subsequently completed and returned by the First Complainant, which was, in turn, sent to the Insurer. By email dated 19th July 2016, the Provider transmitted the completed Extension of Cover Questionnaire, for the Insurer's attention.

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On the 29th July 2016, the Provider issued a follow up email, requesting the Insurer to revert in respect of the email of the 19th July.

It appears from the email correspondence furnished that the Insurer had sent an email on the 25th July 2016, to the Provider, but it was sent to the email address of an ex-employee, who had dealt with the Complainants at the inception of the Policy, but had since left the Provider's employment.

The email of the 25th July 2016, from the Insurer stated:

"I confirm it is in order to extend the above policy, there is a charge of €472.50 for 3 months. Can you please confirm that you wish to proceed."

By email dated 09th August 2016 the Provider responded that, "[Name] no longer works with [the Provider] and therefore I've only picked up this email today I will let the client know and revert on his instructions."

I have listened to a copy of an audio recording of the telephone conversation which occurred between the First Complainant and the Provider, on the 25th August 2016, wherein he indicates that he has received the insurance quote and is disappointed by it, as he believes it is "a huge premium, for 1/8th of the time". The Agent of the Provider advised that "we won't have anywhere else to go", as no one will take it on for that length of time (i.e, three months). She advised that she will "refer it back into them" and she suggests that it should really be around €250, on a pro rata basis. She says that she will ring the Insurers and see if there was anything that could be done about it.

Following discussions with the Insurer as to the premium amount, the Provider advised the Complainant that, "in order to avoid any more hassle they will agree to the €250."

The Complainants agreed to pay this amount and by email of even date, the Provider wrote to the Insurer, confirming the premium agreement.

The Insurer confirmed that cover would extend from the date of the Policy expiry, on the 28th July 2016 for a period of 3 months subject to confirmation that no claims or incidents had occurred since the expiry of the Policy period.

By email dated 06th September 2016, the Provider confirmed that no such claims or incidents had occurred. On this same date the Provider furnished the Complainants with formal confirmation of the Policy extension, including details of the expiry date of the 28th October 2016.

The Complainants have made a number of submissions regarding this email of the 06th September 2016, and regarding telephone calls which took place on the 29th and 30th August between the Provider and the Broker acting on behalf of the Insurance Company. The Complainants' submissions concern the fact that they were not contacted by the Provider prior to it issuing the email, on 06th September 2016. They have submitted that as a result of this omission, they were not given an opportunity to confirm, or otherwise, to the

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Provider that no such claims or incidents had occurred. The Complainants contend that the effect of this lapse on the part of the Provider, is that the extension of the insurance policy should be taken to have commenced on 06th September 2016, for a period of three months, with a second extension for three months to the 06th March 2017.

The Provider has submitted that it acted on the basis that it had not been notified by the Complainants of any incident which may have given rise to a claim under the policy and that *"its conclusions were arrived at in this context and in good faith"*.

I have had regard to the telephone conversations which the Complainants have referred to. I have reproduced these in part below:

- 29 August 2016 – Conversation between the Provider and Insurer (via its broker):

I: We spoke to [Insurance Company] there on it, they have agreed to reduce the premium to 250. Would that be any good to your client?

P: Okay, I'll go back to him and see.

...

I: What I'll do is I'll confirm that in an email to you in the morning. I'm actually just waiting on the confirmed email from themselves.

P...The renewal then is three months from the renewal date? Back from the date when it was due to expire at?

I: Yeah. Exactly yeah. And I'll send you over paperwork and everything in the morning then

P: Alright I'll speak to him and I'll send an email on it [name] alright?

I: Will I just go ahead and do it, or?

P: Oh no, wait until I come back

I: Wait until you come back, okay perfect.

- 29th August 2016 – Conversation between the Provider and First Complainant:

P: I had the guy come back to me there from the insurance company and he said to avoid any more hassle on this they will agree to the €250.

C: Well that's great, that's brilliant.

P: Is that alright. Will I tell them to go ahead with it, or?

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C: Do, do. Will I send the cheque onto yourselves?

P: Do. Yeah. You can yeah. That's no problem.

C: That's great news, thanks for that [Agent's name].

P: I'll get on to him so straight away and I'll say to extend it for the three months, alright.

C: That's brilliant and, come here, will it cover from now like...or is it?

P: No, it's from the date that the policy was expired.

C: Oh right, okay well, sorry nothing I can do about that. Yeah, okay I will still go with it.

P: Yeah, All right [Complainant's name] that's perfect and I'll send you out the documentation anyway, is that alright?

C: That's great. Thanks very much [Agent's name].

- 30 August 2016 - Conversation between the Provider and Insurer (via its broker).

I: Just processing that there...just to make sure we are both on the same page there now, that was due to expire...?

P: ...the end of July was it?

..

I: It was July, yeah. So you are aware that the extension is from then, yeah..?

P: He is aware of that, yeah.

I: Just to cover ourselves on it, [Insurance Company] just want confirmation from yourselves that the client is not aware of any incident during that last period, say from that renewal date to now...

P: Okay

I:... that could rise to a claim.

P: No bother. I can get an email from him, or something in writing is it?

I: Yeah, if you could, yeah. It'd be fine coming from yourselves as well just to say that you spoke to the client and you are not aware of any incident that may give rise to a claim.

P: Oh right. Yeah, yeah, we could do that today.

The Provider then sent an email dated 06 September 2016, which stated:

"I can confirm that no claims or incidents have occurred since 31/07/2016

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Can you issue endorsement to extend the policy for a 3 month period with effect from 31/07/2016 at the ap agreed of €250."

I agree that it was unsatisfactory of the Provider to have issued the email of the 06th September without having first expressly confirmed with the Complainants that no claims or incidents which may have given rise to any claims, had occurred since the expiry of the Policy period on 28th July 2016. As a matter of good practice this should have been done. However, I accept that the Provider was not on notice of any such incidents from the Complainants, whom it had been in recent contact with. The Complainants have since confirmed that no such incidents in fact occurred during the period in question. I am satisfied that the Complainants were not therefore prejudicially affected by the Provider having told the Insurer that no claims or incidents had occurred during the relevant period.

The next communication occurred on the 11th November 2016, when the Provider received a letter from the Complainants, requesting an extension of cover until the 28th January 2017 and enclosing a cheque in the sum of €250.00

By email of the 11th November 2016 the Provider wrote to the Insurers, requesting a further extension of cover.

It seems that the Insurer declined the extension, because, by letter of even date, the Provider then wrote to the Complainants, advising that, *"Your current insurers are unable to extend the policy any further as the 3 month extension expired on 28th October 2016."* The letter went on to advise that an alternative policy may be available, subject to a completed and returned proposal form. The letter enclosed, by way of return, the cheque for €250.00.

By letter dated 18th November 2016 the First Complainant wrote to the Provider, requested copy conversations which took place prior to policy inception, on the basis that, *"it will become clear that I am entitled to a six month policy extension which will expire on 28/01/2017"* and insisting that cover must be extended, enclosing again the cheque for €250.00.

There is an Internal File Note of the Provider, dated 30th November 2016, which states as follows:

"The insured rang and he doesn't accept the fact that the policy has expired and that a further 3 month extension isn't available. He doesn't want to accept the Flex product offered to him and he wants a copy of the phone calls between him and [name of ex-employee] when the policy was incepted advising him a 6 month extension was available. Its infringing on his rights in his opinion that the extension is not available. I advised I would refer this to mgt and they will contact him."

By letter dated 02nd December 2016 the Provider wrote to the Complainant confirming that his complaint had been lodged.

By letter dated 15th December 2016 the Complainant wrote to the Provider, confirming the occurrence of a leak, which he had previously informed it of, by telephone call.

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By letter date 29th December 2016, the Provider wrote to the First Complainant regarding the outcome of its investigation into the Complainant's complaint. This Final Response Letter stated that:

Further to our letter of 02/12/16 I would advise that having investigated the background to the inception of your self build policy and subsequent cover extension requests by you. I do note that you are disappointed that you are unable to extend your policy cover beyond 28/10/16.

The following are some points from our file:

- *Your policy was effected on 28/07/16 and was due to expire on 28/07/16*
- *The policy was extended to 28/10/16, upon your request, and payment of an extra premium (€250.00) was made by you*
- *On 11/11/16 we received a letter from you (enclosing a cheque in the amount of €250.00) in which you requested a further three month extension. On contacting insurers we were advised that the cover had expired on 28/10/16 and as such it could not be extended. Our office wrote to you on 11/11/16 to confirm the position and returned the cheque to you.*
- *Your letter dated 18/11/16 (received 23/11/16) again enclosed a cheque for €250.00, which is again returned herewith.*
- *On 30/11/16 my colleague [name] discussed the matter with you and explained the position to you including why an extension of cover to the policy was not possible and [colleague] also explained how the property may be insured under a new and separate policy.*

You have raised a query regarding the recording of phone conversations which the company does undertake. Regarding telephone conversations with [name of ex-employee] (who no longer works for [the Provider]). I have searched for these calls but am unable to locate any such conversations between you and [ex-employee]. The reasons for this may be that any such conversations pre-date the installation of our voice recording system or those conversations may perhaps have been made or received via [ex-employee]'s phone.

I do appreciate that insurance cover on your property of great importance [sic] and I regret to hear of the water leak to which you refer in your letter dated 02/12/16 which apparently occurred on 27/11/16 (per our conversation with [colleague]). We are notifying insurers of the damage but I trust you will note the aforementioned position regarding the policy during the period during which cover has operated."

The First Complainant, by letter to this Office, dated 17th January 2017, responded to the above letter, as follows:

1. *Policy was effected on 28/07/2014 and was due to expire on 28/07/2016.*

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2. *The policy was extended to 28/10/2016 but the premium charge requested was €472.50 as per letter dated 09/08/2016. I complained that this premium was excessive and premium was reduced to €250.00 as per letter dated 06/09/2016.*
3. *On 11/11/2016 I requested an extension and enclosed a cheque €250.00 to cover premium. It is important to point out that [the Provider] failed to write to me before my policy expired on 28/10/2016. This is not consistent with their precedent and criteria, as they did write to me on 29/06/2016 prior to expiry date of policy on 28/07/2016 and gave us the opportunity to extend cover.*
4. *On 18/11/2016 I requested an extension of policy to 28/01/2017 and enclosed cheque €250.00 to cover the premium. The cheque was retained by [the Provider] and returned with letter dated 29/12/2016.*
5. *[The Provider] wrote to me on 11/11/2016 and offered a new policy with [another insurer]. This is never what we requested or deserved. We had already paid €1900 in premium charges to [insurer] through...*
6. *[The Provider] phoned me and told me that they notified the insurers of water leak damage in our house, which occurred on 27/11/2016 and that the insurers would write back to me, but to date we have not received any letter from [insurers].*
7. *I refer to [the Provider's] Terms of Business 05th March 2013 version VI. Recording of Telephone Conversations: the firm records all telephone calls, inbound and outbound for verification and quality purposes. It is clear the terms of business pre-date the inception of our self build policy, therefore it is reasonable for us to expect that the conversations between [ex-employee] and me [First Complainant] should have been recorded."*

Analysis

The Complainants feel strongly that the Provider breached its Terms of Business insofar as it failed to record telephone conversations which took place between the First Complainant and an ex-employee of the Provider, prior to the inception of the Policy.

The Provider's Terms of Business

The Complainants believe that had these calls been recorded, they would demonstrate that the Provider's ex-employee, had, pre-inception, assured the First Complainant that he was entitled to a six month extension following the expiration of the 24 month self build policy.

I will address each of these issues, in turn.

I have had regard to the Provider's Terms of Business and note that these are dated 05th March 2013. At page 3 it states:

Recording of Telephone Conversations: *The firm records all telephone calls, inbound and outbound, for verification and quality purposes. All data captured by these facilities are managed and safely stored in accordance with Data Protection Act.*

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I note that the Provider has advised that the calls in question cannot be located, and that the reason for this is that the calls either pre-date the installation of the call recording system or that the calls may have been made/received by the employee in question on his mobile phone.

I would observe that as the Terms of Business are dated March 2013 and the policy was incepted in July 2014, it would not appear to be the case that the conversations in question pre-date the Terms of Business, which document pre-supposes the presence of a system of call recording within the company. However, it is also possible that the conversations occurred on the employee's mobile phone and are, resultantly not available. It seems therefore that contrary to what is suggested in the Terms of Business, "all" telephone calls are not recorded.

Whilst it is disappointing that these calls are not available, I note that the reason that the Complainants requested them was because they believed that they would evidence that, prior to the inception of the policy, they were informed of their entitlement to an extension of six months, after the expiry of the 24 month fixed period of the Self Build. However, having had regard to all of the available evidence, it is clear that the possibility of a 6 month extension was separately discussed between the parties in July 2016 (details of which are quoted on page 7, above). Moreover, I am of the view that the Complainants' "entitlement", as they have termed it, to a further extension, of up to 6 months, was not, contrary to their submissions, denied to them.

In fact, when the term of the Self Build Policy expired, in July 2016 the Insurer wrote to the Complainants, via their Broker, the Provider, to see if they wished to avail of an extension, which extension had a maximum duration of six months.

The "Self Build Direct Insurance Extension of Cover Questionnaire" asked the Insured to indicate the "duration of the extension required (6 months maximum)".

By letter dated the 29th June 2016, the Provider advised the Complainants of this option to extend. The First Complainant subsequently spoke to an Agent of the Provider, as set out above, and completed and submitted the relevant Questionnaire, indicating that they wished to avail of a 3 month extension.

The Complainants were, therefore, entitled to apply for an extension period of six months. The fact that they opted for a lesser period, of three months, does not negate this.

When this three month period was due to expire, the Insurers did not write to the Complainants, via the Provider, or otherwise, to invite them to avail of a further extension period.

The period of insurance thus expired on 28th October 2016.

The Complainants contend that the Provider had "set a precedent" by offering such an extension and then failed to adhere to the precedent which they had set, when they failed to contact the Complainants and offer a further extension.

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The Provider has denied that it set any “*precedent*” by having communicated the Insurer’s offer of an initial extension, and has submitted that the reason that it contacted the Complainants in June 2016 was as a result of correspondence which it, itself, received from the Insurer, for the attention of the Complainants, regarding the expiry of the period of insurance and inviting the Complainants to submit a Questionnaire, in furtherance of any request for an extension period.

The Provider has submitted that prior to the expiry of the 3 month extension, the Insurer did not write to the Complainants or themselves, to advise of the expiry of the extended period of insurance or to invite an application for a further extension. It says that as a result, it, itself, did not therefore contact the Complainants in this regard.

Duty to Inform

The Provider has submitted that it has not breached its obligations pursuant to S.I. 74/2007, “*Non-Life Insurance (Provision of Information Renewal of Policy of Insurance) Regulations 2007*”. It submits that these Regulations do not apply to the Policy in question due to the fact that it was a fixed term contract and, consequently, was not subject to renewals.

Having reviewed the Policy in question, I accept that this is the case. Even if it were not, I do not consider that the Provider acted contrary to its legislative obligations, in this regard.

I note that, section 5(1) of the Regulations imposes the following requirements, upon Insurers:

5. (1) An insurer shall, not less than 15 working days prior to the date of expiry of a policy of insurance:

(a) where the insurer wishes to invite a renewal, issue to the client in writing a notification of renewal of the policy of insurance, or

(b) issue to the client in writing a notification that it does not wish to invite a renewal, unless in the case of this sub-paragraph (b) the insurer has reason to believe that the client would not wish to renew the policy.

Section 8(1) goes on to impose the following requirement upon Intermediaries:

8. An insurance intermediary shall provide to the client without delay and without amendment any notification referred to in these Regulations which is received by such insurance intermediary.

[my emphasis]

The Insurer, whilst it initially invited the Complainants to submit a Questionnaire if they wished to extend the Policy, in July 2016, did not write regarding any further potential extension of the Policy, prior to the expiry of the three month extension, in October 2016. I am satisfied that it was in the absence of any such communication from the Insurer that the

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Provider did not notify the Complainants about any further potential extension. Taking into account the functions of an Insurance Broker, I accept that it did not fail in its duty toward the Complainant, in this regard.

When the Complainants advised that they wished for continued insurance cover over the property, the Provider, on the 11th November 2016, wrote to Complainants and offered to obtain a quote for cover with a different Insurance Provider. However the Complainants declined to do so and they have submitted this is not what they wanted, or what they deserved, having already paid €1,900 in premia to their initial Insurer. I would note that any further period of cover would have incurred an additional payment of premium, irrespective of which insurance company was underwriting the policy. In any event, the Complainants declined to avail of this option.

On balance, having examined all of the evidence before me, in detail, I am satisfied that the Complainants were on notice of the fact that the approval of the Insurers would be required for extensions of cover. The Proposal Form itself stated that *"This will be the date from which the insurance contract of 24 months will commence...Should the work take longer than the period stated, Insurers approval is required for extensions of cover and will be subject to an appropriate additional premium."*

As the Insurer did not invite or approve a second extension of cover, I do not find that it was within the Provider's power to procure a further extension with that Insurer. The Complainants turned down the option of a quote from a different Insurer.

Overall, I am satisfied that the Provider did not act wrongfully or unreasonably in its dealings with the Complainants, and in those circumstances, I take the view that there is no reasonable basis upon which this 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

01 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.