An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0110
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Disagreement regarding Settlement amount offered
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants made a claim under their house insurance policy due to escape of water discovered on 28th December 2016. The claim was made on 5 January 2017. The loss adjuster issued a settlement letter for the claim in the amount of €2,965.59 The policy excess was €550. On 30 January 2017 the Complainants' representative queried if the policy excess had to be vouched. On 31 January 2017 the loss adjuster responded confirming that for the full retention to be released the full cost of the agreed figure of the loss would have to be vouched. On 6 March 2017 the Provider made a payment of €1,525.91 to the Complainants but held back a retention of €889.68, this represents 30% of the adjusted loss before the application of the policy excess.

The Complainants' Case

To allow for the release of the retained €889.68 the Provider requires the Complainant to vouch expenditure in the amount of the adjusted agreed loss of €2,965.59. The Complainants say that they accepted the settlement but did not accept the condition attached to the retention. The Complainants dispute that they should have to vouch the €550 excess, they claim that this €550 was an uninsured element of the loss rather than part of the settlement. The Complainants say that this method of settlement is not in conformity with the policy of insurance or the Consumer Protection Code.

The Complainants say that it is not fair to require a policyholder to spend monies that do not form part of the settlement. The Complainants say that the Provider is requiring the

Complainants to spend €550 of their own money to obtain the retention and that this is an unwarranted barrier to the release of the retention.
The Complainants require confirmation that they only need vouch expenditure up to the amount of €2,415.59 which represents the agreed loss less the €550 excess.

The Provider's Case

The Provider states that the policy excess is always a stand-alone deductible which is applied to each and every claim relative to the insured peril that the situation of loss might invoke. The Provider claims that the measured value of the loss is always the agreed figure prior to the deduction of the policy excess. The Provider feels the Complainants are attempting to attribute the policy excess to an uninsured loss and that this is not correct.

The Provider states that page five of the policy booklet defines an excess as:

> *"The amount you must pay towards certain claims. This is shown in your schedule"*

The Provider states that the condition on page 22 of the policy provides that, you must:

> *"within 30 days of any event, all details, documents, proof of ownership and value, information and help which we may need."*

The Provider states that the adjusted agreed value of the loss is always the agreed figure prior to the deduction of the policy excess. The Provider is satisfied that the full amount of €2,965.59 must be demonstrated to have incurred. The policy excess forms part of the settlement figure and therefore it must be vouched.

The Provider states that at renewal 2014 the following changes were made to the policy wording and were included on the schedule:

> *"Changes to the policy wording – Please refer to your policy booklet, relevant pages outlined below*
>
> *Page 3 – Introduction/[Product Name] Insurance Policy, the fourth paragraph now reads as follows:*
>
>> *We will settle claims by either repairing, replacing or reinstating property or by making a payment or stage payments.*
>>
>> *Under this policy stage payments can be made where a portion of the claim payment will be retained by us until the works are completed.*
>>
>> *When these works have been completed and supporting invoices and receipts or any additional evidence we may reasonably request have been provided to us to confirm the total cost incurred, the full agreed sum will be paid,"*

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The Provider states that once it is provided with documentation confirming that the complainant has incurred costs, it will review same so that it will release the retained amount of €889.68 or a portion of it, if incurred costs are less than the agreed loss.

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.

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.

The following additional submissions were received from the parties:

1. E-mail from the Complainant to this office dated 13 July 2018

2. E-mail from the Provider to this office dated 20 July 2018

These submissions put forward further arguments in relation to how the excess should be treated. I have considered the contents of both submissions. They do not contain anything which would alter my view as set out in my Preliminary Decision.

My final determination is set out below.

The claim was agreed to be a loss valued at €2,965.59, this is not disputed. The Complainants' claim is that the policy excess is an uninsured loss which need not be vouched by documentation. I do not agree with this interpretation of the terms and conditions;

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The policy booklet defines an excess as:

> *"The amount you must pay towards certain claims. This is shown in your schedule"*

The excess is a part of the agreed loss value of €2,965.59, it is the part of the loss which the Complainants must pay, this was made clear to the Complainants when they incepted the policy. The policy excess is an insured loss as it included in the loss value of €2,965.59 which the Provider accepts should be covered under the policy. An excess is the part of the agreed loss which the Complainant must pay.

Provision 7.6 of the Consumer Protection Code states that:

> *"A regulated entity must endeavour to verify the validity of a claim received from a claimant prior to making a decision on its outcome."*

The Provider in compliance with Provision 7.6 of the Consumer Protection Code must seek to verify the validity of the claim. In verifying the validity, the Provider is entitled to seek documentation to verify the full loss incurred, including the excess. While I note the Complainants' representative's argument that the excess is not part of the insured loss, I do not agree. The excess forms part of the insured loss. Further the changes to the policy terms made at renewal in 2014, as set out above, allow the Provider to seek supporting invoices and receipts to confirm the "*total*" cost incurred, the word total refers to the agreed loss of €2,965.59.

For the reasons outlined above, I do not uphold this complaint.

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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

9 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.