



<u>Decision Ref:</u>	2018-0146
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Failure to accept evidence of occupancy Rejection of claim - freezing or escape of or overflow of water or oil
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants are the Representatives of the Estate of the policyholder, who held a home insurance policy with the Company. Sadly, the policyholder died on [REDACTED].

The Complainants' Case

The policyholder died in hospital on [REDACTED]. The First Complainant states that *"on the same day a water leak was detected in [the policyholder's] home"* and he notified the Company of the loss on 5 October 2015.

The Company declined the ensuing claim as the policyholder's home had been unoccupied for a year or more at the time the policyholder died as she had been residing in a nursing home. In this regard, in correspondence to the Complainants dated 3 November 2015, the Company advised that *"given the un-occupancy of the property and the fact that the water damage was only discovered on the [REDACTED] the company's position may have been prejudiced as this leak may have been going on for some time"*.

The First Complainant wrote to the Company on 4 November 2015, as follows:

1. [The policyholder] *died on the same day as the water leak was discovered, [REDACTED]. Hence the delay in informing [the Company] on the 5th Oct.*

2. *The property...was occupied less than a week before the leak.*
3. *[The deceased] did not live in it or occupy it for the previous year but her family did.*
4. *I have never claimed that the property was CHECKED. I have always claimed that the property was occupied both then and now.*
5. *The [electricity] bills were not as you claim for the amounts you mentioned and even if they were who do you think was using the electricity in an unoccupied house. If your investigation was truly "comprehensive" you would have noticed [the policyholder] had an electricity allowance of approx. €70 per two months.*
6. *No definition of occupancy appears on the insurance document".*

The First Complainant submits that "[the Company] are now claiming that 'OCCUPANCY' means lived in which I don't agree with. However if this is what they mean, 'LIVED IN' should be clearly on the policy".

The Complainants seek for the Company to admit the policyholder's claim into payment in the amount of €3,737 (€650 for plumbing works, €1,500 for a new 3 piece suite, €958 for new carpet and underlay, €599 for a new television and €30 disposal of old furniture).

The Complainants' complaint is that the Company wrongly or unfairly declined the policyholder's home insurance claim.

The Provider's Case

The Company notes that the Complainants are the Representatives of the Estate of the policyholder, who held a home insurance policy with the Company and who died on [REDACTED].

Company records indicate that the First Complainant telephoned the Company on 5 October 2015 and advised that the policyholder had died on [REDACTED] and that on the same day, whilst organising the wake in her home, her family found that a pipe underground had burst and damaged the property and some contents. The Company appointed a Loss Adjuster to assess the claim on the same day. It was noted that on notification of the claim and as the First Complainant discussed with the Loss Adjuster, the policyholder's home had been unoccupied/not lived in for a considerable amount of time prior to the discovery of the escape of water. The Company notes that at a later stage it was advised that the policyholder had been residing in a nursing home for a year or more at the time she died.

The Company notes that the First Complainant claims that the policyholder's home was checked on a regular basis. The Company submits that a property being checked does not constitute it being lived in. In this regard, the Complainants provided the Loss Adjuster with

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an electricity bill for the policyholder's home for January 2015 to March 2015 in the amount of €15.40 and for June 2015 to July 2015 in the amount of €13.16. Taking into account the standard standing charge, the Company is satisfied that this would indicate that there was little or no usage of electricity during these periods.

As a result of the un-occupancy of the policyholder's home, the Company's underwriting department reduced cover on the property to fire, lightning and explosion only.

If the Company had been advised that the property was not occupied/lived in prior to the incident, cover would have been reduced to fire, lightning and explosion from the time the policyholder left the property and moved into a nursing home. In this regard, the Company notes that the escape of water peril does not operate while a property is unoccupied. Given that the policyholder's home was unoccupied and the fact that the water damage was only discovered on [REDACTED], the Company considers that its position may have been prejudiced as the leak may have been ongoing on for some time. There is no record of the Company having being advised that the policyholder's home was unoccupied. It is a condition of the policy that the Company be advised of any material fact that is likely to influence the policy and failure to do so can result in the policy being cancelled.

As a result, in its correspondence to the Complainants dated 22 October 2015, the Company declined the claim, as follows:

"We understand that a leak was discovered from a water mains supply pipe under a concrete floor resulting in damage to a sitting room carpet and a three piece suite. We note however that the property has not been occupied/lived in for 12 months approximately and as advised, the Escape of Water peril within the policy specifically excludes loss of damage occurring while the private home is unfurnished or unoccupied/not lived in for more than 45 consecutive days immediately prior to the loss or damage or 90 days whether consecutive or not in any one period of insurance. Moreover, the General conditions of the policy...confirm you must notify [the Company] of any change which may affect the policy as soon as possible which you failed to do in this instance.

We must therefore, on this occasion, deny liability".

The Company states that it was clear that the policyholder's home had been unoccupied for a period of time but that it had never been notified that the policyholder was no longer living at the property, in line with the general conditions of the policy. Accordingly, the Company states that it is satisfied that it declined the policyholder's claim in accordance with the terms and conditions of her policy.

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

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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 11 October 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, my final determination is set out below.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the policyholder's home insurance claim. The Complainants are the Representatives of the Estate of the policyholder, who held a home insurance policy with the Company and who died in hospital on [REDACTED]. The First Complainant states that "on the same day a water leak was detected in her home" and he notified the Company by telephone of the loss on 5 October 2015.

I note from the documentary evidence before me that the Company-appointed Loss Adjuster took the following notes in respect of the claim notification, as follows:

"[The First Complainant] advised the Insured...was ill & in hospital for a couple of weeks prior to the date of loss

He did not know exactly how long the house was unoccupied for – no one living in house when she was in hospital

Her daughter had a business across the road from the property and kept an eye on the house".

In addition the First Complainant wrote to the Loss Adjustor on 12 October 2015, as follows:

"As I informed you on the phone the property was never unoccupied as the family were in and out of the premises regularly".

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As part of its assessment of the claim, the Company-appointed Loss Adjusters requested from the Complainants electricity bills for the policyholder's home. I note from the evidence before me that the electricity bill from 29 January 2015 to 30 March 2015 was in the amount of €15.40 and the bill from 3 June 2015 to 29 July 2015 was €13.16, but as €9.11 was arrears brought forward from the previous billing period, the actual amount for that billing period was €4.05.

Even allowing for the Department of Social Protection allowance, I accept that it was reasonable for the Company to conclude that given the standing charges applicable to each billing period, that these amounts did not indicate that a person or persons were living in the policyholder's home.

Recordings of telephone calls have been supplied in evidence. I note from a recording of the telephone call between the Loss Adjuster and the First Complainant on 20 October 2015 wherein the Loss Adjuster advised that these electricity bills show little or no usage of electricity during these periods which indicated that no-one was living in the policyholder's home, the First Complainant advised "*I never claimed anybody was living in it*" but states that in addition to the electricity bills, there were also coal, gas, oil and water bills, which taken collectively indicate that the property was occupied.

The crux of this complaint is that whilst the Complainants acknowledge that no-one was living in the policyholder's home prior to her death, they consider that her home was however occupied. In this regard, I note that in his email to this Office dated 21 November 2017, the First Complainant submits, as follows:

"[The Company] have repeatedly used the word [UNOCCUPIED] when describing the families occupancy of the house. The reality is that different members of the family were using the house for one reason or another on a weekly basis. Details of this were given re a telephone call that I made on the 6/10/15...

[The Company] also say that the water leak may have been going on for some time. This again is ignoring the fact that the family had...an Auctioneer and Valuer in the house days before the leak was discovered to value the house as part of the Fair Deal Initiative ...

My definition of occupancy is if someone is in a place, then they are occupying it, for example if you are sitting in a chair then the chair is occupied. However it does not mean that you are living in it and neither does it mean that you are sleeping in it. An unoccupied house to my mind means that the house is not liveable, no electricity, no water, probably little or no furniture ...

[The Company] seemed to focus on low ESB bills ignoring that [the policyholder] had an ESB allowance of over €60 per two months and also ignoring that the house and water was heated by solid fuel and oil with a gas cooker",

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[The policyholder] *loved coming home on Saturday and Wednesday afternoons to where she spent her life with her husband and daughters running a grocery shop until they retired. She took great pride in her home, keeping it very well maintained*".

In addition, the Complainants submit that "[the Company] are now claiming that 'OCCUPANCY' means lived in which I don't agree with. However if this is what they mean, 'LIVED IN' should be clearly on the policy".

I note, however, that the 'Definitions' section of the applicable Your Home Insurance Policy Document provides the following definition at pg. 6:

"Unoccupied

*Where the private home is **not lived in** by you or a member of your family or household or any other person who has your permission"*

[Emphasis added]

As a result, I accept that the terms and conditions of the policyholder's policy clearly provides that for a private home to be occupied that it must be lived in. I note from the recording of the telephone call between the Loss Adjuster and the First Complainant on 20 October 2015 that the First Complainant advised "*I never claimed anybody was living in it*". Accordingly, I accept that the Company, in concluding that the policyholder's home was unoccupied and as a result declining the claim in respect of the escape of water, acted in accordance with the terms and conditions of her policy.

In this regard, home insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that 'Section 1A – Buildings Cover' of the applicable Policy Document provides at pg. 18, as follows:

"8. Escape of water from any fixed water or heating installation or domestic appliance

What is not covered ...

- *Loss or damage occurring while the private home is unfurnished or unoccupied for more than 45 consecutive days immediately prior to the loss or damage or 90 days whether consecutive or not in any one period of insurance"*

In addition, the 'General conditions of the policy' section of the Policy Document provides at pgs. 12-13, as follows:

"You or any other person claiming under this policy must comply with the following general policy conditions to avail of the full protection provided by the policy. If you or any other person claiming under this policy does not comply with them, we may cancel the policy or refuse to deal with your claim or reduce the amount of any claim payment ...

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2. Your duty

A. *You must advise us of all material facts when applying to us for insurance. A material fact is one which may influence us when agreeing to provide insurance or the premium we charge for example past claims or losses whether insured or not, criminal convictions or prosecutions pending, or medical history if applicable (these are examples and not a complete list). If you fail to disclose to us all material facts we are likely to treat your policy as invalid or not having existed or cancel it.*

We will consider the policy to be invalid and not having existed if you do not truthfully provide accurate information or you fail to disclose any material fact when applying for cover. The answers and statements you provide in the proposal form and declaration or statement of fact and declaration must be true.

B. *You must notify us as soon as possible of any change which may affect this insurance. The whole policy or a section of it may be avoided or come to an end without you receiving any payment if you do not tell us of any changes that happen after the policy has started. In particular you must tell us ...*

4. if the private home will be unoccupied for more than 45 consecutive days or more than 90 days in any one period of insurance”.

[Emphasis added]

Accordingly, I accept that the Company was entitled to decline the policyholder’s claim in accordance with the terms and conditions of her policy.

Accordingly, 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**

9 November 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.