



<b><u>Decision Ref:</u></b>	2018-0170
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Farm & Livestock
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - non-disclosure Failure to consider vulnerability of customer
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This complaint arises out of a Farm Multiperil insurance policy and relates to the Provider's refusal to indemnify the Complainant under the policy.

**The Complainant's Case**

The Complainant took out a Farm Multiperil insurance policy in October 2014. The Complainant has been a farmer since he left secondary education and has a long-standing tradition of herding animals. From time to time, the Complainant rents sheds from neighbouring farms for commercial reasons and has been doing so since 2007 or earlier. The Complainant has a number of cattle who are being contract reared by a nearby farmer on his lands. On 5 February 2017, those cattle fell into a slurry tank on that farmer's land and drowned. The Complainant submitted a claim of €13,000 for the loss of the cattle.

The Provider has refused to indemnify the Complainant on the basis that the policy only provides the cover for fatal injury to livestock following a fall into slurry storage tank that occurred on the insured's own premises and no cover is provided for any such accident that occurs on third party's premises. The Provider submitted that the failure of the Complainant to disclose the fact that he was contract rearing his livestock on another party's land amounted to the non-disclosure of a material fact such that it also entitled the Provider to refuse to provide indemnity under the terms and conditions of the policy.

The Complainant is unhappy with the Provider's decision and has submitted that the policy in question should cover the loss suffered. The Complainant submits that the Provider failed to ask him relevant question to which they now seek to deny liability and that the proposal form for the policy did not request specific information from the Complainant surrounding the rental of sheds and had the Provider requested this information, the Complainant would have answered honestly to state that he rents sheds at different times for commercial reasons.

Furthermore, it is asserted on behalf of the Complainant that he has suffered from learning difficulties which he believes is a form of dyslexia and therefore he is a vulnerable consumer. Accordingly, it is submitted that the Provider failed to comply with the Consumer Protection Code 2012 to ensure that the Complainant, as a vulnerable consumer, was provided with such reasonable arrangements and/or assistance that may be necessary to have facilitated him in his dealings with the Provider.

The complaint is that the Provider has wrongfully or unreasonably refused to fully indemnify the Complainant for the loss in question and the Complainant is seeking to be compensated by the Provider for the loss suffered.

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

The Provider has refused to indemnify the Complainant on the basis that the contract of insurance and the policy was sold subject to certain terms and conditions which formed the basis of the contract. In particular, the Provider relies on section 11 of the policy which only provides indemnity where the loss occurs on the Complainant's own premises. The Provider asserts that as the Complainant's animals were being contract reared on third party's premises, this loss fails to be covered by the policy. In addition to the foregoing, the Provider submits that it is vital that all relevant information relating to the proposed risk is declared by the proposer. The Provider asserts that the Complainant has a duty to disclose all material facts or information which is likely to influence the acceptance of the risk and the calculation of premium with the terms and conditions which may be applied to such a risk. It further submits that failure by a customer to disclose such material fact can result of the policy being cancelled or invalidate the policy.

The Provider further submits that at no point prior to or during the inception of the policy or at any stage, did the Complainant indicate that he had any difficulty in comprehending any communications or correspondence that was completed by him or issued to him. The Provider states that it is confident that its processes are robust and that the Complainant was provided with sufficient information and assistance.

### **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 12 September 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.

Following receipt of my Preliminary Decision, the Complainant's representative made a further submission under cover of his e-mail to this office dated 3 October 2018.

Having considered that submission, I set out below my final determination.

The Provider has submitted a copy of the relevant Policy quotation and proposal form. In addition, the Provider has provided a copy of the relevant terms and conditions of the policy.

The quotation form sets out that cover of €250,000 will be provided for "*livestock fatal injury by electrocution/flood or collapse of slats in slatted house*". The completed proposal form does not ask a specific question as to whether or not the Complainant is renting another shed or in particular, has entered into a contract rearing agreement whereby a third party would have care of his livestock on premises not owned by the Complainant. In that part of the completed proposal form that deals with livestock, the Complainant has ticked the box for cover being required for "electrocution and flood/collapse of slats in or on own farm yard".

On page 12 of the proposal form, the Complainant has confirmed that information relating to the terms of business issued, the duty to disclose all material facts and the consequences of failure to provide information was given and explained to the Complainant. In addition, the Complainant confirms that information was given to him that a consequence of failing to provide information may result in the policy being cancelled, claims not being paid and having difficulty in purchasing insurance elsewhere. Furthermore, page 12 also provides the following:

*"Immediate Cover/Proposal Form*

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### ***Duty of Disclosure***

*You have a duty to disclose to us all material facts. A material fact is any information likely to influence our acceptance of your insurance, our calculation of your premium with the terms and conditions we apply to your policy. If you fail to disclose to us any such material fact we may cancel or invalidate your insurance policy.*

### ***Consequences of Non-Disclosure***

*If we cancel or invalidate your policy due to non-disclosure the potential consequences for you include: non-payment of claims under the policy, difficulty in purchasing insurance elsewhere, breach of contract with your mortgage Provider or lender. If you are in any doubt as to whether or not any information is important in respect of your insurance, please disclose it to us”*

On the following page of the proposal form, there is a declaration which provides, amongst other things, the following wording:

*“I declare that the statements in this proposal are true and complete and I have not suppressed or misstated any material fact.”*

In terms of the policy terms and conditions, section 11 provides as follows:

*“Section 11 - Livestock Electrocution/Flood/Collapse of Slats in Slatted House*

*The Company agrees to indemnify the Insured by payment not exceeding the Policy limit stated in the Schedule in the event of:*

*3. Injury (proving fatal within seven days) following fall into the slurry storage tank as a result of the immediate collapse of slats in the slatted house to horses, cattle, sheep, goats, pigs the property of the insured or members of his household occurring on the Insured’s premises or was temporarily removed therefrom. **Indemnity under item 3 applies only in respect of losses occurring on the Insured’s own premises.**” [My Emphasis].*

It is clear therefore, under the terms and conditions of the policy, that where the Complainant’s cattle suffered fatal injury by falling into a slurry storage tank as a result of the immediate collapse of slats, indemnity would only be provided if this occurred on the Complainant’s own premises.

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This is not a case where examination of the terms and conditions of the policy suggests that indemnity would otherwise have been provided but for the non-disclosure of material fact. In this case terms and conditions of the policy are clear in stating that cover will only be provided for such an incident that occurs on the insured's own premises.

Notwithstanding the foregoing, the Provider has sought to rely on the Complainant's non-disclosure of his contract to rear cattle with the neighbouring farmer as a non-disclosure of material fact. As set out above, there is no specific question in the proposal form as to whether or not the Complainant has livestock in rented premises or has entered into a contract to rear with third party.

That said, it is well established that the test of materiality for the purpose of non-disclosure in insurance law is that every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would take the risk. Therefore, the test of materiality is generally objective, and a fact is material if it would have reasonably affected the mind of a prudent insurer in determining whether he will accept the insurance and if so, at what premium and on what conditions.

In this case, the fact that the Complainant has livestock on premises not belonging to him was a fact that he was aware of. In addition, where the terms and conditions of the policy were so clear such as to only provide indemnity for the fatal injury of livestock on the Complainant's own premises, had he read and considered the terms and conditions in full, the materiality of the fact that he held livestock on premises not belonging to him would have been immediately apparent. I accept that the non-disclosure by the Complainant was not wilful, deliberate or culpable, but the wording of the proposal form in this case is clear and a material fact was carefully and correctly defined in the proposal.

As I accept that the material non-disclosed would have operated on the mind of a reasonably prudent insurer assessing the risk in this case, I am therefore of the view that the Provider is entitled to invoke the terms and conditions of the policy and refused to indemnify the Complainant.

In addition to all of the foregoing, the Complainant has also sought to assert that in light of his learning difficulties i.e. dyslexia, the Provider has failed to adhere to its obligations under the Consumer Protection Code 2012 in dealing with the Complainant as a vulnerable person.

In that regard, the Consumer Protection Code 2012 provides as follows:

#### GENERAL REQUIREMENTS

- 3.1 *Where a **regulated entity** has identified that a **personal consumer** is a **vulnerable consumer**, the **regulated entity** must ensure that the **vulnerable consumer** is provided with such reasonable arrangements and/or assistance*

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*that may be necessary to facilitate him or her in his or her dealings with the regulated entity.*

- 3.2 *A **regulated entity** must ensure that the name of a product or service is not misleading in terms of the benefits that the product or service can deliver to a consumer.*
- 3.3 *A **regulated entity** must ensure that all instructions from or on behalf of a consumer are processed properly and promptly.*

The Provider states that it does not regard the Complainant as being a 'vulnerable person' within the meaning of the Consumer Protection Code 2012.

A 'vulnerable person' is defined in the 2012 Code as follows:

*"vulnerable consumer" means a natural person who:*

- a) *has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*
- b) *has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).*

Having regard to the facts of this case, I accept that the Provider had no reason to believe or to suspect that the Complainant is or was a 'vulnerable person' within the meaning of the Consumer Protection Code 2012. No evidence has been provided to this office that suggests that any information or indication that the Complainant was a vulnerable consumer was ever represented to the Provider by or on behalf of the Complainant.

The Complainant's representative, in a post Preliminary Decision submission, asks what evidence this Office requires in this regard.

The issue is not whether this Office was provided with such evidence. The question is whether the Provider was informed of whether the Complainant had a disability or could be a vulnerable customer. I have been provided with no evidence that this matter was raised with the Provider.

I note further that the Complainant's representative's submission to this Office of 23 May 2018 states "*in respect of [Complainant's] reading difficulties, they do cause him embarrassment therefore this information is very private*".

While it is understandable that the Complainant would not want to inform the Provider of this, I cannot fail the Provider for not treating him as a vulnerable consumer in the absence of this information.

While I understand the Complainant's loss, 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**

28 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.