



<u>Decision Ref:</u>	2018-0203
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant incepted a home insurance policy with the Provider for his private residence on 30 January 2015. In 2017, the Complainant informed the Provider, through his broker, that he had accidentally failed to disclose two previous insurance claims on rental properties. The Provider cancelled the Complainant's home insurance policy due to non-disclosure of a material fact and declared the policy void *ab initio*.

The Complainant's Case

The Complainant states that it was only when he went to renew his policy in 2017, that he noticed that he should have declared two insurance claims he had on his investment properties. The Complainant states that when he incepted the policy it was never his intention to be deceitful, dishonest or untruthful. The Complainant states that he was of the impression that he only had to disclose claims in relation to his private residence and not claims on his investment properties. The Complainant states that he never had a claim for his private residence. The Complainant states that the non-disclosure was a genuine mistake, and that when he noticed the mistake, he immediately informed his broker. He concedes that he did not take the time in 2015 to read the policy in full.

The Complainant wants the Provider to reinstate the policy.

The Provider's Case

The Provider points to the Statement of Fact which was completed by the Complainant at inception of the policy. In the Statement of Fact that Complainant answered "no" when asked had he had any claims/losses in the last 3 years and he stated that he was 5 years claims free. The Provider states that, in the circumstances, this was a material non-disclosure.

The Provider believes that if the Complainant had taken the time to read through the policy documentation including the Statement of Fact at the time when the policy was incepted in January 2015, his genuine mistake would have come to light at that time. It points out that when the Complainant eventually read the documents thoroughly, some 2 years after taking out the policy, he clearly understood the wording and the serious implications for his insurance cover, of his failure to disclose the 2 previous claims. It was for this reason that he therefore notified his broker of the issue immediately.

The Provider states that, had it been aware of the two undisclosed claims, which occurred less than a year before setting up of this policy, it would not have taken on this risk. The Provider states that these claims were material and fell outside its underwriting acceptance criteria.

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 8 August 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.

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Following the consideration of additional submissions received from both parties, the final determination of this office is set out below.

The Complainant accepts that he failed to disclose two insurance claims made on his investment properties when he incepted the policy and completed the Statement of Facts. It is the Complainant's case that he was not aware that he had to disclose the claims on his investment properties; he believed it was only claims on his residential property that had to be disclosed. The Provider's agent accepts that the non-disclosure was a genuine error. This is clear from a telephone conversation on 30 January 2017. I also note that it was the Complainant who drew attention to this error, when he became aware of the situation when renewing the insurance in 2017.

The first issue to be decided is whether the Provider sufficiently warned the Complainant that he had to disclose all "*previous insurance claims made by the consumer for the type of insurance sought*" as per the Consumer Protection Code at Chapter 4.35. The relevant terms in the Statement of Fact are as follows;

Under the heading "*History*" the Statement of Fact states;

"In connection with this or any other property insurance, have you or any family member permanently residing with you:

- 1) Previously held insurance? yes*
- 2) Had any claim/losses in the last 3 years? No*
- 3) Been refused insurance or had any special terms or conditions imposed by an insurer? No*
- 4) Been declared bankrupt or been convicted or charged with arson or any offence involving dishonesty of any kind? No*
- 5) Number of years claims free declared? 5"*

Under the heading "*Disclosure of Material Facts Specific to your Home Insurance Claims and/or Losses History:*" the Statement of Fact states;

"Under the Claims History section of this Statement of Fact, you have declared that in connection with the insurance or any other property insurance, neither you nor any family member permanently residing with you have:

- 1) had any previous home insurance claims or losses in the last 5 years other than as declared under the Claims/Losses History section above."*

The wording used under the heading "*History*" is, "*with this or any other property insurance..... Had any claim/losses in the last 3 years*".

The wording under the heading "*Disclosure of Material Facts Specific to your Home Insurance Claims and/or Losses History*" however states: "*any previous home insurance claims*".

In my opinion, in circumstances of the potentially very serious consequences of a policy being declared void *ab initio*, the policy should be crystal clear that it requires disclosure of all claims, on any house insurance policy, on any property, including rental/investment property, currently or previously owned. It is unfortunate that the policy, in one section, used only the word “home”, and does so by way of verification of the information supplied under the previous “History” section above it. The definition of home is: “the place where one lives permanently, especially as a member of a family or household”. The Complainant had not made a previous claim on his home insurance but he had made a claim on other properties owned by him. Due to the use of the phrase “home insurance claims” by the Provider in its own documentation, I accept that the Complainant could have been confused as to what he was required to disclose, given in particular, that he appears to have only given it a relatively cursory read.

Whilst the Provider insists that the Complainant has never said that he was confused by the documentation, this does not, in itself, lead to the conclusion that the wording in question is not potentially confusing. The Provider however, insists that if the Complainant had taken the time to read the documentation more thoroughly in 2015, his genuine error would have been noticed by him immediately.

The second issue for consideration is whether the Provider made it clear that non-disclosure of a material fact would automatically lead to the policy being declared void.

The Statement of Fact sets out, under the heading “Non Disclosure of Material Facts” that:

“The details shown in this schedule are as supplied to us by you, and should be examined to ensure that they are to the best of your knowledge and belief, true and complete. If they are not, you must inform us immediately...failure to disclose any material information may mean that your insurance cover may not protect you in the event of a claim, the policy may be cancelled and you may encounter difficulty purchasing insurance elsewhere”

Under the heading “Disclosure of Material Facts specific to your Home Insurance Claims and/or Losses History:” the Statement of Fact states;

“....Please note that if you provide false information or fail to disclose information regarding previous claims or uninsured damage to your property that this will invalidate your policy and your policy will be declared void....”

The use of the term “may” and “will” as underlined above create a certain lack of certainty and a lack of clarity as to whether non-disclosure of material information by itself, invalidates a policy or, whether it “may” invalidate a policy at the discretion of the Provider.

I accept the Provider’s position however, that this flexibility in the wording facilitates the Provider in operating a model whereby any decision to cancel a policy for non-disclosure is fair and proportionate to the particular circumstances which have arisen. I note in that regard, the Provider’s confirmation that generally, where non-disclosure is considered to not be fraudulent, the Provider does not cancel such policies unless, as in this instance, the correct factual position placed the proposal outside of its underwriting acceptance criteria.

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I note the Provider's confirmation in that regard, in response to the Preliminary Decision of this office, that it is willing to accept a direction that it amend its records to ensure that the termination of the Complainant's policy is recorded as a voluntary cancellation, in a manner which will ensure that the Complainant will not have to disclose that he has had a policy of insurance cancelled or voided by an insurer.

In this instance, I believe that the decision of the Provider to void the policy *ab initio*, with the ensuing consequences to the Complainant, went beyond what was necessary or appropriate, given the particular misunderstanding which had arisen between the parties.

Accordingly, I uphold this complaint and I direct the Provider to amend its records to ensure that the termination of the Complainant's policy is recorded as a voluntary cancellation, in a manner which will ensure that the Complainant will be entitled to answer any future question as to whether he has had a policy of insurance cancelled or voided, on the basis that this policy was cancelled upon his own request.

Conclusion

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(c) and (g)**.
- Pursuant to **Section 60(4)** and **Section 60 (6)** of the ***Financial Services and Pensions Ombudsman Act 2017***, I direct the Respondent Provider to rectify the conduct complained of by amending its records to ensure that the termination of the Complainant's policy is recorded as a voluntary cancellation by the Complainant. This action is to be taken within a period of 35 days from today.
- The Provider is also required to comply with **Section 60(8)(b)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

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**

15 October 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.