An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0217
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 complaint relates to the Complainant's claim under her Home Insurance Policy which was subject to a 15% reduction by the Insurer on the basis that the property was underinsured.

The Complainant's Case

The Complainant held a home insurance policy with the Insurer since January 2013. In September 2013, damage occurred to the Complainant's property when an oil pipe in her rear garden was broken resulting in an oil spill and the contamination of a well. The Complainant made a claim on her policy which provided cover in respect of oil spills.

In the course of its consideration of this claim, the Complainant states that the Insurer "*invoked an averaging clause which* [the Complainant] *didn't understand*". This resulted in a reduction of the compensation provided by the Insurer to the Complainant in the amount of €4,628, that figure representing 15% of the total claim cost. The Complainant was accordingly liable for that amount to the contractors who had carried out the necessary repairs/works.

The Complainant maintains that the averaging clause (described below as the 'underinsurance clause') was "*not understood*" by her "*until the work was already well under way*". The Complainant also states that the "*clause is published only in their booklet we got along with the policy and not on the schedule or policy documents themselves and no advice was ever received from them about reviewing the cost of building*". The Complaint submits

that the Insurer's actions were unjust and that it was unjustifiable to link "*this outside environmental problem with the cost of rebuilding*".

The complaint is that the Complainant made a claim on her insurance policy which, she maintains, was improperly reduced by the Insurer. The Complainant seeks payment of the amount retained by the Insurer of €4,628.

The Provider's Case

The Insurer maintains that the Complainant's property was underinsured by 29/30%. The property was insured with a 'rebuild value' of €165,000 (which, by the time of the claim, had increased to €165,990 by way of the operation of an inflation clause), however the insurer maintains that the property should have been insured for a minimum of €235,000.

Arising from the foregoing, the Insurer relied upon a term of the policy which, it maintains, entitled it to reduce the pay-out in respect of the claim by the percentage by which the property was underinsured. The Insurer states that notwithstanding that this would have entitled it to reduce the pay-out by 29/30%, it agreed to impose a reduction of 15% only, as a "*gesture of goodwill*". The Insurer maintains that it has acted fairly in the circumstances.

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 20 November 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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In the absence of additional submissions from the parties, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

Policy Terms and Conditions

The Insurer has identified "*Section 1 Buildings*" of the policy in support of its decision to reduce the pay-out on the Complainant's claim. This section expressly provides as follows:

> ***How we settle claims***
>
> *The most we will pay will be the sum insured as shown in the schedule (less any excess) and will also depend on any limits shown in the policy.*
>
> *If, at the time of loss or damage, the sum insured is less than the full rebuilding cost, we may take off an amount to reflect the difference between those amounts. For example, if the sum insured is equal to 80% of the full rebuilding cost, we may pay out only 80% of your claim."*

I will refer to this as the 'underinsurance clause' throughout the remainder of this Preliminary Decision.

Analysis

The Complainant does not appear to take issue with the Insurer's conclusion that the property was underinsured by 29/30%. Rather, the Complainant objects to the Insurer relying on the underinsurance clause in the particular circumstances of her case. The Complainant maintains this position on the basis that she didn't understand the underinsurance clause until after the works had already begun, on the basis that the clause appeared in the policy booklet and not on the schedule or policy documents, and on the basis that the Insurer failed to advise her to review the rebuild cost of her home. There is also a general complaint as to the unjust nature of the reliance on the underinsurance clause in circumstances where the repair works did not require any rebuilding works. I will consider these components to the complaint in turn.

The Complainant states that she didn't understand the underinsurance clause until after the works had already begun. The Complainant asserts that she did not have "*any understanding that any liability would be attached*" to the claim. The works began in October 2016 (investigations were undertaken prior to this) and continued for several months. In or around the commencement time, on the 3rd of October 2016, the Insurer's loss adjusters attended on site and the Insurer maintains that the shortfall in cover was pointed out to the Complainant and the underinsurance clause explained to her. On foot of this attendance,

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the loss adjuster produced a letter dated the 3rd of October 2016 which the Complainant signed on the same date.

This letter included the following passage:

> *We will also make enquiries and take measurements to consider the adequacy of the Sums Insured under your Policy. Should a Sum Insured prove to be inadequate, we will explain how this may impact on any settlement of your claim*.

The letter also provided as follows:

> *Having taken measurements of your dwelling and applied the appropriate rebuilding rates thereto, we estimate the value at risk to be a minimum of €235000. We would respectfully suggest that you increase the Building sum insured and you may wish to seek professional advice in this regard.*
>
> *In the event of underinsurance, deductions may be made in accordance with the Terms and Conditions of the Policy.*

The Complainant states that, in respect of the matters set out above, she "*did not realise that this was going to affect my oil spill claim which was ongoing as the insurance jargon used went over my head*".

Recordings of telephone calls between the Complainant and the Provider have been provided in evidence and I have considered the contents of those calls.

On 10th of October 2016, the Complainant had a phone conversation with the Insurer. This 14-minute conversation related entirely to the question of the sum insured and the ramifications flowing from same. In the course of this call, the Complainant specifically queried how the underinsurance might "e*ffect the oil claim*" and a response was provided in the following terms (at 5 minutes and 28 seconds into the call):

Agent: *So, in relation to how it's going to effect the claim, what happens when the property is under insured is … the terminology is that average will apply. So, we take what the policy should be insured by, what it is insured by and basically, I suppose what the property is insured by at the moment ok, so if we take that that's 165990… so he is saying* [i.e. the loss adjuster] *for the property and the two outbuildings its 235 ok which means that the property is 70% or 71% insured… which means that 29% of your property is not insured at the time of the incident. So, what will happen is…we will have to deduct a certain amount for the underinsured amount.*

The Complainant clearly understood the significance of the point insofar as she highlighted that paying 29% of the claim "*could be beyond us completely*". The Complainant was provided with a copy of this phone recording sometime after the 15th of May 2017. Prior to this, the Complainant had disputed that the underinsurance clause was discussed during this phone call.

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In the circumstances, I do not believe that the Complainant has established that she was unaware of the significance of the underinsurance clause until late in the day. In any event, even if she had been so unaware, this would not necessarily have prevented the Insurer from relying on the underinsurance clause.

The underinsurance clause formed part of the policy terms and conditions as set out in the policy booklet and as provided to the Complainant at inception and upon each subsequent renewal.

Separate to the foregoing, the Complainant states that the underinsurance clause appeared in the policy booklet and "*not on the schedule or policy documents*". It is correct to say that the underinsurance clause does not appear in the policy schedule. The underinsurance clause *is* set out in the policy booklet which is the central policy document which contains the policy terms and conditions. It is this document which governs the relationship between an insurer and an insured. The Complainant accepts that she was provided with this document and she concedes, in relation to the underinsurance clause itself, that she "*eventually found the small paragraph about it in the booklet which I had not read at all*". The fact that the Complainant had not read the relevant provision does not prevent the Provider from relying on it. The key issue is that the Provider furnished the Policy Document to the Complainant.

The Complainant also takes issue with the Insurer's alleged failure to advise her to review the rebuild cost of her home. It is clear however that the Complainant had engaged with this issue insofar as she expressed concerns with the figure which she had originally been put forward in the course of inception of the policy in January 2013. The Complainant was advised at the time that it was a matter for her to ensure that the figure was accurate, and the Complainant was further advised that she could update the figure at any time.

The Complainant did thereafter increase the figure on one occasion from €160,000 to €165,000 however at no time subsequent to this was the figure increased any further by her until the figure was increased to €235,000 in October 2016 following the incident.

It is clear that when the policy was incepted in January 2013, the figure provided by the Complainant was not sufficient. It may well be that the figure reflected, or was greater than, the market value of the property but the critical figure was the rebuild cost. Insofar as the Complainant criticises the indexing system that is intended to mitigate inflationary increases, it is clear that this could only be effective if an accurate figure was provided in the first instance. The problem in this case was not any inadequacies of the indexing system but the fact that the figure provided in 2013 was too low.

It is the obligation of the individual seeking insurance to provide accurate information to an insurer. The Complainant suggests that the low figure which she cited at inception may have been tendered on the advice of her "*surveyor*". The Complainant does not however appear to dispute that this figure was indeed too low. In these circumstances, the Insurer could not be held responsible for any poor advice that may have been received by the Complainant from her surveyor. It was the responsibility of the Complainant to provide accurate details

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and, in circumstances where she failed to do so, the Insurer was entitled to rely on the underinsurance clause.

Finally, the Complainant makes a general complaint as to the unjust nature of the Insurer's reliance on the underinsurance clause stating that it is unjustifiable to link "*this outside environmental problem with the cost of rebuilding*". Underinsurance clauses are employed partly to act as a deterrent against underinsurance.

The fact is that a claim has been made on a policy which provided for insufficient cover given the nature of the property it sought to protect. In such circumstances, the Insurer was entitled to rely on the underinsurance clause and could have insisted on a 29% reduction rather than the 15% actually imposed.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Insurer, 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

12 December 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.