



<u>Decision Ref:</u>	2019-0011
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure Rejection of claim - malicious damage
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant incepted a home insurance policy with the Company on 3 September 2013, which was subsequently renewed on 3 September 2014.

The Complainant's Case

The Complainant let his property, his former main residence, to tenants in November 2012. In 2014 he made an application to the Private Residential Tenancies Board (the PRTB) to have the lease terminated and the tenants vacate the premises so he could take occupancy of the house himself as he had to return to Ireland for health reasons. Whilst this application was successful, the tenants did not comply with the Determination Order of the PRTB but they were eventually evicted from the property on 18 March 2015, with the assistance of the Dublin County Sheriff, on foot of a Circuit Court order to vacate.

The Complainant states that it was only when the tenants were evicted and he gained access to the property on 18 March 2015 that he became aware of the malicious damage caused by the tenants to his property and advises that *"the damage done by the tenants rendered the house uninhabitable"*. In his correspondence to this Office dated 31 May 2018, the Complainant submits that *"while I cannot prove it I believe the damage was done in the final days of their occupation in 2015 when it became clear that the Sherriff would be acting to*

evict them". The Complainant's Assessor notified the Company of a malicious damage claim on 9 April 2015 in the amount of €34,227.68.

Following its assessment, the Company declined the Complainant's claim as it concluded that he had failed to advise it of a material fact, that is, his ongoing dispute with his tenants at that time, prior to his renewing his home insurance policy on 3 September 2014. In addition and for the same reason, the Company cancelled the Complainant's home insurance policy from the previous renewal date of 3 September 2014 and refunded the sum of €407.67, the premium he had paid for that renewal.

The Complainant sets out his complaint, as follows:

"My house was insured against damages by tenants under the policy. I made a successful application through the PRTB to have the tenants removed and they were evicted on 18 March 2015 when I discovered they had damaged the house in a serious manner, I had the damages assessed at €30,000 approx and made a claim. [The Company] rejected my claim on the grounds that I had withheld material information from them at the renewal date. On the last date I had access to the house on 18 July 2014 for an inspection visit as permitted by the lease the house was in good order. I therefore had no information to pass on to the insurance company and no information was withheld. I had made a previous unsuccessful attempt to have the tenants' lease terminated because I wanted to occupy the house myself which I did subsequently. In my application [that is, the previous unsuccessful attempt to the PRTB to have the lease terminated] I relied on third party information from a neighbour about anti-social behaviour. In the event the neighbour refused to corroborate the information and the PRTB Tribunal found against me, I regret the delay in bringing the matter to [the Company's] attention...The house remains in the condition it was left in by the tenants as I am unable to afford the repair costs and [it] is virtually uninhabitable".

In addition, the Complainant submits that *"[the Company] approach has at all times been to delay and frustrate progress on the claim. I was very open and frank...I explained the very difficult circumstances surrounding my re-entry into the house which involved an exercise lasting from 6.00am until 2.00pm on 18th March and included the involvement of a large number of the Sherriff's personnel, private security personnel and [the local] Gardaí"*.

In his correspondence to this Office dated 31 May 2018, the Complainant advises that, *"I remain of the opinion that the justification given by [the Company] for refusing the claim is invalid...In my opinion it is clear from the way [the Company] dealt with the claim from the outset that they were seeking a way of avoiding their liability under the policy"*.

As a result, the Complainant seeks for the Company to pay *"the full amount of my claim"*, that is, €34,227.68, and compensation.

The Complainant's complaint is that the Company wrongly and unfairly declined his claim and then cancelled his home insurance policy from its previous renewal date.

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The Provider's Case

The Complainant incepted a home insurance policy with the Company through his Broker on 3 September 2013, which was subsequently renewed on 3 September 2014.

Company records indicate that the Company was notified of a claim by the Complainant's Assessor on 9 April 2015 relating to malicious damage caused to the Complainant's property by tenants who were illegally occupying the premises. The Assessor advised that the tenants had been evicted from the property on 18 March 2015, with the assistance of the Dublin County Sheriff, on foot of a Circuit Court order to vacate.

The Company-appointed Loss Adjuster carried out a site inspection on 17 April 2015 with the Complainant and his Assessor in attendance, during which details of the circumstances were provided. The inspection revealed that malicious damage had been caused by the tenants to the electrics, plumbing and gas installations. This damage had only been discovered when the Complainant eventually gained access to the property following the eviction of the tenants on 18 March 2015. The house was found to be in a poor state of repair and the Complainant submitted a claim for malicious damage in the amount of €34,227.68. On its inspection of the property, the Loss Adjuster established that a large amount of the repair costings included in the claim were for normal wear and tear to the property and would therefore be excluded from any claim for malicious damage.

In order to fully assess the claim, the Company had to ensure the validity of both the loss itself and the policy cover. This involved carrying out investigations with regards to the dispute that had occurred between the Complainant and his tenants and thus, at various times throughout its assessment, the Company requested documentation from the Complainant and his Assessor in order to establish the full facts and the sequence of events that had occurred.

In this regard, the Company notes that the Complainant had ongoing issues with the tenants as far back as October 2013 when he lodged an allegation of anti-social behaviour with the PRTB, though this complaint was unsuccessful. The Complainant later served a Notice of Termination on the tenants on 22 January 2014 and following their refusal to vacate then made an application to the PRTB on 18 March 2014. The adjudication of this dispute took place on 1 May 2014 and the PRTB ordered the tenants to give up possession of the property and pay a sum of €6,918.61 to the Complainant for arrears of rent and for failing to vacate.

The tenants appealed this decision on 27 May 2014, arguing that the Notice of Termination served on 22 January 2014 was invalid. This matter came before a PRTB Tribunal hearing on 7 July 2014, which held that the Notice of Termination was valid and it made a Determination that the tenants were to vacate and give up possession of the property within 56 days from 15 July 2014, that is, by 9 September 2014, and were also ordered to pay the Complainant the sum of €9,970.25.

As the tenants failed to comply with this Determination, enforcement proceedings were then heard before the Dublin Circuit Court on 11 February 2015, where it was confirmed that the Determination of the PRTB was to be enforced and that the tenants had to vacate and deliver up possession of the Complainant's property within a period of 21 days from the date of the order. Judgement was also entered against the tenants in the sum of €16,018.81. The tenants failed to abide with this order of the Circuit Court, which resulted in them being evicted on 18 March 2015, when the malicious damage was discovered. The Sheriff attended to assist with the eviction of the tenants.

The Company is satisfied that the Complainant ought to have advised it of the ongoing dispute with his tenants before he renewed his home insurance policy on 3 September 2014.

The Company considers such information to be of key importance and vital to its assessment of the risk presented. The Complainant failed to disclose this material fact at that time and it only came to light during the Company assessment of the malicious damage claim. In this regard, the Company treats nondisclosure very seriously and it referred the matter to the underwriters, who confirmed that it would not have invited renewal of the policy on 3 September 2014 had it been made aware that there was an eviction notice served on the tenants prior to this date.

The Company notes that a home insurance policy is a legally binding contract of insurance based on the principle of utmost good faith. The person seeking insurance and the insurer must disclose all material and relevant information about the risk being insured to each other. In this case, the Company concluded that the Complainant failed in his duty of utmost good faith by not disclosing a material fact regarding the circumstances of his dispute with the tenants of the property at the time of his policy renewal. As a result, the Company was not afforded the opportunity to properly assess the risk to be insured when the policy fell due for renewal and had such material facts been disclosed at that time, the Company states that the policy renewal on 3 September 2014 would not have been invited or accepted.

As a result of this nondisclosure, the Company wrote to the Complainant on 3 September 2015, as follows:

*"We wish to confirm that due to the non disclosure of a material fact, we deem policy ***** to be void from renewal date 03/09/2014. We hereby advise you that no valid contract of insurance had existed between us since 03/09/2014".*

The Company cancelled the Complainant's policy with effect from the last renewal date of 3 September 2014 and issued him a premium refund of €407.67 on 22 September 2015.

The Company declined the Complainant's claim and cancelled his policy from its last renewal date due to the nondisclosure of a material fact, in accordance with the terms and conditions of his home insurance 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 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 18 December 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, I set out below my final determination.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the Complainant's claim and then cancelled his home insurance policy from its previous renewal date.

In this regard, the Complainant incepted a home insurance policy with the Company on 3 September 2013, which was subsequently renewed on 3 September 2014.

The Complainant first let his property to the tenants involved in November 2012. In 2014 he made an application to the PRTB to have the lease terminated and the tenants vacate the premises so that he could take occupancy of the house himself. While this application was successful, the tenants did not comply with the Determination Order of the PRTB but they were eventually evicted from the property on 18 March 2015, with the assistance of the Dublin County Sheriff, on foot of a Circuit Court order to vacate.

The Complainant states that it was only when the tenants were evicted on 18 March 2015 that he gained access to the property and became aware of the malicious damage caused by the tenants to his property and advises that, "*the damage done by the tenants rendered the house uninhabitable*". The Complainant's Assessor notified the Company of a malicious damage claim on 9 April 2015 in the amount of €34,227.68. Following its assessment, the Company declined the claim as it concluded that the Complainant had failed to advise it of

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a material fact, that is, his ongoing dispute with his tenants at that time, prior to his renewing his home insurance policy with the Company on 3 September 2014 and it also cancelled his policy from that renewal date.

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 the 'General policy conditions – all sections' of the applicable Home Insurance Policy Document provides, among other things, at pg. 22:

"Keeping to policy terms:

1. *We will only make a payment under this policy if you keep to the following conditions ...*
 - c. *You must tell us all facts or material changes affecting the risk since inception of the policy or last renewal date (whichever is the later). If you do not do so, 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".*

In addition, I note from the documentary evidence before me that in its Home Insurance Renewal Notice to the Complainant dated 9 August 2014, the Company advised, as follows:

*"If your details or circumstances have changed since your last renewal please call us on 1980 ** ** * to advise us of any changes ... Please read the Duty of Disclosure and Data Protection sections overleaf".*

In this regard, the Duty of Disclosure section overleaf advised, as follows:

"Duty of Disclosure

For your own protection, please note that any facts known to you and any changes affecting the risk since inception of the policy or last renewal date (whichever is the later) must be disclosed to us.

If you are in doubt as to whether a fact is material or not, then please disclose it. Failure to disclose may mean that your policy will not provide you with the cover you require or may invalidate the policy altogether".

The crux of this complaint is whether the Complainant ought to have informed the Company of his then ongoing dispute with the tenants when he was seeking to renew his home insurance policy on 3 September 2014 and whether such information amounts to "facts or material changes affecting the risk" that he had a duty to disclose.

In this regard, I note that the Complainant submits, as follows:

“On the last date I had access to the house on 18 July 2014 for an inspection visit as permitted by the lease the house was in good order. I therefore had no information to pass on to the insurance company and no information was withheld”.

I note from the documentary evidence before me that the Complainant had cause to make an application to the PRTB on 18 March 2014 as his tenants had refused to vacate his property. In this regard, on 1 May 2014 the PRTB ordered the tenants to give up possession of the property and pay a sum of €6,918.61 to the Complainant for arrears of rent and for failing to vacate. The tenants appealed this decision on 27 May 2014 and the matter came before a PRTB Tribunal hearing on 7 July 2014, which ordered that the tenants were to vacate and give up possession of the property within 56 days from 15 July 2014, that is, by 9 September 2014, and to pay the Complainant the sum of €9,970.25.

In addition, I note from the documentary evidence before me that Section 6, ‘Matters Agreed Between the Parties’, of the Report of the PRTB Tribunal dated 7 July 2014 states:

“(e) Rent has not been paid since 26 October 2013”.

Whilst cognisant of the aforementioned PRTB applications, and noting the fact that the Complainant’s tenants were 11 months in rent arrears when the Complainant sought to renew his home insurance policy with the Company in September 2014, I am prepared to accept, that the Complainant held a reasonable belief, upon renewal of the policy, that the house, which he had rented, was in “good order” and that he would also be receiving a sum in the amount of €9,970.25 by 9 September 2014. I am satisfied that at the date of renewal of the policy, the Complainant correctly believed that the facts known to him regarding the PRTB applications and the rent arrears, did not constitute a change which affected the risk since inception of the policy. There is no evidence before me to conclude that at the date of renewal of the policy, the Complainant believed that the risk attached to his property had changed or that the property would be subject to malicious damage by the tenants or indeed that they would not comply with the PRTB Tribunal hearing of 7 July 2014 which ordered that the tenants were to vacate and give up possession of the property within 56 days from 15 July 2014, that is, by 9 September 2014, and to pay the Complainant the sum of €9,970.25. It was only on 18 March 2015, following the eviction of the tenants, that the Complainant could reasonably have known that the risk attached to his property had changed i.e. when he discovered the malicious damage.

The Company provided insurance cover in respect of a property that was rented. This is a fact which is not in dispute as the Company was advised of same in the original proposal form dated 3 September 2013. The accrual of rent arrears and the eviction of tenants is a matter which one could reasonably associate with and expect from the renting of properties. I am at a loss to understand why the Company failed to include a reference to same in either the proposal form or in the terms and conditions of the policy if they are prepared to void a policy for not being advised of same by a policy holder.

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The Company has said in its submission to this Office that its underwriters would not have invited renewal of the policy had it been made aware that there was an eviction notice served on the tenants. If this information was of such importance and a basis on which the Company would refuse to insure the property, I fail to understand why the Company would not ask a specific question at inception or renewal of a policy to establish if there are arrears of rent or if there is any other dispute or an eviction notice in play.

In order to have afforded the Complainant an opportunity to maintain insurance cover, perhaps with an alternative Company, the Company should have included reference to rent arrears and the eviction of tenants or other related matters, in the proposal form and/or the terms and conditions of the policy. If such matters had been raised and included in either the proposal form or in the policy terms and conditions, then this would have specifically put the Complainant on notice that such matters were important to the Company for its assessment of the risk and this would most likely have prompted the Complainant to report such matters to the Company for its subsequent consideration. If the Company had decided not to offer a renewal of the policy i.e. upon the receipt of information relating to rent arrears and the eviction of the tenants, then the Complainant would have had an opportunity to seek insurance cover with an alternative insurance company.

Insurance contracts are contracts of utmost good faith, wherein the failure to disclose information allows the Insurer to void the policy from the outset and refuse or cancel cover. Once nondisclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, refuse cover.

The failure by the Company to include specific questions in the proposal form regarding rent arrears or the eviction of tenants or to raise same in the terms and conditions of the policy, is in my opinion, sufficient to declare that the Company cannot rely on the presence of rent arrears or the eviction of the tenants as a reason to void the Complainant's policy.

This Office is aware that the courts have long considered the issues surrounding non-disclosure of material facts. In this regard, I am cognisant of the views of the High Court in *Earls v The Financial Services Ombudsman [2014/506 MCA]*, when it indicated that:

"The duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources..."

I am of the opinion that the Complainant did "... exercise a genuine effort to achieve accuracy using all reasonably available sources..." when renewing his policy and was entitled to believe, for the reasons set out above, that the PRTB applications and the rent arrears, did not constitute a change which affected the risk since inception of the policy. If the Company is seeking to rely on the presence of rent arrears or the eviction of tenants as a ground to void a policy, then it must be prepared to pose relevant and specific questions, either in the proposal form or in the terms and conditions of the policy, which would elicit a response from a potential policy holder regarding such matters. Therefore, I am satisfied that it was unreasonable for the Company to conclude that the Complainant had failed to

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disclose material facts to the Company when seeking to renew his home insurance policy in September 2014, as the Company had failed to specifically raise questions regarding rent arrears or the eviction of tenants either in the proposal form or in the terms and conditions of the policy and which it subsequently considered to be material facts.

Accordingly, I am satisfied that the Company acted unreasonably in declining the Complainant's claim made on 9 April 2015 and cancelling his policy from the previous renewal date of 3 September 2014 due to the alleged non-disclosure of material facts. I am satisfied that the Company's actions have caused considerable inconvenience to the Complainant.

I am particularly concerned of the serious impact that having an insurance policy cancelled can have. It can render it almost impossible for a person to secure insurance from any other source. It is a very blunt and harsh instrument and should only be applied where non-disclosure has clearly taken place.

I am not satisfied that there was a non-disclosure on the part of the Complainant.

For the above reasons, I 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 upheld, on the grounds prescribed in **Section 60(2) (b) 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 reinstate the policy and consider the claim in the ordinary course. I also direct that the Company make a compensatory payment to the Complainant in the sum of €7,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 January 2019

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.