An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0013
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Rejection of claim - storm
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This Complaint concerns the Respondent's refusal of a claim made under the Complainant's household insurance policy.

The Complainant's Case

The Complainant held a household insurance policy with the Company covering the period from the 25th of November 2015 to the 25th of November 2016. The Complainant noticed damage to his property after a storm which occurred on or about the 2nd of January 2016.

The Complainant called the Respondent to make his claim for storm damage on the 4th of January 2016. On the 14th of March 2016 loss adjusters instructed on behalf of the Respondent carried out an inspection of the damage. The said loss adjuster formed the firm opinion that the damage was not consistent with storm damage, but was in fact due to wear and tear over time.

The Complainant has since furnished a report prepared by a firm of architects which states that the damage is consistent with storm damage.

The Complaint is that the Respondent wrongfully failed to admit the claim for payment. The Complainant is seeking payment under the policy.

The Respondent's Case

The Respondent has declined to pay out on foot of the claim on the basis that the damage did not occur as a result of an insured peril (i.e. it was not due to storm damage).

The Respondent states that it has attempted to carry out a further inspection of the damage, but the Complainant has not allowed its engineer to access the property.

On the 4th of November 2016 the Respondent informed the Complainant that it was not in a position to offer a renewal of the household insurance policy.

The Complaint for Adjudication

The complaint is that the Respondent acted wrongfully in failing to admit the Complainant's claim for loss incurred on the basis of storm damage.

Decision

During the investigation of this complaint by this Office, the Respondent was requested to supply its written response to the complaint and to supply all relevant documents and information. The Respondent responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Respondent's response and the evidence supplied by the Respondent. 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 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.

Following the consideration of an additional submission from the Complainant, the final determination of this office is set out below.

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The Policy Terms

On the 25th of November 2015 the Complainant renewed an annual policy of household insurance with the Respondent in respect of a property situate at Dublin 8.

The Complainant was furnished with policy terms and conditions in respect of this policy. The policy covered loss or damage arising from a number of causes, including "*Storm or flood*", but excluded damage caused by reason of "*any gradually operating cause*".

Section 7 of the policy ("*Loss Settlement Basis*") prescribes that, provided the damage is covered under the policy, the insured will settle the claim in the manner explained in that section. Section 7 also places an obligation on the insured to "*provide access to Your Home and facilitate an inspection, for Our Managed Repair Network of Building Contractors to quote for the cost of repair / reinstatement*".

Section 9 of the policy (*"Claims")* notes the entitlement of the Respondent *"to receive all necessary assistance from"* the Complainant.

The Claim

On the 4th of January 2016 the Complainant telephoned the Respondent to claim under the policy. He explained that his property had suffered damage due to high winds over the Christmas and New Year period. He stated that he noticed the damage on the 2nd of January 2016 when water began to drip into the kitchen and he went up to the roof, where he saw the damage. The damage is described as a crack in the wall.

It was explained to the Complainant during this phone call that the Respondent would have to send out a contractor (loss adjuster) to prepare a report identifying the cause of the damage, and an estimate of what the repair would cost. The Complainant was given the contact details for the contractor that the Respondent was sending out, and was advised that the contractor would contact him within 24/48 hours. The Complainant was advised that if emergency repair work was required he must take photographs of the damage before, during and after any such work was carried out. The Complainant was also advised that if he wished to appoint a registered public loss assessor at his own expense, he could do so.

The loss adjuster contacted the Complainant on the 6th of January 2016 to seek photographs of the damage and an estimate of the repairs. At the end of February 2016 the loss adjuster received photographs and an estimate from the Complainant's builder, and it was decided that an inspection would be necessary. An inspection was carried out by the loss adjuster on the 14th of March 2016. On the following day, 15 March 2016, the loss adjuster wrote to the Complainant confirming that a Preliminary Report had been sent to the Provider for consideration.

On foot of the loss adjuster's inspection, the claim was declined on the 1st of April 2016 on the basis that the damage to the wall was not considered to have been caused by storm damage, but rather it constituted damage due a "gradually operating cause" (and was thus

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excluded under the terms of the policy). The letter sent to the Complainant on that date explained that the policy conditions required the Complainant at his own expense to produce all necessary documents and information to support any loss. The letter noted that the Complainant's own building contractor could not confirm what the cause of the damage was, and went on to explain that the policy was intended

> "*to cover your* (sic) *against unforeseen events including fire, escape of water, storm etc. It does not cover wear & tear or anything that occurs gradually over time. The reason for the declinature is that there is no evidence of an insured peril in operation (eg. Storm Damage) and no evidence has been provided to confirm the damage. Furthermore, we note under the Storm Peril your policy does not cover loss or damage caused* by any gradually operating cause"

The Complainant was also advised that as the cause of the damage in this instance, was specifically excluded, the Provider would not be in a position to consider payment of his claim. He was given the option of discussing the matter with the loss adjuster if clarification was required and he was also given contact details for the Respondent Provider.

On the 11th of May 2018 an architect instructed by the Complainant prepared a report which was submitted to the Respondent in which the architect outlined his opinion that the damage was "*consistent with storm damages*".

On receipt of this report, the Respondent states that it carried out a review of the file. On foot of this "review", the Respondent came across a newspaper article appearing to suggest that the Complainant had been convicted of assault and drug related offences in 2000. The Respondent sought clarification on this, as a failure to disclose previous convictions could amount to a material non-disclosure allowing the respondent to repudiate the policy entirely.

While a number of phone calls ensued, and a number of reminders were sent by the Respondent, written confirmation that the Complainant's conviction had been overturned (and thus his record was clean) was not furnished to the Respondent until November 2016. On the 4th of November 2016 the Respondent informed the Complainant that it was not in a position to offer a renewal of the household insurance policy.

In late November 2016 the merit of this claim was revisited when the Respondent advised the Complainant it would send an engineer to reassess the damage (and its cause). However, on the 28th of November 2016 the Complainant refused to allow the Respondent's engineer access to his property for such an inspection.

On the 1st of December 2016 the Respondent advised that it required an engineering inspection of the damage in order to confirm cover under the policy, and it confirmed to the Complainant that it would discharge the cost of such an inspection.

At this stage, matters reached an impasse and a complaint was ultimately made by the Complainant to this Office.

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Analysis

Firstly, I take the view that it was not unreasonable for the claim the subject matter of this complaint, to be delayed until clarification on the issue of a previous conviction was received. I note that the conviction in question was overturned and therefore, whilst this explains the delay in the matter being progressed, this aspect is separate from the issue arising in this complaint, which primarily turns on the identification of the cause of the damage to the Complainant's property.

Secondly, it should be noted that the refusal of the Respondent to offer a renewal of the policy cover, is a matter within its own commercial discretion. It is not a matter for this Office to direct the renewal of a contractual relationship which is by its nature discretionary and subject to review annually. Consequently, I do not consider it appropriate to comment any further on that aspect of the matter.

The crux of the complaint is whether or not the cracking damage to the Complainant's property were caused by storm damage (including high winds) on or about the 2nd of January 2016. The loss adjuster's report of March 2016 says it was not. The Complainant has furnished an architect's report which says the damage is consistent with storm damage.

It is clear from the evidence that because the Complainant continued to contend that the damage caused to the property had been caused by a storm, the Respondent then indicated that it would send an engineer to the property for a further inspection, in order to reassess the claim.

It is disappointing that, for reasons unknown, the Complainant originally agreed to this inspection, but then subsequently would not permit the engineer to attend at the property in order to carry out a further inspection. As recently as on the 14th of July 2017 the Respondent confirmed that it remained open to considering the claim in the event that its engineer would be granted access for an inspection.

I am satisfied that the Complainant's refusal to allow access to the engineer from November 2016 onwards, was in breach of his duty under the policy agreement, to cooperate with the Respondent's investigations, to enable it to assess the claim for benefit pursuant to the policy.

I note in that regard that on 1 December 2016 the Provider wrote to the Complainant advising as follows:-

> *"…*
> *We would point out to you at this juncture that in the event of a claim on your policy of insurance you are required to demonstrate that the loss falls for consideration by the policy. In this instance, the report submitted from* [the Complainant's firm of architects] *is by the author's own admission a "superficial survey". Furthermore, the report in question contains no evidence or factual basis for the damage in question being caused by storm conditions on 2 January 2016. As a result, this report is not sufficient to proceed with your claim.*

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> *As advised in our telephone conversation on 24 November 2016, we therefore require an inspection of the damage by an engineer to ascertain if the damage falls for consideration by the policy. As previously advised, we will cover the cost of this inspection.*
> *…".*

In those circumstances, I am satisfied that it was reasonable for the Provider to postpone any further assessment of the claim until such time as the engineer had been permitted access for the purpose of preparing a report. The inspection however, was not permitted by the Complainant who has recently submitted that he

> "*was in fact about to let their engineer to attend my property despite the fact that my relationship with* [the Provider] *had completely broken down due to what I considered to be taken as my presumption of innocence as laid down in the Constitution was* being *taken away from me as* [the Provider] *in their review of myself had not been complete and it is not for me to prove my innocence.*
> *…*
> *It was only when their engineer informed me that he worked for* [the Provider] *all the time that refused him access I said I would be prepared to draw up a list of ten engineers and for* [the Provider] *to choose from the list any one of the ten they refused."*

In circumstances where the engineering inspection required by the Respondent Provider to assess the nature of the damage caused to the Complainant's property, was not permitted by the Complainant from late 2016 onwards, I do not accept that the Respondent acted wrongfully in refusing to admit the Complainant's claim for benefit under the policy. Any consideration of a claim for benefit requires the financial service provider to assess the claim as appropriate to the circumstances, and in this particular instance, whilst the initial views of the parties were at odds, the Respondent acted correctly in seeking to advance the matter by instructing an engineer to further examine the property, but the Complainant was unwilling to facilitate this process. Whilst the Complainant may well have wished to instruct an independent engineering report on his own behalf, it was not appropriate for him to refuse access to the engineer which the Provider had instructed to inspect the property.

Accordingly, I am satisfied that the Provider did not act wrongfully in failing to admit the Complainant's claim for benefit for loss incurred on the basis of storm damage and in those circumstances, I did not consider that it would be appropriate to 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

3 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.