



<u>Decision Ref:</u>	2019-0053
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim - freezing or escape of or overflow of water or oil Rejection of claim – partial rejection
<u>Outcome:</u>	Rejected

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

Background

The Complainants hold a home insurance policy with the Company.

The Complainants' Case

The First Complainant registered a home insurance claim with the Company on **11 August 2017** in relation to storm damage to the Complainants' property that occurred on **4/5 December 2015** during the storm event that was recorded by Met Éireann as Storm Desmond. The Complainants state that the cowl was blown off the external flue to the gas fire by storm winds, which in turn resulted in rainwater entering and travelling down the flue into the gas fire, rendering it damaged beyond repair.

The Complainants submitted a claim to the Company in the amount of €4,772 for a new replacement gas fire as the manufacturer of the existing appliance had ceased trading and parts could no longer be sourced for that particular model.

In their email to the Company dated 12 March 2018, the Complainants advised, as follows:

"The reason for the long delay between when the damage was initially reported in December 2015 and a formal claim being lodged [on 11 August 2017] was well explained along the way. It was not exclusively related to the original installer being

no longer in business, more importantly it was the fact that the particular stove was no longer being manufactured. In that time we made extensive efforts to secure replacement parts to repair it at our own expense rather than submit an insurance claim which we wished to avoid”.

Following its assessment of the claim, the Company’s appointed Loss Adjusters were satisfied that the damage to the external cowl was as a result of storm damage. It did not however accept that the damage to the gas fire itself was as a result of storm damage, instead concluding that such damage was the result of a gradually operating cause. The Complainants’ home insurance policy cover does not extend to any damage that occurs gradually or as a result of wear, tear or deterioration. As a result, in its correspondence dated 19 January 2018, the Loss Adjusters wrote to the Complainants, as follows:

“To finalise matters, we are now proposing a sum of €766.62 net of the €275 policy excess ...

This claim is concerning the storm damage to the external of the building only as this is the only element of the claim that is covered under the insurance policy. The damage to the stove is not covered as damage that occurs gradually is not covered under an insurance policy”.

The First Complainant advised the Company during a telephone call on 23 January 2018 that he considered this “a derisory offer” and that “I just felt that the claim wasn’t properly considered and there was a bit of expedience in [the Loss Adjusters] going through the motions”.

In this regard, in his email to the Loss Adjusters dated 5 December 2017, the First Complainant states:

“I previously advised the damage was inspected by 2 completely independent Registered RGI Gas Installers. Both confirmed that the fire had suffered storm damage.

In addition, a representative from your firm [Ms X.] called to inspect & photograph the damage. Note that it was not [Ms Y.] with whom you said you had consulted with?

When I spoke to you on the phone on 13th November [2017] I advised that the fire was scheduled to be removed & replaced on 15th November. During that conversation I suggested that you send a further representative out to inspect again before it was removed, you chose not to do that.

It is now unreasonable that you now threaten to close the claim in the absence of more information. We believe we have provided you with sufficient information & independent collaboration to evidence that the damage was indeed caused by storm/high winds. Given our exposed location it is entirely reasonable to expect that

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high winds during rainfall after the flue was blown off would allow water to ingress & damage the fire”.

In addition, in their email to this Office dated 10 September 2018, the Complainants state, *inter alia*, as follows:

“We still believe that neither [the Company] nor its appointed Loss Adjuster made sufficient effort to fully assess the claim particularly given that both were aware that their desktop conclusions were at variance with 2 RGII [registered gas installer] experts opinions, both of whom saw the damage at first hand. When the [Loss Adjuster] inspection was carried out the fire was in situ so the internal damage was not visible or evident. As the claim progressed both parties [that is, the Company and the Loss Adjusters] had ample opportunity to properly inspect the damage but declined to do so despite the fact that each have local offices within 20 minutes of our home. When [the gas fire] was due to be taken out and replaced they were given 3 days notice to do so from 13th to 15th November [2017] ...

We believe that the damage to the fire and flue both resulted from the storm. We are strongly of the view that if either [the Company] or [the Loss Adjusters] had taken the opportunity to call to inspect the fire and its surrounds while it was being removed or before the damaged one was taken away they could have had a meaningful exchange of views with ourselves and our RGII expert and perhaps we could [have] reached a reasonable compromise that would have satisfied all involved”.

In summary, the Complainants set out their complaint, as follows:

“Storm damage claim submitted for gas fire as a result of external cowl being blown off. We endeavoured over 18 month period to source replacement parts so as to avoid an insurance claim. Original installer as well as original manufacturer...gone out of business so entire appliance had to be replaced. We are also unhappy with the process having to deal with [the Loss Adjusters] who we believe did not fully or properly assess our claim”.

The Complainants submit that *“our claim was for full replacement and redecoration €4,772. We accept we should perhaps bear part of the loss but sum proposed €1,041 less excess €275 to €766 is unfair. We feel sum of €3,000 nett is more appropriate”.*

The Company's Case

Company records indicate that the Complainants hold a home insurance policy with the Company.

The First Complainant telephoned the Company on 15 December 2015 to discuss a separate insurance claim that was ongoing at that time and during this telephone call he advised of storm damage that had occurred to the external flue of their gas fire insofar as part of the

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flue had been blown off in the wind but they were unsure if there was damage to the gas fire itself and would not be able to have anyone look at it until after the Christmas period.

The incident was recorded for notification purposes only and the Agent advised the Complainants to contact the Company after they had obtained a repairs estimate, if they needed to claim.

The First Complainant telephoned the Company again on 23 February 2016 in relation to the other claim and during this call mentioned that they were waiting for a gas specialist to inspect the damage that had happened to the flue. The Agent advised the Complainants not to proceed with any major repairs and that the Company would need photographs and a repairs estimate if they intended to claim.

The First Complainant later telephoned the Company on 11 August 2017 to formally register a claim in relation to storm damage to the Complainants' property that occurred 20 months earlier, on 4/5 December 2015 during the storm event that was recorded by Met Éireann as Storm Desmond. The Complainants state that the cowl was blown off the external flue to the gas fire by storm winds, which in turn resulted in rainwater entering and travelling down the flue into the gas fire, rendering it damaged beyond repair.

The Company appointed a Loss Adjuster on 11 August 2017, the same day the Complainants registered the claim. The Loss Adjuster carried out an inspection at the Complainants' home on 16 August 2017, during which she took a number of photographs. She identified the location of the gas fire exhaust outlet and noted that the cowl of the exhaust had been blown off and had not been replaced in the intervening period between the date of loss on 4/5 December 2015 and the date of the inspection, a period of some 20 months. On review of the damage that had occurred externally, the Loss Adjuster was satisfied that the damage to the cowl was caused by an insured peril, that is, Storm, and consequently, the cost of repairs for this element of the Complainants' claim would be recoverable under their home insurance policy. This portion of the loss was later assessed at €766.62 (€1,041 less the policy excess of €250).

The second part of the Complainants' claim is for damage to the gas fire itself. The Complainants submitted a quote for a new replacement gas fire (along with redecoration costs arising from the installation of same) as the manufacturer of the existing appliance had ceased trading and parts could no longer be sourced for that particular model. In order for insurance cover to operate here, the Company notes that the Complainants must show that the damage to the gas fire occurred directly as a result of rainwater entering the exhaust pipe during the storm on 4/5 December 2015 only, after the cowl had been blown off.

The exhaust outlet is positioned on the side of the Complainants' house, directly below the roof eaves, fascia and soffit. As a result, the vent is somewhat protected from the elements by the roof eaves and also, to a certain degree, by a neighbouring property. For the damage to have occurred to the gas fire during the storm on 4/5 December only, a significant amount of rainwater would have had to have entered the exhaust flue horizontally, given the position of the vent on the side of the house. It is the Loss Adjuster's opinion that this simply was not plausible.

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Given the location of the exhaust outlet, the Loss Adjuster was satisfied that the vent would have been sufficiently protected from any horizontal rain which may have occurred during that one storm event. Had the flue exited the building vertically instead, it would be much more reasonable to expect rainwater to enter and flow down through the pipes.

The Company submits that a more likely explanation for the cause of damage is that water had been entering the flue over a prolonged period of time prior to the storm of 4/5 December 2015. In this regard, the face plate to which the flue is mounted was considered vulnerable to a gradual ingress of water. In addition to this, the Company submits that water had been entering the flue over a gradual period since 4/5 December 2015 as the cowl was not replaced and the exhaust therefore had been left totally exposed. The Loss Adjuster attempted to discuss the matter with the Complainants' contractor directly but the contractor failed to provide any evidence or reasoning to support its conclusion that it was solely the storm on 4/5 December 2015 that caused damage to the gas fire, nor did he provide any evidence to dispute that water had been entering the system over a gradual, prolonged period of time.

The Complainants' home insurance policy cover does not extend to any damage that occurs gradually or as a result of wear, tear or deterioration. As the Complainants have not been able to demonstrate that a one-off storm event caused the damage to the internal workings of the gas fire, the Company has not been able to consider this element of their claim.

The Company is satisfied that the Complainants' claim has been properly assessed by the Loss Adjuster. The Complainants first notified the Company of the incident on 15 December 2015, however the claim was not formally registered by the Complainants until 11 August 2017, 1 year and 8 months later. A site inspection took place the following week on 16 August 2017 and a number of photographs of the exterior of the house and the gas fire in the sitting room were taken by the Loss Adjuster, who also asked the Complainants to forward a repairs estimate and their contractor's report, once they had both to hand.

Despite numerous reminders, the Loss Adjuster did not receive any documents from the Complainants until 10 October 2017 but these documents were not sufficient to progress the claim. The Loss Adjuster needed to establish how it could be possible that sufficient rainwater from a one-off storm event could in fact have travelled horizontally under the eaves and followed the path of the flues down to the gas fire, causing it to be damaged beyond repair. In order to do this, the Loss Adjuster attempted to gather further information from the Complainants' contractor directly, however this was not forthcoming and has not in fact been provided to date.

As a result, the claim could not be progressed by the Loss Adjuster herself and she referred the matter to her Property Claims Manager within the loss adjusting firm. This Property Claims Manager spoke with the Complainants on 13 November 2017 and they informed him that the damaged gas fire was to be removed two days later on 15 November 2017 and asked if someone would come out prior to the removal to carry out a second inspection. The Property Claims Manager explained that a second inspection was not actually necessary and that photographs of the controls and burner of the gas fire would suffice.

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By this time, the Property Claims Manager had already been in contact directly with the Complainants' contractor and was awaiting a response to some specific questions that he had raised, along with photographs of the gas fire controls and burner that he had requested.

In this regard, the Property Claims Manager had emailed the Complainants' contractor less than a week earlier on 8 November 2017, as follows:

"I would agree with your advices if the flue was protruding through the dwelling vertically and no mitigation measures were put in place, as the rainwater would naturally flow into same. However, given that this is exiting the dwelling horizontally under the fascia it would be much more likely that rain water would ingress in the same fashion. Do you believe that this has occurred due to small droplets of rain water ingressing into the exposed flue over a period of months and years?"

Can you please forward photos of the damage caused to the controls and burner as the result of this water ingress and please advise too, in your opinion, how long the water has been ingressing.

Can you also please elaborate on your reasoning surrounding the damage to the seals in which you note below. I am satisfied that the storm may have blown the cowl off however I fail to see how this could damage the internal structure or seals past the rigid fixing through the wall unless it was fixed incorrectly.

I look forward to a detailed response to the above queries at your earliest convenience".

The Company is satisfied that an additional inspection of the gas fire was not required as the Property Claims Manager had already requested the information he needed from the Complainants' contractor. As no response was received to his email dated 8 November 2017, the Property Claims Manager was not in a position to determine the true cause and extent of the damage that was caused to the gas fire. As a result, the Company is satisfied that the loss adjusting firm assessed the Complainants' claim correctly and as far as it possibly could, given that the information it requested and needed was never supplied.

The Company says that during a telephone call between the Property Claims Manager and the Complainants on 13 November 2017, the Property Claims Manager incorrectly referred to the Loss Adjuster who had visited the Complainants' home on 16 August 2017 as [Ms Y.] when in fact the inspection was carried out by [Ms X]. In this regard, the Company notes that the usual Loss Adjuster for the Galway area where the Complainants reside is Ms M. C., however she was unable to fit the inspection of the Complainants' property into her diary at that time and in a bid to avoid delays Ms X., who usually covers the Midlands region, carried out the inspection instead. When the Property Claims Manager was speaking to the Complainants by telephone on 13 November 2017, he advises that he inadvertently mentioned Ms Y. as being the inspecting adjuster, however he immediately acknowledged that this was a slip of the tongue (though the First Complainant makes clear that it was he, who drew attention to this error during the phonecall). The Company is satisfied that this

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was simply human error and had no effect whatsoever on the handling of the Complainants' claim.

Having reviewed this matter in full, the Company is satisfied that proactive communication with the Complainants, including telephone calls, emails and letters, was present throughout. In addition, when corresponding with the Complainants' contractor, the loss adjusting firm also provided updates to the Complainants so that they were kept fully informed throughout.

The Company is satisfied that there were no unnecessary delays on the part of the loss adjusting firm and that the Complainants were repeatedly given ample opportunity to present evidence in support of their position that the damage to the gas fire was caused by storm damage on 4/5 December 2015 only. The Loss Adjuster informed the Complainants in person during her inspection on 16 August 2017 that she required both a contractor estimate for the proposed repairs as well as a report detailing the precise cause and source of the damage to the gas fire. The Loss Adjuster reiterated this requirement in her correspondence to the Complainants dated 16 August 2017. In addition, reminders were sent to the Complainants by post on 30 August 2017 and 21 September 2017 and by email on 9 October 2017.

The Second Complainant then provided the following by email on 10 October 2017:

1. 'Gas Installation Notification of Hazard' from Mr P., registered gas installer, dated 29 September 2016.
2. Quotation from [***] Gas Installations, dated 29 September 2017.
3. Quotation from [+++] Painting & Decorating, dated 9 October 2017, in the amount of €1,400.
4. Photographs showing current location of the gas bottles.

This documentation was reviewed by the Loss Adjuster.

The document from Mr P, registered gas installer, is dated 29 September 2016, some 9 months after the storm took place. It is a 'Notification of Hazard' written in respect of the damaged gas fire and states, *"This appliance does not conform to Standard and is unsafe because: Flue not connected properly or sound, due to storm damage"*. The Loss Adjuster had already accepted that it was possible that the cowl could have been disconnected due to storm activity. The document does not, however, provide any details about the damage to the gas fire itself nor does it confirm the cause and source of these damages. In a bid to progress the matter, the Loss Adjuster telephoned Mr P. on 27 October 2017 and left a voicemail, but she did not receive a call in return.

The second document from [***] Gas Installations, is dated 25 September 2017 and is a quotation to supply and fit a new gas fire in the amount of €4,772. The document does not confirm whether or not the existing gas fire was damaged, nor does it detail the cause and source of any such damages.

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Whilst the Loss Adjuster was satisfied that cover was in order for the external repairs to the flue due to the operation of the Storm peril, it was not possible to determine that a one-off storm event had actually damaged the gas fire itself.

In order to verify the validity of the claim before deciding the outcome, the Loss Adjuster needed confirmation of the cause and source of damage to the gas fire, from a gas contractor. In this regard, the Loss Adjusters spoke with the Complainants who, on 2 November 2017, forwarded an email from [***] Gas Installations, also dated 2 November 2017, which stated, as follows:

"I wish to advise that the existing gas fire has suffered damage due to storm. The flue terminal had been pulled out and it damaged internal flue seals. Equally the controls suffered water damage and would need replacing. Unfortunately, the manufacturer is no longer in business and parts are not available for this fire".

The Loss Adjusters still required further information and in a bid to progress the matter and assist the Complainants, the Property Claims Manager corresponded directly with [***] Gas Installations in response to the forwarded email, and requested the following information by way of email dated 7 November 2017:

"I note from the photos on file that it appears the cowl may have become dislodged in high winds and I note your advices below that this has damaged the internal seals. Can you please advise as to how this would occur and how the same would cause the damage to the internal seals? It appears from the below photograph that the outlet pipe is secured at the point of exit through the gable wall and as such it would be unexpected for this damage to occur unless a pre-existing or underlying issue was present (ie not fixed correctly). Also can you please advise as to the location of the controls and how the controls suffered water damage? I include a photo of the outlet for ease of reference and I look forward to hearing from you by return".

[***] Gas Installations, responded by email on 8 November 2017, as follows:

"There is no question that the storm in removing the terminal, the flue was totally exposed and water was sent through the terminal onto the fire. The controls and burner has suffered due to this water ingress".

This was not sufficient information for the Property Claims Manager, who in turn responded the same day by email, as follows:

"I would agree with your advices if the flue was protruding through the dwelling vertically and no mitigation measures were put in place, as the rainwater would naturally flow into same. However, given that this is exiting the dwelling horizontally under the fascia it would be much more likely that rain water would ingress in the same fashion. Do you believe that this has occurred due to small droplets of rain water ingressing into the exposed flue over a period of months and years?

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Can you please forward photos of the damage caused to the controls and burner as the result of this water ingress and please advise to, in your opinion, how long the water has been ingressing.

Can you also please elaborate on your reasoning surrounding the damage to the seals in which you note below. I am satisfied that the storm may have blown the cowl off however I fail to see how this could damage the internal structure or seals past the rigid fixing through the wall unless it was fixed incorrectly.

I look forward to a detailed response to the above queries at your earliest convenience”.

No response was ever received by the Property Claims Manager to this email or the reminder email he sent on 21 November 2017.

The Company notes that it was the opinion of the Loss Adjusters that it was not plausible that sufficient rainwater from a one-off storm event in December 2015 could have caused damage to the Complainants’ gas fire and it was trying to establish the cause of the damage by asking the Complainants’ contactor specific questions in this regard. The Loss Adjusting firm contacted both of the Complainants’ contractors in order to progress and obtain essential information to verify the validity of the claim. Neither contractor provided any reasoning or explanation to validate their conclusions except simply to state that storm caused the damage being claimed for. In addition, neither the Complainants nor their contractors have been able to eliminate the more likely conclusion that any damage that did occur, did so as a result of a gradually occurring ingress of rain water into the flue prior to the storm and during the period of 1 year and 8 months during which the flue was left totally exposed prior to the registration of the claim.

The Complainants were kept fully informed of the ongoing discussion with the contractor by way of email on 8 November 2017 and by telephone on 13 November 2017. On 23 November 2017, following a telephone call with the Complainants, the Property Claims Manager emailed the Complainants, as follows:

“Please note that we require further details from your contractor to elaborate on the cause of the damage in order to consider the claim. We are satisfied that the storm may have blown the cowl off however we fail to see how this could damage the internal structure or seals past the rigid fixing through the wall unless it was fixed incorrectly. Additionally we have requested photographs of the damage caused to the controls and burner as the result of this water ingress and your contractors advices as to, in their opinion, how long the water has been ingressing and how the rainwater would have ingressed onto the controls given that the outlet exits the building horizontally under the eaves.

If your contactor cannot provide the required information or you are satisfied for us to make allowances for the Storm damage to the external flue and cowl only, please advise and we shall issue settlement based on the external flue and cowl to you without delay”

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A reminder letter was sent to the Complainants on 30 November 2017 requesting that the outstanding documents be forwarded within 10 days. In addition, the Loss Adjuster emailed the Complainants on 20 December 2017 to query if they had any additional proof of storm damage to the gas fire that would help validate their claim. This email also advised once again that if no such documentation was available then the Loss Adjuster would proceed to cost just the damages to the exterior of the house. There were then numerous telephone calls back and forth between the Complainants and the Loss Adjusters and each time the Complainants were advised exactly what information was required.

As it had not received the information requested, the Loss Adjusters wrote to the Complainants on 19 January 2018, as follows:

“To finalise matters, we are now proposing a sum of €766.62 net of the €275 policy excess ...

This claim is concerning the storm damage to the external of the building only as this is the only element of the claim that is cover under the insurance policy. The damage to the stove is not covered as damage that occurs gradually is not covered under an insurance policy”.

In addition, the Company wrote to the Complainant on 9 March 2018, as follows:

“The matter was investigated carefully and after investigations and contact with your gas installer, an offer of €1,041.62 or €766.62 net of policy excess was made to you on 19 January 2018. You advised that stove has been damaged beyond repair and has been condemned by a registered gas installer. The stove was excluded from the claim as it was not proven that there was damage caused by an insured peril. There was damage to the cowl/flue on the gable wall evident and our settlement proposals are based on indemnifying you for these particular damages ...

This claim is ongoing since 11 August 2017. An inspection was carried out on 16 August 2017 and documentation was requested to confirm the cause and source of the damage to the stove. There was a reminder letter issued on the 30 August 2017, and Final reminder issued on the 21 September 2017. A further reminder letter issued to you on 30 November 2017. Every opportunity has [been] given to you to send in the information which would validate the claim. Unfortunately none of the documentation that we received provides validating evidence that the damages to the stove are a result of one off storm activity, Our appointed Loss Adjuster attempted to assist and contacted your stove contractor; following discussions your contractor has not been able to provide us with sufficient evidence confirming that the damages to the stove are a result of one off storm activity. Furthermore, neither you nor your contractor have provided any evidence that would eliminate gradual wear and tear form the equation.

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Given the location of the cowl on the gable end of the property and how it exits the building horizontally coupled with the fact that it is located under the roof eaves; to say that there was enough rain water from the storm in December 2015 that has caused this level of damage would be exceptionally unlikely. As per your advices, the cowl which belongs to the flue and protects it was blown off during storm weather in December 2015. It was noted that this cowl had not been replaced when our site inspection took place in August 2017. The most likely cause of the damage to your stove is wear and tear gradually over time. Please be assured however that we are agreeable to reviewing any evidence that it contrary to our findings”.

The Company also emailed the First Complainant on 26 March 2018, as follows:

“There is no dispute regarding the fact that the stove has sustained damage. The crux of the matter in this case is the cause of the damage. Your cover revolves around the cause of the damage as opposed the damage itself. The external issues with the cowl/flue is the key aspect of this claim; there was no evidence externally to display that once off storm conditions could have led to the damage sustained to your stove ...

We are committed to reviewing the matter further on receipt of evidence and/or further in depth reasoning which backs up your position”.

In conclusion, the Company is satisfied that the Loss Adjusters assessed the Complainants’ claim correctly and as far as it possibly could, given that the information it requested was never supplied. The Complainants were given ample opportunity to present evidence that the damage to the gas fire was caused by a one-off storm event and were given an explanation of the type of evidence required. The Loss Adjuster and her Property Claims Manager spoke with the Complainants at various times throughout the investigation of the claim and each time advised that they were awaiting further information from the Complainants and/or their contractor that detailed the cause of the damage to the gas fire. To date, neither the Complainants nor their contractor have been able to provide any evidence as to the cause of damage to the gas fire and no expert opinion or in-depth reasoning has been submitted. In addition, the Company has yet to be shown that a full replacement appliance was warranted.

The Company’s position remains that without any evidence to the contrary, the damage to the Complainants’ gas fire is not within the scope of the cover provided by their home insurance policy due to the policy exclusions relating to wear, tear and gradually occurring loss. The Company remains open to reviewing the matter again should the Complainants be in a position to supply the information that has been repeatedly requested.

The Company notes that the repairs amount of €766.62 after applying the policy excess with respect to the external building damage is still available to the Complainants, should they decide to proceed with the claim.

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The Complaint for Adjudication

The Complainants' complaint is that the Company wrongly assessed the Complainants' home insurance claim.

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 Complainants were 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 on 1 February 2019, 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.

The complaint at hand is that the Company wrongly assessed the Complainants' home insurance claim.

The First Complainant registered a home insurance claim with the Company on 11 August 2017 in relation to storm damage to the Complainants' property that occurred on 4/5 December 2015 during the storm event that was recorded by Met Éireann as Storm Desmond. The Complainants state that the cowl was blown off the external flue to the gas fire by storm winds, which in turn resulted in rainwater entering and travelling down the flue into the gas fire, rendering it damaged beyond repair. In August 2017, the Complainants submitted a claim to the Company in the amount of €4,772 for a new replacement gas fire as the manufacturer of the existing appliance had ceased trading and parts could no longer be sourced for that particular model.

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Following its assessment of the claim, the Company's appointed Loss Adjusters were satisfied that the damage to the external cowl was as a result of storm damage and they assessed this element of the Complainants' claim at €766.62 (€1,041 less the policy excess of €250). The Company did not however accept that the damage to the gas fire itself was as a result of storm damage. Instead they concluded that such damage was the result of a gradually operating cause. The Complainants' home insurance policy cover does not extend to any damage that occurs gradually or as a result of wear, tear or deterioration.

The First Complainant advised the Company by telephone on 23 January 2018 that he considered the claim settlement proposal of €766.62 "a derisory offer" and complained that "I just felt that the claim wasn't properly considered and there was a bit of expedience in [the Loss Adjusters] going through the motions". In this regard, the Complainants are dissatisfied with the claim settlement offer and the manner in which the Company's appointed Loss Adjusters managed the claim assessment throughout.

The Complainants' Home Insurance policy, like all insurance policies, does 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, Section 1, 'Buildings and contents', of the Home Insurance policy document provides, *inter alia*, at pg. 7, as follows:

Event Insured	Exclusions
(See the corresponding exclusions opposite.) We will provide cover for loss or damage to your buildings and contents in your home caused by the following	(See also the general policy exclusions on page 24.) We will not pay for the excess shown in your schedule or for loss or damage:
3 Storm or flood	caused by water entering your home due to wear, tear or deterioration

In addition, the 'General policy exclusions – all sections' section of the policy document provides, *inter alia*, at pg. 24, as follows:

"These [general policy exclusions] apply to all sections of the policy ...

4 Wear and tear

We will not cover loss or damage caused by wear, tear or by anything which happens gradually".

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After the Complainants made a claim to the Company on 11 August 2017, the Company's appointed Loss Adjuster carried out an inspection at the Complainants' home on 16 August 2017. Whilst the Loss Adjuster was satisfied that cover was in order for the external repairs to the flue due to the operation of the Storm peril, she was not satisfied that a one-off storm event had actually damaged the gas fire itself. In order to verify the validity of the claim before deciding the outcome, the Loss Adjuster required confirmation of the cause and source of damage to the gas fire from a gas contractor. In this regard, the Loss Adjusters wrote to the Complainants on 16 August 2017 requesting a *'Contractor report'*.

I note from the documentary evidence before me that the Complainants later submitted documentation from two gas contractors on 10 October 2017. The first document is a 'Gas Installation Notification of Hazard' from Mr P., registered gas installer, dated 29 September 2016. Whilst this document states that the Complainants' gas fire *"does not conform to Standard and is unsafe because: Flue not connected properly or sound, due to storm damage"*, I accept the Company's position that it does not provide any details about the damage to the gas fire itself nor does it confirm the cause and source of these damages. In addition, the second document, a Quotation from [***] Gas Installations dated 25 September 2017, is simply a quotation to supply and fit a new gas fire in the amount of €4,772; I accept the Company's position that this document does not provide any details about the damage to the gas fire itself, nor does it confirm the cause and source of these damages.

In his email to the Loss Adjusters dated 5 December 2017 the First Complainant states *"the damage was inspected by 2 completely independent Registered RGI Gas Installers. Both confirmed that the fire had suffered storm damage"*, I accept the Company's position however that neither the document from Mr P., registered gas installer, dated 29 September 2016 nor the document from [***] Gas Installations, dated 25 September 2017 provide any details about the damage to the gas fire itself, nor do they confirm the cause and source of these damages.

It is an insurance industry standard that the onus rests on the policyholder, as the insured, to show that the loss suffered was the result of an insured peril, in this case storm damage. I take the view in this instance, that the Complainants have not met this requirement. As a result, I am satisfied that it was reasonable for the Company to conclude from the evidence before it (and in the absence of evidence to the contrary) that the damage to the Complainants' gas fire was the result of a gradually operating nature, which is excluded from policy cover. Accordingly, I am satisfied that it was reasonable for the Company to only admit the element of the Complainants' claim that related to the external repairs, which was assessed in the amount of €766.62 (after applying the policy excess of €250).

Having listened to a recording of the telephone call between the First Complainant and the Company on 23 January 2018, I note that the First Complainant submits, *"I just felt that the claim wasn't properly considered and there was a bit of expedience in [the Loss Adjusters] going through the motions"*. In this regard, the Complainants are dissatisfied with the manner in which the Company's appointed Loss Adjusters managed the assessment of the Complainants' claim, and indeed, they deny the suggestion that interactions with the Complainants were proactive. The Complainants point out that, in reality, much of the

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communication especially with the Loss Adjusters, was reactive to the First Complainant's phonecalls seeking an update, i.e. a reaction to those calls which were not recorded and are therefore not available.

The Company appointed a Loss Adjuster on 11 August 2017, the same day the Complainants registered their claim. The Loss Adjuster carried out an inspection at the Complainants' home 5 days later, on 16 August 2017, during which she took a number of photographs and advised the Complainants verbally and in writing dated 16 August 2017 that she required a 'Contractor report' from a gas contractor to confirm the cause and source of damage to the gas fire.

I am satisfied from the documentary evidence before me that the Loss Adjusters made a number of requests for this information from the Complainants and their contractor, but this information was not, and has not since, been provided. As the onus rests on the policyholder, as the insured, to show that the loss suffered was the result of an insured peril, in this case storm damage, I am satisfied from the documentary evidence before me that the Loss Adjusters requested such information from the Complainants and their contractors on a number of occasions, but that such information was not made available.

In this regard, I note that the 'General policy conditions – all sections' of the Home Insurance policy document provides, *inter alia*, at pg. 22, as follows:

"2 Claims ...

You must: ...

- *within 30 days of any event, provide all details, documents, proof of ownership and value, information and help which we may need".*

Having listened to a recording of the telephone call between the Company and the First Complainant on 17 January 2018, I note that the First Complainant stated, as follows:

"The outside flue got damaged and that in turn damaged the actual fire and we spent 18 months trying to get parts for that fire to get it fixed and we were eventually told that it was now a hazard, had to be disconnected, parts couldn't be got so it needed to be replaced and that was explained to [the loss adjusting firm] and they were quite free to send any expert they wanted out to look at it...and indeed the contractors who I got to price this job were totally unaware that there was an insurance angle to this and I wasn't telling them that for obvious reasons so subsequently asking them to elaborate just wasn't what they were there to do".

However, as previously stated, it is not for the Loss Adjuster but for the policyholder, as the insured, to show that the loss suffered was the result of an insured peril. In this regard, it was a matter for the Complainants to obtain a report from the contractor who had deemed their gas fire to be damaged beyond repair, detailing the cause and extent of such damage. I note that this request was made of the Complainants within days of them making a claim to the Provider.

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In addition, I note that in their email to this Office dated 10 September 2018, the Complainants stated, *inter alia*, as follows:

“We still believe that neither [the Company] nor its appointed Loss Adjuster made sufficient effort to fully assess the claim particularly given that both were aware that their desktop conclusions were at variance with 2 RGII [registered gas installer] experts opinions, both of whom saw the damage at first hand. When the [Loss Adjuster] inspection was carried out the fire was in situ so the internal damage was not visible or evident.

As the claim progressed both parties had ample opportunity to properly inspect the damage but declined to do so despite the fact that each have local offices within 20 minutes of our home. When [the gas fire] was due to be taken out and replaced they were given 3 days notice to do so from 13th to 15th November [2017] ...

We believe that the damage to the fire and flue both resulted from the storm, We are strongly of the view that if either [the Company] or [the Loss Adjusters] had taken the opportunity to call to inspect the fire and its surrounds while it was being removed or before the damaged one was taken way they could have had a meaningful exchange of views with ourselves and our RGII expert and perhaps we could reached a reasonable compromise that would have satisfied all involved...”

In this regard, I am satisfied that there is nothing in the documentary evidence before me indicating that the Complainants have furnished the Company with “2 RGII [registered gas installer] experts opinions”. As previously stated, the document from Mr P., registered gas installer, dated 29 September 2016 and the document from [***] Gas Installations, dated 25 September 2017 provided no details about the damage to the gas fire itself nor did they confirm the cause and source of these damages. Thus they cannot be said to contain what the Complainants consider to be “expert opinions” on the matter.

In addition, I do not accept the Complainants’ contention that the Loss Adjusters ought to have carried out a second inspection in and around 13/14 November 2017 or that they should have been present when the Complainants’ gas contractor was removing the old gas fire and installing a new one on 15 November 2017. In this regard, the Loss Adjusters had already emailed the Complainants’ gas contractor the previous week, on 8 November 2017, setting out the information it required in order to progress the matter, but the contractor had not provided the necessary information. Again, it was for the Complainants, as the insured, to show that the loss suffered was the result of an insured peril.

Finally, whilst it is accepted by the Company that the Property Claims Manager referred to the Loss Adjuster who carried out the inspection at the Complainants’ property on 16 August 2017 by an incorrect name during a telephone call on 13 November 2017, I do not accept the Complainants’ contention, as stated in their email to this Office dated 10 September 2018 that this indicates “that the [Loss Adjuster] inspector who visited our property was not properly involved in contributing to the decision”. I am satisfied that the Loss Adjusters have provided a reasonable explanation for the use of an incorrect name in this instance.

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In conclusion, I am satisfied from the documentary evidence and audio recordings before me that the Company and the appointed Loss Adjuster appropriately assessed the Complainants' claim. In this regard, I am satisfied that the Complainants were provided with notice and opportunity to submit the information the Company and the appointed Loss Adjuster required in order for the Complainants to show that the loss suffered was the result of an insured peril. I do not accept that the Complainants have, in this instance, satisfied this requirement. As a result, I am of the opinion that it was reasonable for the Company to conclude, in the absence of evidence to the contrary, that the damage to the Complainants' gas fire was the result of a gradually operating nature, which is excluded from policy cover.

Accordingly, I am satisfied that it was reasonable for the Company to only admit the element of the Complainants' claim that related to the external repairs to the flue and in this regard I note that the claim settlement offer for such repairs in the amount of €766.62 (after applying the policy excess of €250) remains open to the Complainants to accept. Should they wish to do so, it is a matter for the Complainants to advise the Company if they now wish to proceed with settlement of that element of the claim.

Furthermore, I note that the Company advised the First Complainant by email on 26 March 2018 that "*We are committed to reviewing the matter further on receipt of evidence and/or further in depth reasoning which backs up your position*". I am satisfied that this was a fair and reasonable position for the Company to adopt in this matter and I note that it remains open to the Complainants to submit such documentation so that the claim can then be further reviewed.

It is my Decision therefore, on the evidence before me that this complaint is rejected.

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

4 March 2019

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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.

