



<u>Decision Ref:</u>	2019-0075
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Mis-selling (insurance) Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant purchased a Holiday Home Insurance Policy through the Provider, an independent broker, in November 2009.

In May 2010 the Complainant notified her broker of a claim for damage to her property caused by theft.

In June 2010, following an investigation into the claim by a Loss Adjuster appointed by the third party insurance underwriter, the Complainant was informed by the underwriter of the policy that cover had been cancelled with effect from the inception date of the policy on the grounds of non-disclosure of a material fact, that is, that the building had been under construction at the time the policy was purchased.

The Complainant submits that she had declared all available information to the Provider at point of sale, and that she did not deliberately conceal any information in relation to the property.

The complaint is that the Provider wrongfully recommended and sold an unsuitable Holiday Home Insurance Policy to the Complainant in November 2009.

The complaint is also that, following the cancellation of her Holiday Home Insurance Policy by the underwriter, the Provider wrongfully and without the Complainant's consent used

the premium refund from the cancelled policy to put in place a “fire only” policy on the Complainant’s property.

The Complainant’s Case

The Complainant submits that she obtained a mortgage loan through the services of the Provider in 2007, to enable her to build a house, and that in conjunction with this the Provider also arranged her buildings in the course of construction policy for the period 19 November 2007 until 18 November 2008. The Complainant states that this policy was renewed by the Provider for the period 19 November 2008 until 18 November 2009.

The Complainant states that she contacted the Provider in early November 2009, prior to renewal of the policy, and spoke to a staff member about her policy. In a letter of complaint sent to the Provider on 30 March 2015, the Complainant gave the following account of the telephone conversation that took place:

“I explained to him that the building work was complete and that I no longer required a buildings policy. I also told him that I had certifications from my engineer and an independent one from the bank that the building work was complete. I explained to him that I was living in my house at [insured address] on my days off work every week. I told him that my dad checked on the property on a daily basis as he lived very close by. I told him when asked that I had no intention of renting it, that it was my home. [The staff member] went on to ask me various questions; roof type, building materials, locks, alarms, accidental cover, flooding, how many years previous insurance, building amount, contents amount etc. [The staff member] advised me that based on my circumstances the policy I should get was a holiday home policy costing €462.50. He said this was the policy he recommended and the only qualification was that I had to be there once every 30 days. He said he would post me out the details.”

The Complainant states that, on receiving a proposal form from the Provider in the post a few days later, she read it fully and was satisfied that all the details were correct, including the accidental cover she had requested. The Complainant states that, on this basis, she signed the proposal form and wrote a cheque on 6 November 2009 for the amount of the premium requested and returned it to the Provider.

The Complainant states that she received a text message from the Provider on 9 November 2009, confirming receipt of the signed proposal form and the cheque and advising that the old policy would be cancelled and the new policy set up with effect from 19 November 2009.

The Complainant states that she subsequently received her policy documentation. She states that she did not feel the need to study the details of the policy as she assumed it would reflect what she had agreed to in the proposal form.

The Complainant states that her house was broken into by burglars in early May 2010, and that the copper water cylinder and all the copper piping were stolen. The Complainant states that extensive water damage was caused to the property as a result.

The Complainant states that she reported the break in to the Gardai. She states that she also reported the incident to the Provider, but that ultimately she was advised that she had to report the incident to the underwriters of the policy. The Complainant states that she appointed a third party to assess the damage to her property and to represent her claim to the underwriter.

The Complainant states that she had reason, during the assessment of her claim, to check the cover under her policy and that she noticed that there was no accidental cover in place, although she remembered that it had been included in the proposal form she had signed in November 2009. The Complainant states that she contacted the Provider to request a copy of the original proposal form. The Complainant states that, when she received a copy of the proposal form by email, it appeared to be different to the one she had signed in November 2009. The Complainant states that accidental cover had been omitted from the copy of the proposal she received. The Complainant believes that the proposal form had been altered without her knowledge.

The Complainant submitted a complaint to the Provider, but states that the Provider's initial response was that she must be mistaken. The Complainant states that she has since obtained a copy of the original proposal form which, she states, clearly included the accidental cover she wanted.

The Complainant states that on 14 June 2010 she received a letter from the underwriter of the policy informing her that her claim was declined, that her policy was to be voided from inception date, and that the premium payable would be returned to her. The Complainant states that she never received a return of premium from either the underwriter of the policy or from the Provider, in its capacity as her broker.

The Complainant states that she complained to the Provider about its decision to void her policy from inception, stating that it was the Provider that had advised and recommended the policy in question to her in November 2009, and that it was the Provider that had set up the policy on the basis of a proposal form which appeared to be different to the one that she had signed.

The Complainant states that the Provider refused to take ownership of her complaint and kept advising her that her complaint should be directed to another third party broker, who had acted in the capacity of a superbroker.

The Complainant states that on 21 June 2010 she received an email from the Provider, entitled "House Insurance Change of Cover", informing her that her insurance policy was being changed to a course of construction fire only policy, and that funds would be transferred to the new policy. The Complainant states that she was advised that the cost of this new policy was €462.50, which was the same annual premium she had paid in

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November 2009 for the policy which had been voided. The Complainant states that she had not given her consent for this new policy to be put in place.

The Complainant states that she emailed the Provider on 22 June 2010 informing it that she was not accepting any change to her original cover, and that if any change was being proposed to her cover she would need to see the appropriate documentation in writing in order to consider whether she wished to accept the changes or not. The Complainant states that she also specified that she had not at any time given her permission to the Provider, to the third party broker/superbroker or to the underwriter of the policy, to utilise in this manner the premium that was to be refunded to her.

The Complainant states that, similarly, she conveyed this message to the Provider over the telephone on 21 June 2010, and to the third party broker/superbroker over the telephone on 21 June 2010.

In summary, the Complainant submits that in November 2009 the Provider changed her house insurance policy from a Buildings in the Course of Construction Policy to a Holiday Home Policy. The Complainant submits that the Provider had evidence on file of the completion of the property, including certification of completion from the her mortgage lender's appointed official, and the Certificate of Completion from the Complainant's engineer, which the Complainant states that she had submitted with the original proposal form in November 2009.

The Complainant's complaint against the Provider has a number of elements. The complaint is that:

- the Provider wrongfully misold her an unsuitable insurance policy for her property in November 2009, which subsequently impacted on her ability to make a claim under the policy;
- certain failings in the Provider's response to the Complainant's claim notification in May 2010 caused unnecessary delays in the processing of the Complainant's claim;
- the Provider wrongfully put in place a replacement course of construction/fire only policy in June 2010, following the voiding of the Complainant's original Home Insurance Policy, without the Complainant's consent and without issuing her with any policy documentation or policy information;
- the Provider wrongfully and against the Complainant's wishes utilised monies, which had been refunded to the Complainant on foot of the voiding from inception of her Holiday Home Insurance Policy, to pay for the new policy; and that
- the Provider has failed adequately to investigate and respond to her complaints as required by the Consumer Protection Code.

The Complainant states that she has been unable to obtain insurance cover for her property since 2010, and that she has been unable to repair the damage to her property since it occurred.

The Complainant states that she has been informed that the original premium she paid for her policy in November 2009 has been refunded to the Provider on her behalf. However,

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she states that she remains unaware of what became of this money as she refused to give her permission for it to be utilised for any change to her original cover.

The Complainant states that she would like the insurance cover on her property to be reinstated and her claim to be processed and paid. The Complainant would also like the events giving rise to this complaint to be cleared from her insurance history so that they have no impact on her ability to obtain insurance cover in the future.

The Provider's Case

The Provider states that the Complainant availed of a Holiday Home "Buildings in the Course of Construction" Policy through the Provider, in 2007, in conjunction with the requirements of her mortgage lender.

The Provider submits that, at renewal of the policy in 2008, upon receipt of the required documentation from the Complainant confirming completion of the property, the policy was upgraded to full insurance cover as required by the mortgage lender prior to the final stage payment being released.

The Provider states that, prior to policy renewal in November 2009, the Complainant contacted the Provider to discuss the possibility of obtaining more affordable cover. The Provider submits that its staff member completed a Holiday Home Insurance Proposal Form over the telephone with the Complainant, for a different insurer, and that this proposal was sent to the Complainant on 2 November 2009 for signature.

The Provider submits that it subsequently realised that the Complainant had mistakenly been quoted for accidental damage cover on her property, in circumstances where accidental damage cover was not available under the Holiday Home Insurance Policy in question. The Provider states that its staff member spoke with the Complainant on 5 November 2009, explained the error and issued a new proposal and quote to the Complainant, dated 5 November 2009. The Provider submits that the signed proposal and a cheque for the correct premium amount, both dated 6 November 2009, were subsequently received from the Complainant, and that the new insurance policy, underwritten by a new insurer, was thereafter put in place effective as of 19 November 2009.

The Provider states that the Complainant contacted its offices on 3 May 2010 following a break in at the insured property, and that the Provider advised the Complainant how to report her claim.

The Provider states that it came to light during the claims assessment process, carried out by the underwriter, that the property was not fully completed but was still under construction. The Provider states that the failure of the Complainant to disclose this material fact at point of sale led to the claim being declined by the underwriter in June 2010, and the policy voided from inception.

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The Provider rejects the allegation that it mis-sold an unsuitable policy to the Complainant. The Provider states that, if it had been informed by the Complainant in November 2009 that the property was not fully completed, even allowing for the fact that cover had been amended in 2008 when it was confirmed that the property was complete, the Provider would have ensured that an appropriate "Building in the Course of Construction" policy was put in place.

The Provider submits that, in arranging the Complainant's policy, it relied in good faith on the information provided by the Complainant, including the content of the signed proposal form, supported by the documentation from the Complainant's engineer and the independent valuer, confirming the completion of the property. The Provider states that it had no reason to doubt that the construction of the property was complete.

The Provider states that, as the Complainant's Holiday Home Insurance Policy was voided from inception, the third party broker had no alternative but to arrange Buildings in the Course of Construction Cover to be implemented in respect of the Complainant's property as of May 2010, in order to comply with the requirements of the Complainant's mortgage lender, and in order to protect the interests of both the mortgage lender and the Complainant.

Evidence

The Provider's e-mail of 1 October 2010

"We would also point out that had the policy not have been voided the loss still would have been declined by the policy. Stealing (or attempted Stealing) and Escape of Water is excluded by the holiday home policy while the Holiday Home is unfurnished. A property will be deemed unfurnished if it is not adequately furnished or equipped for normal living purposes (see policy definition)".

The Provider's correspondence of 12th May 2015

"While structurally the property may have been completed which allowed you to draw down your final stage payment from the mortgage company, without a kitchen the property is not deemed habitable from the general insurance side. This in turn means that the building under the course of construction cover should have been maintained".

The Provider's submission of 30th May 2017 states:

"In arranging the initial cover, [the Provider] relied upon the documentation supplied by the complainant. When this cover upgraded in 2008 as required by the lender [the Provider] again relied upon the documentation supplied by the complainant / Auctioneer / Engineer. Had [the Provider] been informed that the property was still incomplete, the original Building in the Course of Construction

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Plan would have been maintained. [The Mortgage Lender] also relied on this documentation and would not have released the final draw down of the mortgage funds had the property not been complete”.

The Complaint for Adjudication

The complaint is that the Provider wrongfully recommended and sold an unsuitable Holiday Home Insurance Policy to the Complainant in November 2009.

The complaint is also that, following the cancellation of her Holiday Home Insurance Policy by the underwriter, the Provider wrongfully and without the Complainant’s consent used the premium refund from the cancelled policy to put in place a “fire only” policy on the Complainant’s property.

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 on 11th 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.

A Submissions dated 22nd February 2019 was received from the Provider, after the issue of the Preliminary Decision to the parties. In the submission the Provider queried the direction for the Provider to give assistance to have any record of the cancelled policy for non disclosure corrected. This submissions was exchanged with the Complainant. The content of this submissions however has not persuaded me to alter my previous

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preliminary determination and, consequently, the final determination of this office is set out below.

Analysis

An insurance broker acts as an intermediary between clients and insurance companies. Clients may be either individuals or commercial businesses and organisations. Brokers use their in-depth knowledge of risks and the insurance market to find and arrange suitable insurance policies. Insurance brokers, unlike tied agents, are independent and offer products from more than one insurer to ensure that their clients get the best deal.

The Broker's role typically involves:

- gathering information from clients, assessing their insurance needs and risk profile;
- building and maintaining ongoing relationships with clients;
- foreseeing clients' insurance needs, such as policy renewals;
- researching insurance companies' policies and negotiating with underwriters to find the most suitable insurance for clients at the best price;
- renewing or amending existing policies;
- keeping up with changes in the insurance market and in relation to their clients;

Ultimately this complaint concerns what was communicated and understood by the parties about the completeness of the construction of the property.

I accept that the Complainant had reasonably endeavoured at all times to ensure that her property was correctly insured. The Complainant had a policy in place while the house was in the course of construction. When her property was later certified as complete by her engineer and by way of a valuer's report a full buildings policy was arranged.

However, it is clear that the Provider (the Mortgage Broker) had a different understanding than the Complainant of what constituted completeness in relation to the construction of the property.

The Provider should have had the experience and knowledge of what Underwriters expect in relation to a property and seems to accept the Insurance Company's position that for the property to be complete in its construction it would have had to have a kitchen and bathroom installed. The Provider also refers to the Insurance Company's position that the property was not adequately furnished or equipped for normal living purposes.

On the latter point I consider that the question of a property being adequately furnished or equipped for normal living purposes is subjective, in that what one person considers to be adequately furnished for normal living purposes would differ from what another person would find acceptable. The only guidance or examples of what the Insurance Provider considered would indicate an unfurnished house would be that: *"In the case of a newly constructed or renovated house, it will be deemed unfurnished if either the water or electricity service has not been connected"*.

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The evidence indicates that the water and electricity services had been connected to the Complainant's property.

The specific requirements for there to be a fully functional bathroom and kitchen in place, are not set out by the Provider or Underwriter. The Complainant's testimony evidences that in relation to her living arrangements for the time she occupied the property in question, she relied on the facilities in her parent's home, which she says was only 150 meters away from her house. The Complainant's property was a new build and it is understandable that not everything was going to be completely finished in relation to services and furnishings for a time. The house was for the Complainant's own use and not for rental purposes, therefore there was no regulatory requirements on her as to its habitable condition for her own stay there.

Given that the Provider had a clear idea of what constituted completeness in relation to the construction of the property and the furnishing of same, it is reasonable to expect that the Provider would have been clearer in its communications with the Complainant on those requirements when she sought to protect her property by way of insuring same. In this regard I have particularly noted the Complainant's need for guidance from the Provider, the questions that were asked of the Complainant by the Provider, and the answers that she gave.

I note that it was detailed in the Proposal Form, among other things, that the property to be insured was used as a holiday home, that it was occupied solely as a private dwelling, that it was in a good state of repair, that the property was built "2000 – to date", and that both buildings and contents insurance were required.

I note that the answer "NO" was provided in response to the following question in the Proposal Form:

"Important – Material and/or Additional Information

Is there any additional information you wish to bring to our attention regarding the risk being proposed that might be considered material by underwriters?"

"Occupancy Details

Is the property occupied solely as a private dwelling? i.e. is not used for business purposes other than holiday accommodation? Answer recorded "YES"

How will this property be used? Answer recorded "Family Use Only – No rental use allowed"

The policy was put in place on the basis of the information contained in the Proposal Form, and the policy schedule was issued on 19 November 2009. The Complainant's policy schedule has been submitted in evidence. It indicates that the insurance in question is a "**Holiday Home Insurance**", and that the period of insurance was "**From 19.11.2009 to 18.11.2010**". The schedule details that the cover in place was Buildings and Contents

cover, excluding accidental cover, and that the occupancy of the property was ***“Family use only – no rental use allowed”***.

As regards the questions that were asked and answered in relation to the “Property Details” on the Proposal Form, it is noted that the following was answered in relation to what year the property was built. The recorded answer is ***“2000 – To Date”***.

This was an indefinite timeframe and I consider reasonably indicated that there was work still ongoing with the property, be that be in its furnishings or in the installation of the different elements such as the bathroom and kitchen. I consider that this indefinite timeframe should have reasonably caused the Provider to further question same, but it did not.

Again it is noted that an incomplete answer was given to the question as to what was the ***“Approximate area of the property in square feet?”*** The answer recorded was ***“Not Known”***. I consider that this also would have reasonably required a further query from the Providers, but there is no evidence of such enquiry.

There was a question as to ***“What was the primary source of heating for the property”***. The answer recorded is ***“Not Known”***. I consider that this should also have reasonably been further queried, but was not.

I consider that the above questions are clearly related to the structure and completeness of the property and reasonably required further clarification from the Provider. I consider that had such further enquiries been made by the Provider as to what was meant by the answers given by the Complainant, it would have given the Provider a clearer picture of the condition of the property to be insured. The Provider could have duly clarified matters and / or could have informed the Complainant of any problems it had in relation to sourcing insurance for such a property. I find no such evidence of further enquiries being made by the Provider here.

While there is no general duty of enquiry in relation to matters that should be disclosed by a proposer for insurance, where a Provider seeks specific information on the risk property and is put on notice of matters pertaining to that risk, such general enquiries are reasonably expected. It is important to ensure that the information being collected / recorded is accurate.

As regards the premium refund issue, I am satisfied that the Insurance Company’s action in paying the refund to the Broker would have been the usual practice. However, I do not consider that the Provider acted correctly in applying the premium in respect of alternative cover without first consulting with the Complainant as to what she wanted to do with the monies.

It is my Legally Binding Decision that the complaint is upheld.

In respect of the failings identified in the set up of the policy by the Providers that led to the voidance of the policy by the Insurance Company and the refusal to deal with the

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claim, I direct that the Provider pay the Complainant the compensatory payment of €8,000 (eight thousand euro). I also direct that the Provider assist in having any record of the cancelled policy for non disclosure corrected.

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)(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 make a compensatory payment to the Complainant in the sum of €8,000, 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 direct that the Provider assist in having any record of the cancelled policy for non disclosure corrected. 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

6th March 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**

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.