



<u>Decision Ref:</u>	2019-0083
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Contents
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Lapse/cancellation of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant held a household contents only insurance policy with the Provider in respect of an apartment he owned and was renting out, which lapsed on **1 March 2017**.

The Complainant's Case

The Complainant did not learn that his policy had lapsed until September 2017, when he first noticed that the direct debit payments through his bank to the Provider had ceased. He contacted the Provider and was advised that as he had not responded to its previous two letters, dated **3 January** and **19 January 2017**, his policy lapsed on **1 March 2017**. The Provider states that as the insured address is in a potential flood location, that the Complainant's apartment may be at risk of flooding and in this regard, its earlier letters were seeking information as to what floor his apartment was on in order to assess the risk before it could offer renewal terms.

The Complainant then emailed the Provider on 22 September 2017, as follows:

"You did issue two letters that's already been agreed but they were not received and then without any other form of contact you just cancelled my cover?"

There is around 30 managers and staff in [the Provider's office] who have my phone number, why was I not called? This is very serious, what happens if there had been a claim before I found out about this?

I worked in [the Provider] underwriting for over 10 years and know all about the flood system and I'm sure that it will tell you that there has never been a flood claim anywhere near my apartment regardless of what floor its on. For your records, its on the first floor.

Please reinstate my policy as I previously requested with immediate effect and with no unnecessary premium increase and confirm this by close of business".

The Provider advised the Complainant that it could not reinstate the policy as it had lapsed on 1 March 2017, but that it could offer the Complainant a new business policy.

The Complainant set out his complaint to this office in October 2017, as follows:

"I hold various insurance policies through [the Provider]...I use to work for this company from 2006 through to 2015; hence all my insurance was placed through the company.

I recently noticed that one of my direct debit instalments was not being taken from my account, and so phoned a contact in the [Provider's] office to see if they could advise me further. I was told that my policy had been lapsed without my agreement or knowledge.

Upon further investigation into this matter I was told that [the Provider] had written to me on two separate occasions requesting information about the risk under cover. When they had not received any response to these letters [the Provider] lapsed my policy without any further considerations or attempt at contact.

The letters were not sent by registered post, and they were not received by me. All other correspondence from around that time was received by me, to the best of my knowledge, and I have no other examples of letters going astray. It is mentionable at this point, that this is an apartment block, and we have had in the past had cases of letters being delivered to the wrong block, or into the wrong letter box, and there is currently a stack of letters to various previous tenants sitting on top of the letters box area waiting for their rightful owners to pick them up. I have checked this area but no letters from [the Provider] are there.

I am now left in a situation where I am uninsured on this apartment due to [the Provider's] internal process malfunction. They have email address on file for me, and telephone and mobile numbers for me, and no further attempt was made at contact before they just went and lapsed my policy ...

[The Provider] has advised me that the reason that they lapsed my policy was because of a threat of flooding on my apartment, and when I did not respond to their

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questions, they had no option but to lapse my policy. I am fortunate in as much as a trained insurance professional I know that the background to these mechanisms are flawed, and that my apartment is in no way near a flood area, and apart from that is over 12 feet from ground level over a car park so there is absolutely no danger of any flood in this regard”.

In addition, in his email to this Office dated 16 August 2018, the Complainant submitted, *inter alia*, as follows:

“The letters [dated 3 January and 19 January 2017] should never have been sent in the first place as the information that [the Provider] were requesting within that letter was already on their file! ...

This property was on cover with [the Provider] since 2009, and all through the past 10 years there has never been a reported storm of flood claim at this location. With the billions of Euro that Dublin County Council have invested in the area there is also unlikely to be any chance of damage in the future. [The Provider’s] flood mapping information on this risk is incorrect”

The Provider has since offered to reinstate the Complainant’s policy from the March 2017 renewal date for an annual premium of €191.74 with one change, namely, that cover in respect of ‘Rent and Alternative Accommodation’ as a result of Flood only would be excluded, that is, where the apartment is made uninhabitable directly or indirectly due to flooding.

The Complainant however finds it unacceptable that his property was left uninsured without his knowledge. He asserts that his apartment is *“over 12 feet from the ground and nowhere near a flood area”* and submits that he will not be *“palmed off with new quotations”*. In this regard, in his email to this Office dated 16 August 2018, the Complainant submitted, as follows:

“The offer [the Provider] put forward is not worth the paper it’s written on, [the Provider] have reduced cover under the ‘Rent and Alternative Accommodation’ section and that is a significant restriction in my cover and I am not happy to accept this as a compromise. There is no valid reason for them to restrict this cover”.

As a result, the Complainant seeks for *“my policy to be reinstated with effect from date of lapse. I want no change in terms, conditions, warranties or endorsements, or premium”*.

The Provider’s Case

Provider records indicate that the Complainant held a household contents only insurance policy with the Provider in respect of an apartment he owned, which lapsed on 1 March 2017.

The Provider notes that as the Complainant's insured apartment was at the time flagged as a potential flood location, it wrote to him on 3 January 2017 asking what floor his apartment was on in order for it to review the risk. As no response was received, the Provider wrote to the Complainant on 18 January 2017 to advise that as it had not heard from him within the specified timeframe, the policy would lapse from renewal. The policy fell due for renewal on 1 March 2017 and was lapsed from that date.

The Complainant later emailed the Provider on 20 September 2017 to advise that he had just been passed the letters dated 3 January and 18 January 2017 by an ex-colleague (the Complainant was a former employee of the Provider) and that he had not received the originals in the post and was requesting for his cover to be reinstated. The Provider replied by email on 21 September 2017 informing the Complainant that these letters had been sent to the address it held on file. It also advised that the Provider had updated its flood model system and that the level the apartment was situated on, was required in order to review the flood risk on the policy. In addition, the Provider advised that it could not reinstate the policy as it was lapsed, but it did advise that it could offer the Complainant a new business policy.

The Provider notes that the Complainant considers that it ought to have contacted him by other means. In this regard, the Provider's standard method of communication is by post and it had no indication that its correspondence had not been received by the Complainant as the letters had been sent to the address provided by him and had not been returned as undelivered by An Post. In addition, all communications with the Complainant since the policy inception date in 2008, including all yearly renewal terms, were by post, thus he would have been aware that the Provider would be corresponding with him by post. It is standard procedure for the Provider to contact its policyholders by letter due to the volume of correspondence handled by its customer service department. It simply would not be feasible to telephone all policyholders with such requests and therefore all correspondence of this nature is sent by post to the current address on file, as provided by the policyholder. In this regard, the Complainant did not notify the Company of an alternative address, when he left the country.

Insurance contracts are annual contracts and do not automatically 'roll over'. As a result, a selection of policies may be reviewed on an annual basis prior to renewal to determine the cover and price for the risk based on changes from a customer's point of view or changes to the Provider's risk appetite. The majority of policies will renew automatically as there will be no changes. However, where changes do occur, the Provider issues a letter to the policyholders to acquire the relevant risk details needed, similar to the letter it sent to the Complainant on 3 January 2017. These letters advise that if the required information is not received by a specific date then the policy will cease on the renewal date. A second letter is sent 2-3 weeks later if no contact has been made by the policyholder reiterating what the Provider is requesting along with notice that cover will cease at the renewal date.

The Complainant's risk address was not previously reviewed for flood. The Provider regularly reviews the range of products and services that it is able to offer its customers. One of the tools it uses is a flood model, which it invests in to enable it to map areas of high flood risk and where there have been previous flood claims. This assists the Provider to accurately

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assess the risk to individual properties. The flood model update in 2016/2017 was reviewed and the Complainant's risk address was evaluated as a high flood risk. Given that the risk address in question was an apartment, the level on which the apartment was situated was key to reviewing the Complainant's policy for flood cover at renewal.

The Provider acknowledges that the original proposal form completed by the Complainant in 2008 asked "On which floor is flat/apartment situated" and that he has answered "1". The Provider notes that it was not clear in this instance as to whether "1" indicated the ground floor or the 1st floor above ground level and it was on that basis that it wrote to the Complainant on 3 January 2017 to clarify. If the Complainant had responded and advised that his apartment was situated on the ground floor level, then 'Flood Cover' would have been excluded from any renewal terms offered at that time. If he had responded and advised that his apartment was located on an upper floor level, then the Provider would have excluded 'Rent and Alternative Accommodation' as a result of Flood only, from any renewal terms offered, that is, where the apartment is made uninhabitable directly or indirectly due to flooding. As it had not received the required information requested prior to the renewal date in 2017, the Provider was not in a position to offer the Complainant renewal terms.

In July 2018, the Provider advised that it was prepared to reinstate the Complainant's policy from the 2017 renewal date, with a premium of €191.74. There would be one change in the terms, which is in relation to the 'Rent and Alternative Accommodation' aspect of the policy. The following clause would apply to the policy if the Complainant wished to proceed with renewing his policy:

"Under Section B, Contents, Paragraph 23, cover for 'Rent and Alternative Accommodation', is excluded where the home is made uninhabitable directly or indirectly from flooding".

The Provider notes that the application of this clause is due to its flood model showing a direct match for the apartment building where the Complainant's risk address is, as being at a high risk of flooding. Whilst the apartment is on the first floor, this is the Provider's standard process in such circumstances and this clause would have been applied to the Complainant's policy had he supplied the information requested back in January 2017 and thus it is not an extra term and condition now being applied from what would have been offered to him at renewal date in March 2017.

The Complaint for Adjudication

The Complainant's complaint is that the Provider wrongly or unfairly lapsed his household insurance policy.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 1 March 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 Provider wrongly or unfairly lapsed the Complainant's household insurance policy. In this regard, the Complainant held a household contents only insurance policy with the Provider in respect of an apartment he owned and was renting out, which lapsed on 1 March 2017. The Complainant did not learn that his policy had lapsed until September 2017, when he first noticed that the direct debit payments through his bank to the Provider had ceased. He contacted the Provider and was advised that as he had not responded to its previous two letters, dated 3 January and 19 January 2017, his policy lapsed on 1 March 2017.

The Provider states that as the insured address is in a potential flood location that the Complainant's apartment may be at risk of flooding and in this regard, its earlier letters were seeking information as to what floor his apartment was on, in order to assess the risk before it could offer renewal terms.

In this regard, the Complainant considers that the Provider was wrong to lapse his policy on the basis of it having received no response to its correspondence dated 3 January and 19

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January 2017 and that it should have written to him by way of registered post or have emailed or telephoned him when it had obtained no response, as the Provider had these contact details for him on file. In addition, the Complainant considers that the Provider already knew what floor his apartment was on, and that it is *“over 12 feet from the ground and nowhere near a flood area”* and submits that he will not be *“palmed off with new quotations”*. In this regard, the Complainant seeks for *“my policy to be reinstated with effect from date of lapse. I want no change in terms, conditions, warranties or endorsements, or premium”*.

I note from the documentary evidence before me that the Provider wrote to the Complainant on 3 January 2017, at the address it had on record for the particular policy in question, as follows:

“As you know your household insurance is due for renewal on 01/03/2017.

In order for us to review your renewal offer, we need to ensure your information is up to date.

Please confirm what floor this apartment is on by 18/01/2017.

Regrettably, if we do not hear from you by 18/01/2017 we will take this as confirmation that you do not wish to renew the policy and cover will cease as of 4pm on 01/03/2017”.

In addition, the Provider wrote to the Complainant on 18 January 2017, as follows:

“As outlined in our correspondence dated 03/01/2017 we required you to confirm what floor the apartment is on in order to review the above policy for the upcoming renewal.

As we have not heard from you within the specified timeframe we wish to advise that the policy will be lapsed and that all cover will cease as of 4.00pm on 01/03/2017”.

As the Complainant did not respond to this correspondence, the Provider did not offer renewal terms and lapsed his policy on 1 March 2017.

I note the Complainant states that he did not learn that his policy had lapsed until September 2017, when he first noticed that the direct debit payments through his bank to the Provider had ceased. He emailed the Provider, which responded by way of email on 21 September 2017, as follows:

“I can confirm that we issued two letters, one on the 03/01/2017 and a follow up on the 19/01/2017, these were issued to your correspondence address at [address listed].

As there had been an increase in flood claims in recent years we have upgraded our flood risk system and in order to review this for the renewal of your policy on the

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01/03/2017 we did require this information regarding what floor your apartment is on. As we did not receive this information before the renewal date we were unable to review your policy and issue renewal terms.

As your policy lapsed in March we cannot reinstate it, I can get one of our Sales team agents to call you to set up a new quote going forward if you wish”.

I note from the documentary evidence before me that in his email to the Company on 3 October 2017, the Complainant submits, *inter alia*, as follows:

“[The Provider] lapsed an insurance policy on my apartment without my knowledge and authority to do so, and have left me in a position where I am now uninsured.

I want my policy reinstated with immediate effect, and with no change to the terms, conditions or premiums ...

The facts here are simple, you sent me two letters asking for information, but neither of these were received by me. These letters were not sent registered post, and you have no proof of receipt, or evidence that they were received by me. On the basis of these two letters you lapsed my policy?

I have other contact details on my file, but nobody thought to call me or send me an email, which is not very good customer service ...

Also the letters were asking for information which is not relevant to the risk in question. I have some experience in underwriting, and I know about the flood mapping tool you use, as I was part of the team used to test the system when it was introduced. My apartment does not appear on any flood maps, the locality may show up, but not the actual position. The part of the road where my apartment is has never been flooded! That being said my apartment is located on the first floor so the flood waters would have to reach around 7 meters to actually get into my apartment. If you had actually underwritten this risk correctly you would know this!”

In addition, in his email to this Office dated 16 August 2018, the Complainant submits, *inter alia*, as follows:

“The letters should never have been sent in the first place as the information that [the Provider] were requesting within that letter was already on their file! ...

This property was on cover with them since 2009, and all through the past 10 years there has never been a reported storm of flood claim at this location. With the billions of Euro that Dublin County Council have invested in the area there is also unlikely to be any chance of damage in the future. [The Provider’s] flood mapping information on this risk is incorrect ...

The offer [the Provider] put forward is not worth the paper it’s written on, [the Provider] have reduced cover under the ‘Rent and Alternative Accommodation’ section and that is a significant restriction in my cover and I am not happy to accept

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this as a compromise. There is no valid reason for them to restrict this cover and doing so without providing concrete proof of why, are not in the customer's best interests".

The Complainant submits that the correspondence from the Provider dated 3 January and 18 January 2017 asking which floor his apartment was on *"should never have been sent in the first place as the information that [the Provider] were requesting within that letter was already on their file"*. I note from the documentary evidence before me that the original proposal form completed by the Complainant in 2008 asked *"On which floor is flat/apartment situated"* and that he had answered *"1"*.

In this regard, I accept the Provider's stated position that it was not clear in this instance as to whether *"1"* indicated the ground floor or the 1st floor above ground level, and it was on that basis that it wrote to the Complainant on 3 January 2017. The Provider is entitled in that respect to seek clarification on any matter relating to the risk to be insured, prior to renewing cover. The Provider could not simply be required to assume that *"1"* meant that the apartment was not on the ground floor, and it was entitled to seek such clarification from the Complainant, in the context of the changes to its flood risk system, in advance of the pending renewal of the Complainant's annual policy.

In addition, I am satisfied that the Provider wrote to the Complainant via the address it held on record for him for the particular policy in question and there is no obligation on it to contact the Complainant by way of registered post or by any other means. I note that the Complainant himself submits that the address he had provided to the Provider was *"an apartment block, and we have had in the past had cases of letters being delivered to the wrong block, or into the wrong letter box, and there is currently a stack of letters to various previous tenants sitting on top of the letters box area waiting for their rightful owners to pick them up"*. In this regard, it is a matter for the Complainant to ensure that he furnishes the Provider with an address where he himself is satisfied that he will receive and have full access to his post.

Furthermore, though the Provider lapsed his policy on 1 March 2017, the Complainant submits that he did not learn of this until September 2017, when he first noticed that the direct debit payments through his bank to the Provider had ceased. It appears that the Complainant did not notice the absence of premium payments until that time, and neither did he notice the absence of any renewal papers for the policy, which in the normal course the Provider sent to the Complainant in February each year.

I note that the Complainant is adamant that his apartment block is not located in a flood area and thus the Provider is mistaken in this regard and should not have sought information from him as to what floor his apartment was on or lapsed his policy because of his failure to respond to this information request, nor should it be altering the cover it is now offering him to include reduced flood cover. In this regard, the Provider has offered to reinstate the Complainant's policy from the 2017 renewal date for an annual premium of €191.74. The Provider notes that there would be one change in the terms, which is in relation to the 'Rent and Alternative Accommodation' aspect of the policy. The following clause would apply to the policy if the Complainant wished to proceed with renewing his policy:

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“Under Section B, Contents, Paragraph 23, cover for ‘Rent and Alternative Accommodation’, is excluded where the home is made uninhabitable directly or indirectly from flooding”.

The Provider notes that the application of this clause is due to its flood model showing a direct match for the apartment building where the Complainant’s risk address is, as being at a high risk of flooding.

Whilst the apartment is on the first floor, this is the Provider’s standard process in such circumstances and this clause would have been applied to the Complainant’s policy had he supplied the information requested back in January 2017 and thus I accept that it is not an extra term and condition now being applied from what would have been offered to him at renewal date in March 2017, if he had responded to the Provider’s correspondence at that time.

In this regard, I note that a household insurance policy is like any other contract, that is, it is based on the legal principles of offer, acceptance, and consideration. Each year, a Provider may offer terms which can be accepted by those seeking insurance, who then elect to pay the premium requested, which represents the consideration for the contract. The policy held by the Complainant with the Provider was a one year policy, as opposed to an ongoing policy. Just as the Provider was not obliged to offer a contract of home insurance to the Complainant in the first instance, nor is it required to renew the policy annually.

Although the Complainant takes the view that the information sought by the Provider was *“not relevant to the risk in question”*, I don’t accept this. It is a matter for the Provider, at any given time when considering whether or not to offer renewal terms to a policyholder, to take steps to assess the risk which is to be underwritten and, in that context, it is a matter for the Provider to gather such information as it considers to be relevant.

Similarly, it is a matter for the Provider to determine the specific terms of the cover it wishes to offer and then it is for the individual seeking insurance, in this case the Complainant, to decide whether they wish to accept such terms and conditions offered, or select other cover with an alternative Provider.

I note that after the Provider received clarification that the Complainant’s property is on the first floor and not on the ground floor, it offered to reinstate cover from the 2017 renewal date, upon payment of the required annual premium. The Complainant however, remains dissatisfied in circumstances where the source of his dissatisfaction stems from the change to the level of cover being offered by the Provider.

It is important for the Complainant to understand that there is no obligation on the Provider to offer him the same contractual arrangement every year. His household contents policy is an agreement entered into by the parties for a 12 month period and whilst the Complainant insists that he will not be *“palmed off with new quotations”*, the Provider is entitled to review the cover in question every year and then decide whether it wishes to offer any renewal terms to its customer, based on the information available to it. The

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customer can then decide whether the renewal terms offered are acceptable and suitable, or whether it is preferable for that customer to seek alternative insurance elsewhere.

On the basis of the evidence before me, I take the view that there was no wrongdoing on the part of the Provider and it is my Decision therefore, 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**

26 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

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.