



<b><u>Decision Ref:</u></b>	2019-0107
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Disagreement regarding Settlement amount offered
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint relates to the Complainant's claim under his house insurance policy arising from damage caused when a chimney went on fire.

**The Complainant's Case**

The Complainant held a home insurance policy with the Insurer since 2014. In October 2015, the Complainant made a claim on the policy following a chimney fire. The Complainant states that, notwithstanding the fact that this claim was approved, the Insurer paid out a reduced figure than that quoted for repairs on the basis that the house was underinsured. The Complainant says that he made a complaint about this but that he also increased the sums insured under the policy.

Thereafter, the Complainant states that he suffered further damage to his chimney when the flue collapsed. The Complainant states that he provided a revised quote to the Insurer which again approved the claim but which "*would only pay half the amount despite the fact that I increased the value of my home*".

The complaint is that the Complainant made a claim on his insurance policy which, he maintains, was improperly reduced by the Insurer. The Complainant seeks payment in the

amount of the full value of the necessary repairs (which are as of yet uncompleted due to financial constraints).

### **The Provider's Case**

The Insurer maintains that the Complainant's property was underinsured to a significant extent. The property was insured with a 'rebuild value' of €250,000, however the Insurer maintained that the property should have been insured for a minimum of €492,906. Subsequently, the Insurer agreed that the property should be insured for a minimum of €462,252.

The Insurer paid out on the claim in an amount that reflected a reduction relative to the percentage to which the house was underinsured. The Insurer points out that the Complainant agreed to this figure and that he also agreed to the 'Value at Risk' [VAR] being assessed at €462,252.

### **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 26 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.

In the absence of additional submissions from the parties, I set out below my final determination.

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Prior to considering the substance of the complaint, I will set out the relevant terms and conditions of the policy.

### **Policy Terms and Conditions**

The Insurer has identified “*Section 7 -Loss Settlement Basis*” of the policy in support of its decision to reduce the pay-out on the Complainant’s claim. This section expressly provides as follows:

*“Under Insurance Clause  
If at the time of damage, the Sum Insured is less than the full rebuilding cost, We will pay only for the proportion of the damage the Sum insured bears to such cost.”*

### **Analysis**

The Complainant in this case submitted a claim on his house insurance policy in October 2015 following a chimney fire. This prompted the attendance on site by the Insurer’s loss adjustor who noted that the house was underinsured. The loss adjustor initially indicated that the property should have been insured for a minimum of €492,906 – that figure representing the ‘VAR’ or ‘Value at Risk’.

Following the attendance on site by the Insurer’s loss adjustor, a payment was made to the Complainant in the amount of €1,334.88. The Insurer’s loss adjustor’s notes record that this payment was agreed with the Complainant at the time. Sometime after this attendance, the Complainant sought a second opinion which concluded that more extensive repair works were in fact required as there was damage to the clay flue liners which had not previously been apprehended. The Complainant also raised a complaint regarding the VAR.

The loss adjustor “*agreed to revisit*” its previous settlement proposal. By way of email of 11 May 2016, the Insurer’s loss adjustor wrote to the Complainant regarding a “*revised settlement proposal*”. This email contained the following:

*As advised during our discussions with regard to the settlement of your claim you are entitled to avail of a 10 day consideration period during which time you can reconsider the offer. We note that you have declined to avail of this period and we will now therefore report to Insurers immediately recommending settlement as agreed.*

The email includes an attachment setting out the relevant figures. It notes the adjusted cost of the chimney repairs in the amount of €4,500.23 and from this amount it extrapolates the figure of €2,423.38. That figure representing the proportion of the full repair cost to which the Complainant is said to be entitled following a deduction on the basis of underinsurance. The figure is arrived at by way of the application of the percentage to which the house was underinsured; 250,000/464,252. The conclusion is thus

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that €2,423.38 is to be paid to the Complainant which modifies to €2,373.38 when contents cover is accounted for and when an excess is applied.

The document goes on to note that, as €1,334.88 has already been paid to the Complainant, a further payment of €1,038.50 is required.

The loss adjustor's notes also record that the "*Value at Risk for the property was reviewed also and agreed in the amount of €464,252.00*". The reduction of the VAR appears to have arisen as a result of an earlier application of an incorrect rate which failed to take into account that the house was a dormer house.

The Complainant does not appear to dispute that he agreed to payment in the amount of €2,423.38. Nor does he dispute that he agreed that a VAR of €464,252.00 was fair and reasonable. This latter concession is itself an acknowledgement that the house was underinsured prior to the increase in VAR.

The underinsurance clause formed part of the policy terms and conditions as set out in the policy booklet and as provided to the Complainant at inception. I accept that the Insurer was entitled to rely on this clause set out in the contract between the customer and it.

Recordings of telephone calls have been submitted in evidence. I note that in the call between the Complainant and the Provider on 25 May 2016 the Complainant argues that his revised claim (subsequent to receipt by him of the second opinion) should not have been subject to any decrease in circumstances where he had by this point increased the VAR (which was done on 6 January 2016). I cannot accept the argument as a claim is assessed in the context of the policy in place at the time that the insured peril occurred. In this case, that was the chimney fire which occurred in October 2015 at a time when the house was underinsured. Any subsequent increase to the VAR could not have any bearing on a claim relating to that chimney fire but would only be relevant to damage occurring from an insured peril which occurred after the increase in value.

The Complainant has suggested that the damage which gave rise to the need to replace the flue liners was the result of some other peril, that is other than the October 2015 chimney fire. However, no evidence has been provided suggesting that the damage occurred after the increase of the VAR. The Insurer's loss adjustor states that he is entirely satisfied that the damage was caused by the one incident as is clear from a review of a phone recording of 25 May 2016 between the Insurer and the loss adjustor; "*it's all the same damage... it's all from the chimney fire*". The Insurer has however indicated that if the Complainant furnishes evidence that damage occurred after the increase in the VAR "*as a direct result of another incident*", it will consider that. I believe that this is a reasonable response.

For the reasons set out above, I do not uphold this complaint.

**Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is 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.

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

25 April 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.**