



<u>Decision Ref:</u>	2019-0112
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Rejection of claim - freezing or escape of or overflow of water or oil Rejection of claim - late notification
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant holds a home insurance policy with the Provider since 1 January 2010 in respect of an end of terrace house, constructed in the 1920s or 1930s. The property is let with buildings cover only.

The Complainant's Case

The Complainant sets out his complaint, as follows:

"A series of Storms/Floods have resulted in damage to the gable end of my building and internal damage. I have expended €22,223.03 on repairs to secure the property from further ingress of water.

...the Property passed to me from my Grandmother and has been in our family for over 40 years. In that time no ingress of water occurred to the property. The first recorded ingress of which I was made aware by my tenant was in December 2015 (which was mentioned as a minor problem and which dried up as quickly as it arrived) and was an event which I never considered as a reportable matter under my Policy.

My concern was increased in February 2017 when my tenant again made contact following a further ingress. Again the water came and went as quickly as it arrived leaving damage to internal fixtures/fittings and furniture. The ingress only took place in Storm and Flood conditions.

For a prolonged period I considered whether the issue was a result of some failure of City Council infrastructure...City Council kindly carried out some investigations which proved that the water did not come from an underground source within its control. Its Engineering Department introduced dye into its underground pipework and flushed them. No dye entered the property. This proved to me that the water entry was from the surface as public or private service pipes do not run under the property.

Following Storm Ophelia in early October 2017 I realised that further structural investigation and perhaps repair work was needed and in late 2017 I engaged with my building contractor again. My building contractor's investigations were fulsome and were inconclusive as to the exact point of entry of the storm water. He did note that the subsoil under the house did not show signs of ongoing dampness which would have indicated a continuous source. He recommended an excavation and repair of the gable end wall and internal flooring. This work was carried out in early 2018. The repair to the gable end wall included a membrane which was put in place to make the wall watertight again. This required an internal trench to be dug from the front to rear of the house. My tenant had to move out and moved back in on completion of the repair works approximately one month later.

Since the repair there have been a number of severe weather events and no ingress has occurred".

The Provider declined the Complainant's ensuing claim due to both his delay in notifying the Provider of the loss and that the loss itself was not the result of an insured peril but was instead due to a gradual deterioration or gradually operating cause, which is specifically excluded from cover. In this regard, the Complainant submits, as follows:

"[The Provider] have refused to indemnify me for two reasons:

- 1. For not notifying it following the first incident in 2014 which was not reported to me at that time. In fact the December 2015 incident was only mentioned to me in passing. The ingress only became a real issue in February 2017...this was the first time the possibility of an insurance claim entered my mind.*

I note [the Provider] state I was in touch with them on the 25th of September 2017 however that was not my initial report and [the Provider] telephone records for the days following the first ingress in early February 2017 will show this! The speed with which the water entered and subsided was baffling. Even the ingress from Storm Ophelia clearly relatively quickly.

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As stated I did not consider the ingresses to be something which might be covered by my Policy until 2017. Even then I simply made a report for notification purposes as I hoped the matter would not develop into a claim. My thinking at all times was towards an external or underground source not within my control. Unfortunately that has been proved incorrect.

- 2. [The Provider] contend that no damage has arisen from a peril insured by my Policy. I disagree. The damage to the gable end wall is clearly as a result of severe weather events. The ingress only occurred at those times. In the 40 years of occupancy it only developed from 2015 with these Storms and Floods which have become more common of late. It does not constitute normal Wear and Tear. It clearly occurred as a result of Storms/Floods – a cause which is covered by my policy with [the Provider] but which is strangely not defined.”*

In addition, in his correspondence to this Office dated 12 November 2018, the Complainant submits, among other things, as follows:

“[Local] Council had flood alerts in operation and part of the County were impassable on [27 September 2017]. The met reports prove an extreme of rainfall on the day which once again I submit caused a sudden ingress ...

The Policy Document contains no definition of ‘Storm’ of ‘Flood’...Storm and Flood damage must be one of the most common claims under Household Insurance in Ireland ...

I say the Policy is deficient as it fails to carry a definition of Storm or Flood – a conscious decision designed to favour the Corporate over the Consumer ...

I submit that I have at all times been open and transparent with [the Provider]...I am not a claims conscious individual. I did not see the eventual outcome when I was first made aware of the ingress issue. This caused delay in reporting which I do acknowledge. I would submit however, that [the Provider] were in no way prejudiced by my continued investigation of a transient issue. It was not constant or persistent. It only occurred in times of extreme weather and went away again as quickly as it came due to good soil percolation thereby losing its priority or seriousness for me ...

I submit that the issue did not get progressively worse, each ingress presented as a separate incident and it was not constant. The extreme weather events which caused each ingress may have become worse or the flow of water has become more intense with the loss of exposed soil to accommodate excessive rainfall by way of percolation ...

My ingress issue did not become worse over years – it only occurred at these times of extreme weather. The building is still in good order. No external damage has been seen in the gable end. Since the repair work was completed by my builder no further ingress has occurred so I assume the entry point has been repaired and sealed ...

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If this is not Flood then it is the result of Storm – by my definition an extreme weather event resulting in higher than normal levels of rain and perhaps wind (which do not need to be present at the same time) ...

The damage to my property was caused by particular volumes of water which developed in periods of heavy rain beyond normal levels. To attempt to avoid my claim on the basis that the wording does not extend to cover such an event where the water has on rare occasions entered the premises is a gross breach of contract. Water entered the property. [The Provider]’s agent accepted this. The source could not be identified but over a considerable time it became clear it did not come from underground drains or pipes either under the property or from those belonging to the local authority outside the boundary of the property. ...

The property is a very old house. It has been watertight for all but three years of its existence to my knowledge. The repairs undertaken have again restored the integrity of the gable wall. No ingresses occurred in the latest extreme weather this Autumn. The repair did not fix a gradually operating cause. It was a cause which occurred only at particular times of the year when rain levels were above normal ...

The one important factor missing [from the Provider’s] equations...is the fact that the Insured Property sits at the end of a very steep hill which some locals refer to as a mountain. Housing and industrial developments at the higher levels have in my view led to less percolation. The accumulation of rainwater run-off from this incline has increased over the years and probably increased considerably since 2010 following inception of the Policy ...

This Property is not built to modern construction and damp proofing standards. I am advised that a continuing or gradual ingress of water would have affected the property in far more serious ways had such been occurring [subsidence]”.

The Complainant submits that the Provider “arrived at an unreasonable conclusion in relation to the Reporting aspect of the Claim and an incorrect interpretation of the cover available to me under my contract of insurance with it”. He now seeks for the Provider to admit his claim. In this regard, the Complainant notes that “my main expense was the wall and internal structural repair [that is, €22,223.03]...I will provide the cost of the internal fixtures/fittings/furniture in due course”. The Complainant wants the Provider “to honour the terms of the contract of insurance and pay for my loss/damage”.

The complaint is that the Provider wrongly or unfairly declined his home insurance claim.

The Provider’s Case

Provider records indicate that the Complainant first telephoned the Provider on 25 September 2017 to advise that water had been entering his property at ground level since February 2017. The Provider-appointed Loss Adjuster carried out an inspection two days later, on 27 September 2017, where he met with both the Complainant’s builder and his tenant. The tenant informed the Loss Adjuster that a small amount of water ingress first

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arose in September 2014. Initially the tenant believed it to be a problem with the rainwater chutes and passed it off.

However, the matter got progressively worse and in December 2015 the tenant advised that she first reported it to the Complainant. The Provider was not notified until September 2017, which is a significant delay in notification and in breach of the terms and conditions of the Complainant's policy.

In addition, having assessed the Complainant's claim, the Loss Adjuster concluded that there was no evidence to confirm the operation of an insured event, like Storm or Flood, for which the policy might extend to provide cover for. The Provider notes from the outset that the Complainant is correct in stating that his policy does not provide a definition of Storm or Flood. It argues that it is impracticable to define every word in a policy document. Definitions in a policy document are provided to give words a specific meaning, which may differ from their normal or regular meaning or usage. When a word is not defined in the policy document, the normal meaning applies, as defined in an English dictionary. In this regard, the Provider uses the definitions from the Oxford English Dictionary (at www.oxforddictionaries.com), as follows:

"Storm: A violent disturbance of the atmosphere with strong winds and usually rain, thunder, lightning, or snow.

Flood: An overflow of a large amount of water beyond its normal limits, especially over what is normally dry land".

As the Complainant's property did not suffer damage as a direct result of a Storm, an example of this would be missing roof tiles, the Provider reviewed the Complainant's claim taking into account the above definition of Flood.

The Provider notes that water first entered the Complainant's property in September 2014, again on 31 December 2015 and then on 6 February, 14 February, 5 March, 9 March, 20 September, 27 September and 19 October 2017. It is clear that there is a history of water entering the property, first in September 2014, and possibly before as incidents may not have been reported to the Complainant by his tenant. From September 2014 to October 2017 there were nine occurrences of water entering the property. If the Provider accepted a flood or floods occurred, each occurrence would be considered a separate claim.

The Provider has attempted to identify the reason the water entered the property. The water entered via the gable end of the property, but the exact reason for this was not identified. The repairs carried out, which the Complainant advised have been successful, consisted of, as follows:

"[The builder] decided to repair the damaged wall by fitting a 2 meter Delta Liner along its interior and joined this to the concrete slab in the kitchen. Further, a percolation type pipe was run along the length of the gable wall internally between the Delta Liner and the gable wall to take away any further ingress of water through the wall".

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As the repair was successful, the Provider assumes that prior to the repairs, rainwater had been running along the exterior footpath, striking the gable end and breaching the brickwork and damp proof membrane (if installed).

The Provider next considered whether the rainfall on each of the known dates may have resulted in a Flood, that is, *“an overflow of a large amount of water beyond its normal limits, especially over what is normally dry land”*. In this regard, the Provider obtained from Met Eireann the hourly rainfall recorded locally on 31 December 2015 and 6 February, 14 February, 5 March, 9 March, 20 September, 27 September and 19 October 2017.

In reviewing the 192 hours (8 days x 24 hours) of data obtained from Met Eireann, the Provider calculated that only 11 of these hours can be classified as having had heavy rainfall, six of which were on 27 September 2017. The Provider is therefore of the opinion that only the rainfall on 27 September 2017 could have led to flooding, however on review of its records for [the area], no flood claims were reported to the Provider with a date of loss/occurrence of 27 September 2017. For this reason, the Provider is of the opinion that flood conditions did not occur on 27 September 2017.

The Complainant submitted a claim in the amount of €22,223.03 for repair and preventative work. His policy provides cover for loss or damage caused by an insured event, that is, repair work as a direct result of an insured event, like Storm or Flood. It does not provide cover for work required to prevent a reoccurrence of an event.

The Provider states that it is satisfied that it correctly declined the Complainant’s claim as it concluded that a flood did not occur on any of the dates that the water entered the Complainant’s property and that as the water entered the property gradually on at least nine occasions, the general policy exclusion relating to gradual deterioration or any gradually operating cause applies. In addition, the Complainant delayed in notifying the Provider of his loss, in breach of the policy terms and conditions. Accordingly, the Provider states that it is satisfied that it declined the Complainant’s claim in accordance with the terms and conditions of his home 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.

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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 12 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.

The complaint at hand is that the Provider wrongly or unfairly declined the Complainant's home insurance claim. The Complainant holds a home insurance policy with the Provider since 1 January 2010 in respect of an end of terrace house, constructed in the 1920s or 1930s, which is let. The Complainant submits that *"a series of Storms/Floods have resulted in damage to the gable end of my building and internal damage. I have expended €22,223.03 on repairs to secure the property from further ingress of water"*.

Provider records indicate that the Complainant first telephoned the Provider on 25 September 2017 to advise that water had been entering his property at ground level since February 2017. The Complainant, however, disputes this, as follows:

"I note [the Provider] state I was in touch with them on the 25th of September 2017 however that was not my initial report and [the Provider] telephone records for the days following the first ingress in early February 2017 will show this!".

The Provider states that it has no record of the Complainant having telephoned it in and around February 2017 or any time thereafter until 25 September 2017. Recordings of the telephone calls between the Complainant and the Provider have been provided in evidence. Having considered the recording of the telephone call between the Complainant and the Provider on 25 September 2017, I note that the Complainant makes no reference to having previously notified the Company of water entering his property and proceeds to inform the Agent of his loss, as follows:

"There's water flowing into the kitchen at the back...it happened last year and I've been trying to rectify it, em, so I need someone to contact the builder, who I have trying to rectify it...I was trying to sort it myself".

When asked by the Agent when this loss first occurred, the Complainant advises *"a year ago, no...November last year, sorry, it wasn't, it was February"*.

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Home insurance policies, like all insurance policies, do 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, the 'Terms and Conditions' section of the applicable Policy Document provides, among other things, at pg. 28, as follows:

"CLAIMS – YOUR DUTIES AND OUR RIGHTS

WHAT YOU MUST DO

Tell Us IMMEDIATELY of any loss, damage or accident and give details of how the loss, damage or accident occurred. *You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward those to Us, together with a completed Claim Form, within 30 days of first notifying Us of the incident".*

[Emphasis provided]

I note from the documentary evidence before me that water first entered the Complainant's property in September 2014, again on 31 December 2015 and then on 6 February, 14 February, 5 March, 9 March, 20 September, 27 September and 19 October 2017.

The Complainant submits *"I am not a claims conscious individual. I did not see the eventual outcome when I was first made aware of the ingress issue. This caused delay in reporting which I do acknowledge"*. While I accept the Complainant's contention, I must also accept from the evidence before me, that the Complainant failed in his obligation to notify the Company *"IMMEDIATELY"* of his loss and thus was in breach of one of the general terms and conditions of his home insurance policy. Timely notification of a loss is, for an array of reasons, a fundamental principle of insurance.

Whilst I accept that it would have been reasonable from the evidence before me and in accordance with the policy terms and conditions for the Provider to rely solely on his delay in notification of his loss to decline the Complainant's claim, I note that the Provider nevertheless assessed the Complainant's loss to determine whether there was the operation of an insured event, like Storm or Flood, for which the policy might extend to provide cover for.

I note that during the Loss Adjuster's inspection on 27 September 2017 it became evident that the first ingress of water was as far back as September 2014. I note that the Loss Adjuster's Report, dated 28 March 2018, concluded, as follows:

"At the time of our site inspection we did not observe any insured event for which this policy might extend to provide cover for. The insured has not proven the ingress of water in the risk property is as a result of "Freezing, Escape of Overflow of Water from within any plumbing or heating system, fixed water apparatus or fixed domestic appliance".

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In addition, there is also no evidence to suggest this incident occurred as a result of a one off incident of 'Storm or Flood' as we are advised the issue first arose in September 2014 and got progressively worse over the following number of months/years.

We note the relevant policy wording and general exclusion in terms of gradual deterioration or any gradually operating cause which are excluded for as follows:

- *Gradual deterioration or any gradually operating cause”.*

In this regard, the 'General Exclusions' section of the applicable Policy Document provides, among other things, at pg. 31, as follows:

“WEAR, TEAR AND AS UNDERNOTED

- *Wear, tear, rust or corrosion.*
- ***Gradual deterioration or any gradually operating cause”.***

[Emphasis provided]

In addition, the Loss Adjuster also concluded that the Complainant's claim should be declined due to his failure to notify the Provider of his loss when it first came to light.

Accordingly, I accept that it was reasonable from the evidence before me, and in accordance with his policy terms and conditions, for the Provider to decline the Complainant's claim due to his delay in notifying the Provider of his loss.

For the reasons set out a 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**

4 April 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.

