An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref: 2019-0145

Sector: Insurance

Product / Service: Household Buildings

Conduct(s) complained of: Rejection of claim - non-disclosure

Outcome: Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to the cancellation of a household insurance policy.

The Complainant's Case

The Complainant is unhappy that her household insurance policy was cancelled *ab initio* due to, what she claims, was an unintentional omission relating to a previous household claim made several years previously. The Complainant telephoned an insurance intermediary seeking a quote for her annual household insurance. The insurance intermediary returned a quote lower than that which she had been paying previously so she accepted it and the policy was incepted from 01 October 2014. In February 2015, the Complainant put in a claim for a shower pump and subsequently received notification from the Provider advising her that, as she had omitted to disclose a previous claim dating back several years, her claim was rejected. In addition to this, the Complainant's household insurance policy was cancelled *ab initio* "*with immediate effect dating back to October 1st 2014*".

It is the Complainant's contention that, as her father-in-law was dying of cancer at the time, and she was preoccupied with arranging care for him, she forgot to include details of the prior claim in question. The Complainant states that she "*genuinely didn't think of it as a claim that wasn't over 5 years old"* and that she would not "*lie about a claim when* [she

knew] *like everyone else that* [her] *records across the board can be checked and* [she] *would obviously be found out if* [she] *left out information*".

The Complainant is also unhappy that, as a result of this omission, she has been unable to get competitive household insurance quotes from third party providers, if indeed she is quoted at all. The Complainant illustrates this point by explaining that she has had a home alarm fitted in the interim but, because of the policy cancellation, her household premium has not decreased.

The complaint is that:

- The Complainant's household insurance policy was cancelled *ab initio* due to an unintentional omission by the Complainant in relation to a claim she made on her household insurance several years before;

- The Complainant has been unable to get competitive household insurance quotes from third party providers in the interim owing to the cancellation *ab initio* of her household insurance policy with the Provider.

The Complainant would like the Provider to amend her record in relation to the cancellation *ab initio* of her household insurance policy with the aim of obtaining competitive quotes in the future.

The Provider's Case

The Provider asserts that the Complainant failed to disclose prior to the inception of her policy in October 2014, on her Statement of Fact document, a claim made on her household insurance policy in April 2011 which was settled in the amount of €1,108.30. The Provider maintains that this represented a non-disclosure of a material fact which entitled it to deem the policy void *ab initio.* The Provider also maintains that, had the previous claim been disclosed, insurance terms would have been refused on the basis that the Complainant had two claims on her household insurance policy in the 5 years immediately prior to inception.

Decision

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

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

/Cont'd…

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 29th April 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, my final determination is set out below.

Prior to considering the substance of the complaint, I will set out the relevant passages from the Statement of Fact document as completed by the Complainant and as relied upon by the Provider.

Statement of Fact

The Provider relies upon certain passages of the Statement of Fact document completed by the Complainant in September/October 2014. This document, which is expressly stated to form the basis of the contract, includes a section entitled "*Previous Insurance History*". The section requests disclosure of "*any claims/material losses incurred in the last 5 years*".

The section also states as follows in bold:

> ***NOTE: Failure to disclose previous claims/material losses may invalidate this insurance policy. We may request information about you and your claims history and / or share information we hold about you and your claims history with other insurance companies.***

Elsewhere, in the '*Declarations*' section, the document states:

> ***Please note that we are providing insurance to you on the basis that you have confirmed the following statements to be true. <u>The policy details supplied in the statement</u> set below form the basis of the insurance contract between us. Incorrect information could invalidate all or part of the policy and or result in a claim not been paid.***

In addressing the previous insurance history section of the Statement of Fact, the Complainant disclosed details of an accidental damage claim made and settled in December 2012 in the amount of €385. No reference is made to the April 2011 claim.

/Cont'd…

Analysis

The Complainant accepts that she failed to disclose the fact of the April 2011 claim in the Statement of Fact document. The Complainant however maintains that this non-disclosure was unintentional and explains that she "*just completely forgot the date that this claim took place*".

The Complainant also highlights the ill-health of her father-in-law at the time that she completed the Statement of Fact document as a factor explaining her oversight. The Complainant insists that she is a person of "*integrity*" that would not be in "*the habit of trying to hide claims or material facts*".

In the first instance, I might say that I have no difficulty in accepting the Complainant's submissions as to her integrity.

However, because the Complainant failed to disclose a previous claim at inception of the policy, for whatever reason, the Provider is entitled to deem the policy void *ab initio* in the event that this non-disclosure related to a material fact. A material fact is one which would have influenced a reasonable insurer had it been disclosed. Accordingly, it is not sufficient merely to establish that the particular insurer involved would have declined cover, it is also necessary to show that such a course of action would have been reasonable, or that a reasonable insurer would have been influenced by the information had it been disclosed.

In its letter of the 13th of July 2015, the Provider stated as follows:

> *This information should have been disclosed to us at inception. This fact would have rendered this risk materially different and would have resulted in our Underwriters refusing to accept cover on this risk.*
> *…*
>
> *We consider the non disclosure of past claims history to be non disclosure of a material fact.*

In the Final Response Letter of the 2nd of July 2015, the Provider stated as follows:

> *Should we have had your claims details which we deem to be a material fact prior to the setting up of this policy this would have then been deemed outside of our risk appetite.*

In its response to this office, the Provider expounded on the issue in the following terms:

> *If this 2nd claim had been declared to us this risk would have been outside of our acceptance criteria and we would have declined to offer terms*.

This indicates that the Provider would have been influenced by the fact of the undisclosed claim (insofar as it would have represented a second claim in the 5 years immediately prior to inception) and that the information would have led to it declining to offer terms. I must

/Cont'd…

accept that two claims in five years is a material fact that must be notified to an insurer and that a reasonable insurer would have been influenced by the information which was not disclosed had it been disclosed.

In light of the entirety of the foregoing, I accept that by reference to the provisions of the Statement of Fact document cited above and by reference to the law relating to non-disclosure, that the Provider was entitled to repudiate the Complainant's claim and to deem the policy void *ab initio.* In the absence of evidence of wrongdoing by the Provider or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017 that could ground a finding in favour of the Complainant, I do not uphold this complaint.

Conclusion

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

27 May 2019

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.

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.