



<b><u>Decision Ref:</u></b>	2019-0229
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - non-disclosure
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This complaint is in respect of the refusal of the Provider to admit the Complainant's claim following a fire under a home insurance policy he had incepted with the Provider, and the subsequent cancellation of this policy by the Provider due to what the Provider claims was the failure of the Complainant to advise the Provider of a change in the occupancy of the property.

The Provider issued a letter to the Complainant from the Provider's underwriting department querying a change in occupancy of the Complainant's insured property. The Complainant had allowed friends to live in the property, the subject matter of this dispute. The Provider cancelled the Complainant's policy on the **29<sup>th</sup> of June 2015** by way of letter with effect from the renewal date of **21<sup>st</sup> of February 2015**, as the Provider claims the Complainant did not disclose a material fact being the of change of occupancy, at the time of the renewal.

The Provider has refused to indemnify the Complainant for the fire, which occurred on the **26<sup>th</sup> April 2015**, and also cancelled the policy with retrospective effect.

The Complainant is represented by his solicitor.

### The Complainants' Case

The Complainant incepted a home insurance policy with the Provider on the **21<sup>st</sup> of February 2012** via telephone on a call with an Agent of the Provider.

The Complainant submits that the property was at all times his principal private dwelling and he resided there on a permanent basis. He states that he allowed two close friends to occupy the house with him, without paying any rent.

The Complainant states that in May of 2014 his father sustained a serious injury and due to this he spent his time between his property and his parents' house, which are approximately two miles apart. He submits that at times he may have been spending 2 or 3 days at his parents' house, but at all times his property remained his principal private residence and he attended his property on a regular basis. Due to the Complainants' friends also living in his property, the Complainant submits that at no stage was the property left unoccupied.

A fire occurred in the Complainant's property **26<sup>th</sup> April 2015**. The Complainant was not in the property at the time and heard about the fire from a neighbour. The Complainant's friends who were residing in the house were also not in the property at the time as they were away for the weekend. On **the 28<sup>th</sup> April 2015** the Complainant reported a claim via telephone to the Provider under his home insurance policy in respect of the property. On this call the Complainant stated to the Provider that friends of his were staying in the house but were away on the night that the fire occurred.

The Provider wrote to the Complainant by letter dated **29<sup>th</sup> June 2015** advising that it was refusing cover due to the failure of the Complainant to disclose the change in occupancy of the property in the most recent renewal. The Provider also advised the Complainant that it was cancelling the policy from the renewal date. The Complainant, through his representative, responded to the Provider stating that the Provider had no authority to do so.

The Complainant's representative further wrote to the Provider disputing the Provider's decision in respect of the claim and the cancellation of the policy on the **5<sup>th</sup> November 2015**. By way of reply on the **10<sup>th</sup> of November 2015** the Provider advised that it had considered all aspects of the case and would not be reconsidering its position

In respect of the duty of disclosure as regards the occupancy of the property, the Complainant maintains that he remained in complete control of the property by way of visits to the house very regularly and staying in the house on occasions. He denies that he either abandoned or neglected the property.

The Provider has stated that there was an alteration of risk due to the change in occupancy of the property and the Complainant submits in this regard that there was no alteration of risk as there was no tenancy arrangement in place between the Complainant and his friends who were living in the property. Furthermore, he says that the building was not left unoccupied.

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It is submitted on behalf of the Complainant that the policy document, sent by the Provider to the Complainant by letter dated **13 January 2015**, deals with the "*Occupancy Clause*" of the policy but, it is submitted, it does not allow the Provider to exclude cover in the circumstances the subject matter of this complaint. The Complainant submits that the policy document states that the cover provided is more restrictive or excluded from policies where the occupancy of the home is (a) let to tenants (b) unoccupied or (c) a holiday home, none of which are relevant in this case.

The Complainant has submitted a statement from his mother, dated **9<sup>th</sup> February 2016** which advises that the Complainant did not return to live with her and her husband full-time but regularly stayed at his own house on a very regular basis. The Complainant's friend who was residing in the property also provided a statement dated **12<sup>th</sup> January 2016** which confirms that he did not pay rent to the Complainant and that the Complainant used to come and go from the property every second day while he was helping his father recuperate.

The Complainant contends that the Provider wrongfully refused his claim and cancelled the policy and did so on discriminatory grounds. The Complainant states that the failure to disclose to the Provider that he was spending more time at his parents' house caring for his sick father and less time at his principal private dwelling house is not and should not be deemed to be material non-disclosure.

The Complainant also states that he is clearly in the realms of being classified as a "*vulnerable customer*" as he is a member of the travelling community and is protected by Section 3.1 and 4.2 of the Consumer Protection Code 2012 and is also protected by common law, as per the case of *Haughey v J&E Davy* and was therefore entitled to greater protection by the Provider.

Phone calls between the Provider and the Complainant were submitted to this office and on listening to the phone calls it is submitted on behalf of the Complainant that that these phone calls are proof of his status as a "*vulnerable customer*". The first call occurred on **21<sup>st</sup> February 2012**, and was in respect of the quotation for the policy and the Complainant submits that no enquiry was made by the Provider as to the vulnerability of the Complainant or otherwise on this call.

The second call was on **11<sup>th</sup> March 2015** and was in respect of a payment query. It is submitted on behalf of the Complainant that this telephone conversation clearly demonstrates that the Complainant was unable to fully comprehend the position with regards to the policy terms and conditions and it was clear that he had spelling difficulties as he had to hand the phone over to his mother to deal with the query. It is submitted that this should have alerted the Provider to the Complainants vulnerability and the need for special requirements in that regard.

It is also submitted on behalf of the Complainant that in the first phone call there was no reference that there was any restriction on the policy in the event that there was a change in the occupancy of the property.

In resolution of his complaint, the Complainant is seeking the Provider to indemnify the property and to discharge costs of repair works the value of €83,594.72, which the Complainant states have been evaluated by an Assessor.

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

The Provider submits that this complaint is in relation to the forced cancellation of a policy held by the Complainant which was treated as null and void due to the failure of the Complainant to notify the Provider of a change in occupancy of the property.

The Provider states that following receipt of a claim in respect of a fire that occurred at the property on **25<sup>th</sup> April 2015** investigations revealed that the property was not permanently occupied by the Complainant. The Provider took a statement from the Complainant in **June 2015** in respect of the claim and the Provider points to a section of this statement which states;

*"In May 2014, my father got sick and was in hospital for a while. When he came out of hospital sometime around the end of June '14, I moved back to my parent's house at [...] to help out. About a month before my father got sick, which was April 2014 a good friend of mine [...] needed somewhere to stay so I allowed him to stay at the house in [...]. He moved into the house with his partner*

....

*An odd time I might stay the night and I would sleep on the couch nearly always.*

....

*I always intended on keeping the house and I was going to move back there again when things settled down at home."*

The Provider submits that this clearly confirmed that the Complainant moved out of the property in June 2014 and two other persons resided there whilst he was staying at his parents' house.

The Provider submits that when the Complainant's policy fell due for renewal on **21<sup>st</sup> of February 2015** there was a duty on the Complainant to disclose the change in occupancy of the property. The Provider referred to the "*duty of disclosure*" and "*alteration of risk*" sections of the policy and highlighted that any material changes such as tenancy or occupancy should be notified to the Provider.

The Provider contends that due to the Complainant's failure to disclose that he had not been permanently residing at the property since **June 2014**, and that other parties were residing there, the Provider was entitled to treat his policy as null and void with effect from the renewal date of **21<sup>st</sup> of February 2015**.

The Provider submits that it has complied with its obligations under the CPC 2012, in particular Clause 2.1 in that it believes that it has acted honestly and fairly in all its dealings with the Complainant.

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In respect of the submission that the Complainant was a “*vulnerable person*” the Provider states that in the first call on **21<sup>st</sup> February 2012** the Complainant appeared to be able to answer the sales agent’s questions in a coherent manner and understood the questions that were being asked.

In respect of the second call on **11<sup>th</sup> March 2015**, the Provider states that it has concerns regarding the identity and validity of the caller who contacted it on this date. The Provider states that on the first call the caller could recite their date of birth without hesitation or delay, however on this call they were unable to do so.

### **Complaint for Adjudication;**

The Complaint for adjudication is that the Provider wrongly refused the Complainants claim under the home insurance policy and subsequently cancelled the policy from the renewal date.

### **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 **10 June 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, within the period permitted, taking into account all of the evidence provided and submissions, my final determination is set out below.

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The Complainant incepted a policy with the Provider via telephone on a call with an Agent of the Provider on **21<sup>st</sup> of February 2012**. That phone call has been provided in the schedule of evidence and I have carefully considered the content of the call. The Agent of the Provider asked;

**Agent:** *"Is this property your main residence and occupied solely by you and members of your family"*

**Complainant:** *"Yes"*

It was further asked by the Agent for the Provider:

**Agent:** *"Is the property always occupied other than normal daily absences or vacations?"*

**Complainant:** *"Always be someone there, yeah"*

This phone call was the basis for the inception of the policy and it was based on this information that the Provider incepted the policy. There is some lack of clarity as the first question above clearly refers to *"you and members of your family"*, whereas the second question simply asks *"is the property always occupied"* and does not specifically specify *'by you or members of your family'*, on balance I believe that it was not unreasonable for the Provider to take the view that the answer *"always be someone there yeah"*, means that this person would be either the Complainant or a family member. I find this because the Complainant had already confirmed that the property was to be occupied solely by him and members of his family. Furthermore, the Complainant also confirmed on this call that the property was owned by him and would be occupied by him. From this telephone exchange, I find that it was reasonable for the Provider to be satisfied that the property was occupied by the Complainant and members of his family.

As regards the vulnerability of the Complainant, having considered the telephone call on **21<sup>st</sup> February 2012**, the questions posed by the Provider and the answers given by the Complainant, I can find no evidence to demonstrate vulnerability of the Complainant on this call. The Complainant does not appear to have difficulty in answering the questions put to him by the Provider. Any questions posed by the Provider that the Complainant did not understand initially were worded a different way by the Provider and the Complainant answered these questions fully and coherently and demonstrated his understanding of the questions. The Provider does not make any enquiry as to the vulnerability of the Complainant, however, I do not find from the contents of the call that the Provider was obliged to do so as the Complainant demonstrated an understanding of the questions asked of him and answered them fully and coherently.

I note the submission on behalf of the Complainant that he had spelling difficulties and that he had to pass the phone to his mother to deal with queries posed by the Provider as he was unable to understand the policy terms and conditions on the payment query call on **11<sup>th</sup> March 2015**. The Provider has submitted that it has concerns regarding the validity of the caller on this call as the caller was unable to recite his date of birth without hesitation or delay.

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Having considered the content of this call, I note that the caller had to ask someone beside him what his date of birth was before he could answer the Provider. I will not make a finding as to the validity of the caller on this call, but I do note that the Complainant had no difficulty in reciting his date of birth to the Provider on the call of **21<sup>st</sup> February 2012** nor on the call of **24<sup>th</sup> April 2015**, on which the Complainant notified the Provider of the fire in the property.

In respect of the call on **11<sup>th</sup> March 2015**, the Complainant has submitted that his vulnerability was demonstrated as he could not fully comprehend the position with regards to the policy terms and conditions. Having considered the content of the call, I note that the difficulty that the Complainant appeared to have was in the spelling of the address of the Provider, at which stage the Complainant handed the phone to another person to take down the address, which the Provider spelled out for them. I do find that it was clear that the Complainant, and the third party who then took over the call, had spelling difficulties, however, the Provider dealt with this by clearly spelling out each word of the address for the caller.

Clause 3.1 of the CPC 2012 states that

*“Where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity.”*

I find that the difficulties that were demonstrated by the Complainant did not appear from the telephone call to be difficulties in understanding the questions posed by the Provider, they appeared to be difficulties with spelling and I find that the Provider gave reasonable assistance to the Complainant in facilitating him by spelling out the relevant words that were posing difficulty to him and then to the third party who took over the call on the Complainant's behalf. Therefore, I find that the Provider has complied with its obligations under the CPC in this regard.

In respect of Clause 4.2 of the CPC, which the Complainant submits is relevant in this matter. This clause states that

*“A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:*  
*a) the urgency of the situation; and*  
*b) the time necessary for the consumer to absorb and react to the information provided.”*

I find that the Provider gave all necessary information to the Complainant on the call, clearly explained the questions to him and the Complainant answered in a coherent manner which show he absorbed the questions asked and reacted to the information provided and understood the questions asked of him. I therefore find that the Provider has complied with its obligations under the CPC in this regard also.

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The Proposal Form signed by the Complainant and dated **2<sup>nd</sup> March 2012**, with cover provided from 21<sup>st</sup> February 2012, specifies under “*Your Dwelling Details*” that the occupancy of the property is “*House I Own and Live in*”. In the Declaration section of the form where the Complainant has signed, it states that “*I declare that the above statements are true and complete and I have not suppressed or mis-stated any material fact*”.

This Office has been provided with copies of the Renewal Notices which issued to the Complainant from the Provider prior to each of his subsequent yearly renewal dates in 2013, 2014 and 2015. The Renewal Notice applicable to the policy renewal for 2015 is dated **23 January 2015**. At the bottom of each Renewal Notice it states;

***“DUTY OF DISCLOSURE:*** *At each renewal you have a duty to advise us of any material fact that could affect your policy [.....]*

***ALTERATION OF RISK:*** *You have an ongoing duty to advise us of any change to the risk such as; a modification to a vehicle; structural alterations to any building; change of use in any building including a change of tenancy or building becoming unoccupied. Policy cover may be avoided in respect of any alteration in risk which is not notified to and accepted by us.*

***The above is not an exhaustive list of examples of information that could affect your policy, if ever in doubt over whether any information could affect your policy please disclose it.”***

The Features and Benefits document applicable to the Complainant’s Policy sets out the main features, benefits and restrictions that apply to each section of the policy and that document has also been submitted to this office.

On **13<sup>th</sup> of January 2015** the Provider sent a letter to the Complainant informing him that it was changing the policy documentation into simpler English that will make it easier for consumers to read. The letter advised the Complainant to read the new documentation stating that:

*“Our new plain English home policy is enclosed and we recommend that you read it in full as it will form the basis of your cover from renewal.”*

This documentation included the revised Features and Benefits document, which issued prior to the Complainant’s renewal in 2015. This Features and Benefits document has a section highlighted in a text box marked “*Important*” which states;

*“Duty of Disclosure*

*You have a duty to disclose to us all material facts. A material fact is any information likely to influence our acceptance of your insurance, our calculation of your premium or the terms and conditions we apply to your policy. [.....]*

*If you are in any doubt as to whether or not any information is important, please disclose it to us.*

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*Consequences of non-disclosure*

*If you fail to disclose to us all material facts you are likely to experience problems including;*

- *your policy being treated as invalid or not having existed or cancelled,*
- *the non-payment of claims,*
- *difficulties in buying insurance elsewhere,*
- *failure to carry out a duty under a contract with a lender.*

*Cover is subject to the terms, conditions, exceptions and excesses noted in your policy documents. Your policy documents (schedule, policy document, quotation letter, proposal form or statement of fact) will confirm the cover that applies to your policy or quotation.”*

When the Policy was incepted by the Complainant in **February 2012**, it was incepted on the basis that the Complainant both owned and resided in the property and, importantly, that the property was occupied solely by the Complainant and members of his family.

However, as per the Complainant’s statement, which was given to the Provider in **June 2015**, it is clear that the Complainant was not living in the property since the end of **June 2014** as he states but that he had “...moved back to my parent’s house...”. This statement further advises that the Complainant’s friend and his partner were living in the property since **April 2014**.

The Complainant advised in this statement that he “...would have called out every few days for a chat and to watch a DVD. An odd time I might stay the night and I would sleep on the couch nearly always”. The Complainant in his own submissions has stated that he remained in complete control of the property by way of visits to the house very regularly – staying in the house on occasion. I am satisfied that, having regard to the contents of his statement and his submissions to this office, that at the time of the renewal of the policy in February 2015 the property was not solely occupied by the Complainant and members of his family.

I must then consider whether the failure to disclose this fact to the Provider at the time of renewal constituted a failure to disclose a material fact, in light of the disclosure term in the policy:

*“Duty of Disclosure*

*You have a duty to disclose to us all material facts. A material fact is any information likely to influence our acceptance of your insurance, our calculation of your premium or the terms and conditions we apply to your policy. ....*

*If you are in any doubt as to whether or not any information is important, please disclose it to us.”*

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It is relevant to my decision in this regard that one of the questions asked by the Provider of the Complainant at the time of the inception of the policy was *“Is this property your main residence and occupied solely by you and members of your family”*.

In those circumstances, the failure to disclose a change in circumstances that would give rise to a change to the answer given to this question is a material fact in my view. It is not disputed by the Complainant that he did not disclose this material fact to the Provider at the time of renewal.

The consequences of a failure to disclose are clearly set out in the policy, as follows:

*“Consequences of non-disclosure*

*If you fail to disclose to us all material facts you are likely to experience problems including;*

- *your policy being treated as invalid or not having existed or cancelled,*
- *the non-payment of claims,*
- *difficulties in buying insurance elsewhere,*
- *failure to carry out a duty under a contract with a lender.*

*Cover is subject to the terms, conditions, exceptions and excesses noted in your policy documents. Your policy documents (schedule, policy document, quotation letter, proposal form or statement of fact) will confirm the cover that applies to your policy or quotation.”*

At the first bullet point, it provides for *“your policy being treated as invalid or not having existed or cancelled”*. The reference to *“not having existed”* in my view provides for the cancellation as occurred in this complaint, whereby the event giving rise to the claim occurred after the renewal and before the cancellation of the policy. I find that having regard to the terms of the policy, the Provider was entitled to cancel the policy and therefore to decline to admit the claim.

I note the section in the policy, whereby under the heading *“Occupancy”* it states;

*“Many of the covers provided are more restricted or excluded from policies where the occupancy of the home is;*

- *let to tenants,*
- *unoccupied,*
- *a holiday home*

*These restrictions will be clearly shown on your quotation documents and policy schedule.*

*It is important to clearly advise us of the occupancy of your home as it is a material fact which we use in agreeing to provide insurance or the premium we charge.”*

This serves to reinforce my view that the occupancy of the property and any change to this was a material fact that the Complainant ought to have notified to the Provider, as it ought to have highlighted to the Complainant the import of this. While there is no evidence to support the proposition that the property was let to tenants, unoccupied or a holiday home, this term highlights the importance to the Provider of it being aware of the occupancy as this is a material factor it assesses in determining whether to provide cover and the level of premium.

It is clear to me from the above quoted sections of the Proposal Form, the Renewal Notices and the Features and Benefits document, that the occupancy of the property is a material fact in respect of the property which should have been disclosed to the Provider. The “*Duty of Disclosure*” is highlighted prior to each renewal of the policy and the Complainant had a duty to notify the Provider that the occupancy of the property had changed.

It is further made clear that should a material fact not be disclosed to the Provider that the insured is at risk of having their policy voided and having a claim refused.

In light of the foregoing, I find that the fact that the property was no longer occupied solely by the Complainant and his family members, and in fact was on the balance of the evidence not occupied by the Complainant at all, is a material fact which should have been disclosed to the Provider. I further find that the Provider was entitled to cancel the policy and therefore not to admit the claim and I find that the Provider has not acted wrongfully in doing so.

An issue has been raised by the Provider that the house in question was let to tenants. The Complainant contends that he allowed his friend and partner to live in the house out of goodwill and friendship. There is no evidence made available to this Office to support the contention that the friends of the Complainant were residing in the house as tenants. However, this does not impact on my finding as outlined above, as it remains the case that the Complainant failed to disclose to the Provider that the property was no longer solely occupied by him and his family members and the terms of the policy permitted the Provider to decline a claim and cancel the policy arising from this.

For the reasons set out above 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***.

**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**

11 July 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.**