



<u>Decision Ref:</u>	2019-0236
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant submitted a claim under his Household Insurance Policy, which is underwritten by the Provider. The claim was for storm damage to one of the chimneys on his house that occurred in 2014.

The claim was declined by the Provider on the grounds that the damage to the chimney was caused by a chimney fire occurring some eight years previously, prior to the inception date of the Complainant's Household Insurance Policy in 2014, and is not therefore covered under the terms of the Complainant's policy.

The complaint is that the Provider has wrongly and unreasonably declined the Complainant's claim.

The Complainant's Case

The Complainant states that, in February/March 2014, he suffered a fire in one of his household chimneys (chimney no. 1), and storm damage to a second chimney (chimney no. 2), causing cracking and ingress of water.

The Complainant states that, on a very windy night at the end of March 2014, he heard a loud bang and found that a portion of the flue pipe had blown off chimney no. 2 on to his neighbour's property.

The Complainant submitted a claim to the Provider under his Household Insurance Policy for the cost of reinstating the damaged chimneys.

The Complainant states that, following inspection by the Provider's Loss Adjuster, the Provider initially found that there was no damage to chimney no. 1, and that the damage to chimney no. 2 had been caused by a fire which pre-dated the policy, and was not covered by the policy.

The Complainant states that, following a complaint by the Complainant and further investigation by the Provider, the Provider accepted that chimney no. 1 had been damaged by fire, and settled the claim in respect of chimney no.1 on that basis.

In respect of chimney no. 2, the Complainant disputes the Provider's findings. The Complainant states that, eight years previously, he had installed an oil range in the kitchen area of his house and that a flexible flue pipe had been inserted in chimney no. 2 to serve the oil range. The Complainant states that he had never had a fire in chimney no. 2, and disputes that the Provider found any evidence to suggest that he had.

The Complainant submits that he contracted an engineer to inspect the chimney on his behalf and that, upon climbing on to the roof to inspect the chimney, the engineer had found fresh cracks in the chimney consistent with storm damage. The Complainant states that it was the engineer's opinion that there may have been a fire in the chimney some 8 years previously, but that there was no evidence of it. The Complainant states that the engineer did find evidence of more recent damage consistent with storm.

The Complainant states that subsequently, at the end of October 2015, he contracted a man to take down the chimney and take out the flue pipe for inspection by the Provider's Loss Adjuster. The Complainant has submitted photographs of the flue pipe, which he states prove that no fire ever occurred in chimney no. 2. He states that, although the old chimney is no longer standing, the flue pipe is available for inspection at any time at his house.

The Complainant reiterates that there has never been a fire in chimney no. 2 and he disputes the Provider's assessment of his claim.

The Complainant submits reports from two engineers in support of his complaint, and seeks full payment of his claim. He has submitted an invoice for the cost of rebuilding chimney no. 2 in the sum €5,107.50 (incl. VAT).

The Provider's Case

The Provider submits that the Complainant's Household Insurance Policy provides cover for specified events, subject to various terms and exclusions, and that it is the policyholder's responsibility to demonstrate that the damage being claimed has been caused by a specified insured event.

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The Provider states that the Complainant's Household Insurance Policy was inceptioned on 12 January 2014, through a broker. The Complainant notified the Provider of a claim under the policy on 9 June 2014, in respect of a possible subsidence claim, during which his engineer had advised him that his chimneys were cracked, albeit unrelated to the cause of the subsidence.

The Provider submits that it settled the Complainant's claim in respect of fire damage to chimney no. 1 in November 2015, but submits that it has not received any evidence that confirms that the damage to chimney no. 2 was caused by an insured peril.

The Provider states that initially it was advised by the Complainant that the cracking to chimney no. 2 was the result of heat from fire, but that subsequent correspondence from the Complainant indicated that the damage to chimney no. 2 had been caused by storm. The Provider submits that it has considered both potential causes in the context of the Complainant's claim.

The Provider states that both the Provider's appointed engineer and the Complainant's engineer have stated the opinion that a chimney fire in chimney no. 2 was the likely cause of the cracking to the chimney. The Provider states that no evidence has been provided to show that the vertical cracking to this chimney was caused by storm, and that the damage observed is not consistent with storm damage.

The Provider states that the evidence provided points to the cause of the damage being from an open fire. The Provider states that the chimney in question had been serving an oil range in the Complainant's kitchen for the previous 8 years, and that a chimney fire would therefore date back prior to the installation of the range. The Provider submits that, in circumstances where the Complainant took out the Household Insurance Policy in question in January 2014, the chimney fire would have occurred prior to the inception of the policy, and would not therefore be covered under the terms of the current policy.

The Provider states that, based on the information received to date, it has declined the Complainant's claim in respect of chimney no. 2 as the cause of damage to the chimney has not been proven to be the result of an insured peril within the period of policy cover.

Evidence

7 November 2014 – Complainant's "Report on cracks to chimney"

"Engineers Overall Opinion

Both chimneys are damaged and the CCTV inspection has revealed that the chimney on the left has been damaged by a fire. An on roof inspection had shown that the chimney on the right has been damaged during a storm".

20 November 2014 – the Complainant to the Provider

“I received your letter today, I have forwarded your letter to my solicitor. I never mentioned that it could be caused by a fire. More lies. An oil range that’s installed for the last 18 years could not cause a fire and we had no fire 18 years ago. Stop sending such nonsense letters”.

13 February 2015 – e-mail said to have been received by the Provider from the Complainant:

“I have an Engineer coming on Monday to carry out a proper inspection on both chimneys. In his opinion, its heat that cracks them”.

17 February 2015 – Claim Handler to the Provider

“Our Adjuster at the inspection considered the possibility of a storm taking place on the 12 February 2014 as extremely high winds were experienced at that time. The possibility remains that it may in fact be some storm damage to the chimney but details of same have not been presented by the Insured or his Engineers to date”.

26 March 2015 – The Complainant

“I notified [Provider’s representative] to attend next week and I will have [Chimney expert] present. He now wants an Engineer to call out to inspect chimneys with [Chimney Expert] present. I am not agreeing to that unless [Provider’s representative] foots the bill for [Chimney Expert]. You have a copy of disc from [Chimney Expert] outlining the damage to chimney and [..] report”

20 April 2015 – Provider’s Engineer’s report

“Storm Damage

3. The lead apron flashing to Chimney 2 was displaced. It is common practice when fitting a lead apron such as this, that it is fixed in place to ensure it cannot not be easily displaced. The flashing on the Insured’s Chimney would not appear to have been fixed in place and it most likely to have been displaced during a storm. It is our opinion that water ingress to the inside of the building has occurred at the location of this flashing resulting in water ingress to the ceilings and wall in Bedroom 2.

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Chimney 2 – Serving an oil fired range cooker fire in the Kitchen of the Insured Property

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The Insured should carry out repairs to the cracks in this chimney above roof level and to the chimney cap. The Insured should also consider altering the chimney cap detail to prevent water from lying in the recess under the chimney cap. We do not consider the damage to this chimney to be related to storm damage”

Storm Damage

..

The displaced lead apron on Chimney 2 should be fixed back into place and redecoration should be carried out to the ceiling and walls of Bedroom 2”

24 April 2015 – Provider’s Claim Handlers

“In addition we were not allowed to speak with your client during our most recent inspection and were not shown any damage by him. The claim form submitted states “damage to right chimney storm cause further damage to chimney on right of house storm knocked portion of flue pipe from chimney”.

20 May 2015 – Quotation for Complainant prepared by Builder

“Chimney leaking which might be cause of been hit by falling branches of neighbouring trees. Knock chimney below slate level, rebuild, re-cap and plaster” Amount quoted was €4,500 + VAT”

24 August 2015 – Provider to the Complainant’s solicitor

“We have recently received a report from [Complainant’s Engineer] which was forwarded by your client directly on 11th August 2015. We note a copy has also been provided to your office.

The report suggests that recent damage has been occasioned to the flue and concrete capping to chimney number 2 as a result of storm damage. The report accepts that there was a previous chimney fire in the property some 8 years ago prior to inception by our clients and as explained previously any damage occasioned by the chimney fire would not be covered under the terms of your client’s policy”.

4 September 2015 – The Provider’s Claim Handlers

“When we attended site on 17 June 2014, we were shown a chimney serving an oil fired range and black staining to wall paper at ground and first floor level relating to this chimney. At that stage we ruled out a chimney fire as there had been no open fire for 8 years and suggested that the damage may have been storm related but requested an Engineer’s report to confirm the position”

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4 September 2015 – The Complainant to Provider

“In relation to chimney number two, my engineer states that it was damaged by storm and that maybe there was a fire there prior to insertion of range. He cannot prove this as there is a flexi pipe leaning from a range up to top of chimney. He could find no evidence of fire damage on chimney flue pipe which had blown off”.

6 October 2015 – Claim Handlers for the Provider

“Unfortunately we were not in a position to inspect the chimney at the time of our visit to site, as this would have required a teleporter or scaffolding. As explained our visit took place prior to receipt of the claim form and we understood we were examining the roof covering which was possible from a ladder mounted against the eaves. The damage to the flue pipe were however referenced in [Engineer’ s] report of 20th May 2015, based on photographs supplied by the Insured”.

“Whilst the pots may have been displaced in a storm event in March 2015, the liners in the chimney would have necessitated replacement prior due to damage occasioned by the fire in any case”

“..Both engineers believe a chimney fire occurred at the property some 8 years ago”

7 October 2015 – Complainant to Provider

“My Engineer stated that there may have been a fire but fresh damage is caused by storm”

8 October 2015 – the Complainant to Provider

“In my Engineers report He states that there is fresh cracks in chimney and again the incident at end of March 2015 which was storm damage. You are putting the damage down to Fire, a Fire that never was nor no evidence found to suggest a Fire only your Engineers opinion ..”

1 November 2015 – The Complainant’s submission

“Please find attached photos of flue pipes from Chimney number two. It is quite evident from the flue pipes that there is no fire damage. I had a man on Saturday who took down the chimney and took the flue pipes out for inspection by [Mr K] loss adjustor and his experienced engineer who stated in their report that there had been a fire prior to the insertion of the range. This is proof that no fire ever occurred in this chimney and I will have further photos tomorrow to prove same. These flue pipes can be inspected at any time at my house”.

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2 November 2015 – The Complainant to this office

“Thanks very much for your email. I have no problem with another Engineer calling to inspect the chimney but the chimney has being taken down to prove that there was no fire damage, all that he will see now are the flue pipes that were in the chimney and no damage done to them by fire as outlined by previous Engineer who could look up at chimney and come to a conclusion that there was fire prior to insertion of range. I will have the person present on site to show and prove that they were the flue liners that he removed”.

2 November 2015 – this office to the Provider

“.. Please find attached a copy of the response I have received from the complainant in this case. Please feel free to contact the complainant in order to arrange the meeting with your engineer”.

2 November 2015 – Loss Adjustor’s view on photographs

“I don’t believe the photos show anything new as the first set of photos the insured provided of the same capping show green mould in the cracks.

If you want [Engineer] to inspect the stack I also suggest the insured permit the wallpaper in these rooms be removed so the exact cause of the staining be recorded”.

3 November 2015 – The Complainant to this office

“Thanks for your email. The reason why I got the chimney taken down was to prove that there was no fire damage to flues. I have an oil range installed and there is a flexi flue pipe going from it up the chimney thus enabling me to carry out a cctv on it. The only way was to dismantle the chimney and inspect the flue pipes for fire damage and this has proven no fire damage .The flues are here for inspection but the old chimney is no longer standing. [The Provider] informed me that their Engineer stated fire damage and they were taking it no further. You will see from Photo attached that the chimney has been dismantled and no fire evidence from flue pipes”.

12 November 2015 - The Provider’s appointed Engineer’s report

“Discussion

..

Vertical cracking can be seen through the flue liner in Photograph 1 & 2 and from the evidence contained in the photograph, the cracking would not appear to be recent. A visual inspection of the flue liners would be required to provide a further opinion on this.

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“Conclusions

Following our review of the recent photographs provided by the Insured, it is our Professional Opinion there has been no further information provided to substantiate the alleged storm damage to Chimney 2 at the Insured Property. The photographs show:

- 1. Vertical cracking to a flue liner, damage that commonly occurs as a result of a chimney fire. In addition, the cracking would not appear to be fresh with apparent blackening of the crack, which is most likely to have occurred prior to the installation of the flexible flue liner.*
- 2. Incorrectly installed flue liners that could result in creosote tar leachate from the flues to the exterior of the chimney casing.*
- 3. Apparent black staining on the exterior of the flue liners.*

Water ingress may have occurred during the storm event that could have exacerbated the staining on the interior walls of the Insured Property however had the “inherit defects” as described by the Insured’s Engineer (cracking to the chimney cap/stack, cracking to the flue liners and displaced render) not been present and pre-existing, water ingress would not have occurred”.

Following this report, the Engineer suggested an onsite visit to confirm whether cracks in flue were recent or not. The Engineer suggested that both engineers attend on site and that the wall paper should be removed to confirm if soot/leachate is coming from the chimney.

13 November 2015 – the Complainant to the Provider

“Also as stated to Ombudsman, there was no fire in chimney 2 as otherwise stated by [Claim handler] and proof is available to see at my house”.

16 November 2015 – The Provider to this office

“The Engineer has reviewed the photographs submitted by [the Complainant] in respect of chimney 2 and has outlined his opinion in the attached report.

The Engineer states that the crack would not appear to be recent and suggests a visual inspection would be required to confirm this. [The Complainant’s] own Engineer’s report mentions that no opening up work was done prior to his inspection . We suggest that both Engineer’s attend to outline their positions. While on site the wallpaper should be removed to confirm if soot /leachate is coming from the chimney.

I will request that our Engineer contact [the Complainant] to arrange for an inspection”.

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8 December 2015 – This office to the Provider

looking for an update re email of 16/11/15 that Engineer was to arrange inspection of chimney 2 in the matter.

9 December 2015 – Telephone call from Provider

Provider querying if FSO would clarify with the Complainant if it is ok for their engineer to contact the Complainant's loss assessor to arrange a visit.

9 December 2015 – This office to the Complainant:

"I refer to your previous correspondence with my colleague, ... and in particular your email to him of 2 November 2015 in which you indicated that you would be happy for the Insurer's Engineer to inspect the chimney in the matter.

I would be obliged if you might confirm that this remains the case and if so I will advise the Insurer of this and they can make the appropriate arrangements with you and/or your Engineer".

9 December 2015 – The Complainant's response to the Provider's suggestion

"I stated to [to this office] that the said chimney was taken down to prove there was no fire i.e. flue pipes available for inspection as outlined already. I don't see much point in an engineer coming to see a chimney that is gone and the only proof of no fire damage is the chimney flues and I can obtain a statement in writing from the builder who took down chimney. [Mr K] and his learned engineer inspected the chimney for a period of one and a half hours and stated that there was a fire prior to the insertion of the range which was installed 8 years ago. The flue pipes that the builder took down shows no evidence of fire so [Mr K] and his engineer have been proven wrong. [Mr K] also stated that there was no fire in chimney one, there was a fire and I proved him wrong".

[The Provider was sent this e-mail on the same date]

10 December 2015 – The Provider to this office

"We are willing to review the matter further we require that a Loss Adjuster re-inspect the chimney under dispute. This was not possible previously but circumstances have changed as [the Complainant] has since had the chimney dismantled.

We are willing to review the matter further but require the co-operation of the policyholder as required under his policy terms and conditions.

We await [the Complainant's] agreement before we can proceed with requesting the Loss Adjuster to arrange the re-inspection with [the Complainant's] Assessor.

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Can you please confirm with [the Complainant] that this re-inspection can proceed in order to progress matters”.

10 December 2015 – This office to the Provider

“I’ll put it to him today .. and revert in due course when I hear back from him”

17 December 2015 – the Complainant to this office

“I forward photos of the chimney that [the Provider] states that there was a fire in prior to insertion of range. I got the chimney taken down and the Flues are here to prove no fire damage to them. My Engineer Mr ... stated that there was damage to chimney as a result of storm”.

[This e-mail was sent to the Provider on the same date]

18 December 2015 – the Provider states that it notes the Complainant’s non agreement for a further inspection. The Provider states that it feels that it has been fair and reasonable in offering to inspect the demolished chimney area and without the Complainant’s co-operation it is unable to review the claim further.

18th January 2016 – The Complainant’s solicitor contacts the Provider and requests arbitration

3 February 2016 – the Complainant’s solicitor seeking response to letter to Provider of 18 December 2015. Also enclosed the following undated report from a Plumbing and Mechanical Expert:

“When the top 6 chimney pots were removed from the kitchen chimney we did not find any cracked pots they seemed visually sound and intact, the top pot was fractured externally above capping-level”.

2 April 2016 – The Complainant confirmed that he wanted to continue with his complaint to this office.

13 September 2016 – the Complainant’s response to the Provider’s submission of 8 September 2016

“I attach letter from [Specialist as per correspondence of 3 February 2016] who carried out work on chimney 2 and He found no fire damage to chimney flues. [The Provider’s] Engineer stated that it was an old fire prior to insertion of range that caused the damage but why is there no fire damage caused to the flue pipes. My Engineer states that it may be fire damage but that there is damage consistent with

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storm. I can assure you that we never had a chimney fire in chimney number 2. [Mr K] working on behalf of [the Provider] also stated that there was no fire damage in chimney number one. He had a cctv carried out on same and his findings were no fire damage. I asked [own specialist] to carry out a cctv on the same chimney and fire damage was found , proving my statement that we had a chimney fire in chimney one and none in chimney 2. It appeared to me that [Mr K] was not taking my claim seriously for chimney one. If I did not get [own Specialist], my claim would be refused. In relation to chimney number 2, as I previously stated we never had a chimney fire. On the 31st of march 2014 at 9.25pm while watching T V, we heard a loud bang on our roof. On investigating I found a piece of flue pipe on my neighbours ground. It had fallen from chimney 2. I sent an email to [Mr K] and to my Solicitor. They state that the damage was caused by my neighbour, this totally untrue. [Specialist as per correspondence of 3 February 2016] has proved from carrying out the work on chimney 2 that there is no fire damage to the flue pipes. In relation to chimney 1, my claim was being denied only for I proved otherwise. The chimney flues taken from chimney2 are available for inspection at my house. I had a loss adjustor out at the very start when I reported the damage, she was from [the Provider] and she agreed that the chimney may have been damaged by storm. I don't know her name but she was heavily pregnant at the time. I have subsidence to my property as a result of roots from neighbours trees encroaching on my site. There are branches of 2 trees hanging over chimney 2. My Engineer .. inspected the chimney from the roof while their engineer inspected it from the ground. I am not making false statements in relation to the damage, but I know that we never had a chimney fire in chimney 2. I have found out the name of the Loss Adjuster from ... who called on behalf of [the Provider] and stated that it may be storm damage. Her name is ..."

Undated report from the Complainant's specialist (received 29 September 2016)

"We conclude as follows:

- 1. There is staining on the chimney breast at ground floor hallway and upstairs on the chimney breast.*
- 2. The staining appeared to have occurred in or around February 2015, 8 years after use of this chimney.*
- 3. The chimney breast has an inserted flexible flue liner installed approximately 8 years ago.*
- 4. The blockwork of the chimney stack was inspected in the attic area and there was no sign of cracking or creosote tar evident.*
- 5. There is evidence of lead flashing displacement (slight) and of displacement of plasterwork at the reveal of the chimney capping.*
- 6. There is evidence of horizontal cracking on the chimney stack at capping level and on the flue sticking out of same.*
- 7. There is evidence of new cracking along the internal of the existing flue at chimney No. 2.*
- 8. There is evidence of new cracking on the concrete capping at chimney No. 2.*

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It is our professional opinion that there may have been a fire in chimney 2 prior to the installation of the oil range and flexible flue liner over 8 years ago. We cannot be certain of this without evidence of CCTV and this is impossible to obtain as there is a flexible flue installed through same clay flue liner. There is also clear evidence that the detail around the chimney has mortar bedding displaced and lead flashing displacement. There is also evidence that a recent crack was observed inside the flue liner below the capping level and of fresh concrete crack on the top of the chimney stack. These cracks showed no evidence of soot damage or marking and therefore occurred fairly recently.

As this chimney has had no open fire or burning of fossil fuel in the past 8 years and there is no leakage of creosote tar during this period, then something recently had to exasperate the inherit defects. Even if the minor defects noted above were in place it can only be concluded that the damage onsite newly formed cracking has been caused by storm damage and this has resulted in the ingress of water in sufficient quantities to allow the staining of the chimney breast at first floor level and ground floor level during the past year.

We therefore conclude that storm damage played a significant part in the ingress of water into this chimney stack, together with the possibility that a previous fire may have done internal damage to allow the staining on the chimney stack. If the chimney stack was not breached by water then no staining would have occurred.”

[Correspondence to Complainant from the Engineer enclosing the above report; *“We are clutching at straws but I have given it our best shot. The problem is with the previous correspondence from the last Engineer”.*

30 September 2016 – The Provider’s response

“[The Complainant’s appointed Engineer’s] report notes that [the Engineer] conducted an inspection on 12/06/14 and 20/07/14 and his report combined both inspections. He states in his report that: “As this chimney has had no open fire or burning of fossil fuel in the past 8 years and there is no leakage of creosote tar during this period, then something recently had to exasperate the inherit defects”. He acknowledges that prior to the alleged storm damage that there were inherit defects in the chimney that were exacerbated by some other occurrence and in his opinion there was a “possibility that a previous fire may have done internal damage to allow the staining on the chimney stack”.

[The Engineer] also states in his report that: “The capping is cast insitu with a recess of sand and cement on the ledge as described in [the Provider’s Engineer’s] report and it does not appear that the render underneath the chimney capping has displaced and I would not agree that it is a construction related defect, it has just weathered over time and has moved”. The policy does not provide cover for wear and tear or gradual deterioration”.

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19 October 2016 – The Complainant confirms that the Builder carried out the repairs in November 2015 and he found no fire damage. The Complainant reiterates that his engineer identified storm damage and in March 2015 a portion of the flue pipe fell as a result of storm.

3 November 2016 – The Provider's submission

"We note [the Complainant's] statement that there was no fire damage, however, the cause of the damage has not been proven to date to have been caused by an incident covered under the policy and within the period of time that this policy has been on cover.

[The Complainant's] Engineer, ..., state in their report that: "As this chimney has had no open fire or burning of fossil fuel in the past 8 years and there is no leakage of creosote tar during this period, then something recently had to exasperate the inherit defects". They therefore acknowledge that prior to the alleged storm damage that there were inherit defects in the chimney that were exacerbated by some other occurrence and in their opinion there was a "possibility that a previous fire may have done internal damage to allow the staining on the chimney stack".

As mentioned previously, our Loss Adjuster observed the following damage that would be attributable to storm damage:

- *A displaced loose ridge tile ([The Complainant] has confirmed that this tile has been in situ since the house was built 27 years ago)*
- *A broken roof file*
- *The lead apron flashing to chimney no 2 was displaced. "It is common practice when fitting a lead apron such as this, that it is fixed in place to ensure it cannot be easily displaced. The flashing on the Insured's chimney would not appear to have been fixed in place and it most likely to have been displaced during a storm event. It is our opinion that water ingress to the inside of the building has occurred at the location of this flashing resulting in water staining to the ceilings and wall in bedroom 2"*

[The Complainant] confirmed that he would not be pursuing a claim against his policy for this damage however should he want to claim for this damage we are prepared to review the details of same.

The proximate cause of the damage to the chimney has not to date been shown to have been caused by an insured peril during the period of this policy cover and as mentioned previously, we are prepared to review any evidence provided showing that the cause of damage was due to an incident insured under the policy".

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The Complaint for Adjudication

The complaint is that the Provider has wrongly and unreasonably declined the Complainant's claim, under his Household Insurance Policy, for storm damage to one of the chimneys on his home.

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 22 July, 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, the final determination of this office is set out below.

The Complainant purchased the insurance policy in question, through a broker, on 12 January 2014.

By email dated 6 June 2014, the Complainant notified the Provider of a claim under the policy, as follows:

"I wish to register a claim for a cracked chimney breast. This has happened in March. I haven't my Policy Number to hand. My address is ..."

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The Provider advised the Complainant that it had appointed a Loss Adjuster to act on its behalf and to inspect the damage sustained, and requested that the Complainant complete a Claim Form and return it to the Provider as soon as possible.

The Preliminary Report of the Loss Adjuster, following a site visit on 17 June 2014, contains the following remarks:

"...This claim arose after the insured noticed an ingress of water along the chimney breast in the upstairs bedroom and landing and ground floor hall in March 2014, which has blackened the wallpaper. Externally there is a crack in the chimney cap however the chimney serves an oil fired stove for the past 20 years so a chimney fire has been ruled out. It is possible that the storm on February 12th may have caused damage to the stack ...We have requested he have his engineer look at the chimney and provide a report on the cause of the damage. We will update you further on receipt of same."

The Complainant's broker returned the Complainant's Claim Form to the Provider on 23 June 2014. It contained the following details of "the lost/damaged property":

"Cracks in 2 chimneys. Noticed in March this year".

I note that the Claim Form did not identify, or provide any details, in relation to the cause of the damage.

The Complainant provided the Loss Adjuster with a copy of a report from his engineer, dated 9 June 2014, which reported as follows:

"Following my site inspection of Thursday 5 June 2014 I can confirm that the cracks to your chimneys are not linked in any way to the tree roots which are causing excessive settlement to your drive, paths and storage shed. The cracks to the chimney have more than likely been caused by a chimney fire of old."

I note that the Loss Adjuster wrote to the Complainant on 18 June 2014, further to its inspection on 17 June 2014, requesting that he forward his engineer's report on the cause of the ingress of water along the chimney breast wall, and that the Complainant, in his response dated 20 June 2014, confirmed that he had arranged for a Loss Assessor and his engineer to inspect the damage to both chimneys, and that he would forward the report immediately upon receipt.

The Provider's Loss Adjuster wrote to the Complainant on 20 August 2014 to advise that it had not yet received the Complainant's engineers report advising the cause of the alleged cracking to the chimney of his property. The Provider requested further clarification in this regard and stated that it was not the insurer's responsibility to prove the claim under the policy.

I note that the Complainant wrote to the Provider on 6 November 2014, commenting that the Provider had sent out an engineer and a loss adjuster to inspect the damage done on

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its behalf. The Complainant stated that *“my engineer is not obliged to give a report on the chimney damage...this is a normal claim and your engineer should be well capable of determining the cause.”*

The Provider wrote to the Complainant on 18 November 2014, noting that the Complainant’s engineer would not be furnishing a report in respect of the matter, and stating as follows:

“...we would advise that the policy provides cover for certain listed perils occurring during the course of the policy.

We note your original Engineer ... is of the view the cracks to the chimney have more than likely been caused by a chimney fire. As the chimney in question is no longer used for a fire, we can only assume from his findings in the absence of any other Engineer’s report that damage was occasioned by a chimney fire prior to inception of the policy.

In the circumstances, the policy cannot respond...”

It is evident, therefore, that as of 18 November 2014, in the absence of any further reports, the Provider was declining the Complainant’s claim on the basis that the damage had been caused by an old chimney fire as identified by the Complainant’s initial engineer’s report dated 9 June 2014, and that any chimney fire occurring in chimney no. 2 prior to the installation of the oil fired range which it served would have occurred prior to inception of the policy on 12 January 2014, and was not therefore covered by the terms of the policy.

The submissions show that, on 16 December 2014, the Complainant forwarded a report from his engineer, dated 7 November 2014, entitled “Report on Cracks to Chimney”:

“4.01. Chimneys

The chimney on the right hand side is cracked and is allowing water ingress into the dwelling at first floor level.

5.00 Conclusion

5.01 Engineer’s Overall Opinion

The chimney has cracked after there was a chimney fire in February of this year. The chimney will need to be taken down to below ceiling level and rebuilt.”

In an email to the Provider’s Loss Adjuster dated 11 February 2015, the engineer advised that he had identified the wrong chimney in the report quoted above:

“The fire is supposed to have taken place in the left (looking from front) chimney back to back with stove, I have it wrong in my report where I say the right. Although

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it now appears both chimneys are cracked I can't say for certain why they would have cracked."

The Loss Adjuster advised the Complainant, in an email dated 12 February 2015, that the Provider had agreed to carry out a CCTV survey of the chimney.

The Complainant informed the Loss Adjuster on 13 February 2015 that he had arranged for an engineer "to carry out a proper inspection on both chimneys" the following Monday. The Complainant commented that "in his opinion, it's heat that cracks them".

On 14 February 2015, the Complainant emailed to Loss Adjuster to inform him that "damage to chimneys could be the result of storm damage due to the storms that we had in January and February of 2014". He commented that a builder had identified the displacement of lead on the chimneys, which he regarded as "proof of the damage the storms did".

It appears that, subsequently, there was some confusion about which chimney, whether on the left or on the right hand side of the roof, had suffered fire damage and which had suffered storm damage. On 26 February 2015 the Loss Adjuster requested of the Complainant's solicitor that the Complainant identify the following:

"(a) The chimney in which the fire is alleged to have taken place, provide a copy of their own CCTV survey...together with your client's engineer's report on same;

(b) Provide evidence of the storm damage occasioned to the chimney, identify the chimney in question and finally confirm the date of loss so that we can verify an insured peril has operated".

After a number of further correspondences with the Complainant's solicitor, the Loss Adjuster wrote to the Complainant's solicitor on 20 March 2015, requesting again a copy of the engineer's report following his consideration of the CCTV, plus a copy of the CCTV of the chimney which had been damaged by fire. The Provider further requested the Complainant's engineer to comment on the alleged storm damage to the property, with photographs, in circumstances where there had been no reference to storm damage in the Complainant's engineer's report to date.

The submissions show that the Complainant's solicitor subsequently, on 19 March 2015, furnished the Provider with a copy of the Complainant's engineer's report dated 7 November 2014 and signed on 2 December 2014, which the solicitor stated "unequivocally relates the damage to both chimneys". I note that this report had been submitted to the Loss Adjuster previously, as quoted above, but that the content had been altered, particularly in respect of paragraphs 4.01 and 5.01, as follows:

"4.01. Chimneys

After a CCTV inspection of both chimneys it is apparent that both chimneys are cracked. The cause of the cracks to the chimney on the left of the house serving the living room and dining room is from excessive heat from a chimney fire. The

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chimney on the right hand side is deemed to have been damaged during a storm and is cracked vertically below the capping and through the capping and there is a section of the flue liner broken or missing.

5.00 Conclusion

5.01 Engineer's Overall Opinion

Both chimneys are damaged and the CCTV inspection has revealed that the chimney on the left has been damaged by a fire. An on roof inspection had shown that the chimney on the right has been damaged during a storm."

The Loss Adjuster responded to the Complainant's solicitor on 25 March 2015, acknowledging receipt of this report and requesting a copy of the CCTV to which the report referred, together with the date of loss in respect of the alleged storm damage to the chimney. The Loss Adjuster further advised that the Provider had decided to appoint its own engineer to view the insured property.

The Complainant has submitted, on 1 November 2015, that he contracted a man to take down the chimney and take out the flue pipes for inspection by the Provider's Loss Adjuster. The Complainant has submitted photographs of the flue pipe, which he states prove that no fire ever occurred in chimney no. 2. He states that, although the old chimney is no longer standing, the flue pipes are available for inspection at any time at his house.

The Provider reviewed the photographs of the chimney no. 2 and observations contained in the report dated 12 November 2015.

I note that the Complainant advised this office in writing on 21 December 2015 that he had received payment from the Provider in respect of his claim for fire damage to chimney no.1.

Analysis

The outcome of this complaint turns on the issue of 'causation' (in other words, establishing what caused the damage to Chimney No. 2). In general the enquiry must establish what was the dominant or effective cause of the damage - which the Policyholder is claiming for.

There is no dispute between the parties that a weather event contributed to the damage claimed for. However, the Provider argues that there was prior issues with the chimney which pre-dated cover. The Complainant argues that the damage resulted from storm conditions and points to the fact that there was not a prior fire or ingress of water.

Applying a common sense approach and in light of the evidence not being conclusive on what was the dominant or effective cause of the damage, I consider that a contribution

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from the Provider towards the repairs would be the fair and reasonable outcome to this complaint. In this regard I have taken particular note of:

- The fact that there is no dispute that a weather event did contribute to the damage.
- The otherwise general good state of repair of the property.
- The evidence from the Complainant's Specialist Contractor who actually physically examined the chimney at close range. As opposed to the Provider representative who carried out an inspection from ground level and by viewing photographs.
- The Provider stating that the Complainant's specialist had said there was a fire, when all he had said was that there may have been a fire.
- The Complainant's evidence that there was no ingress of water or obvious damage prior to the weather event in question.
- There was no conclusive evidence as to a historic fire causing the cracking to the chimney. In this regard the Complainant's specialist commented as follows: *"We cannot be certain of this without the evidence of CCTV and this is impossible to obtain as there is a flexible flue installed through the same clay flue liner"* The Provider's own conclusion on this is that: *"to confirm whether there was a chimney fire in the property it will be necessary to take out the flexible flue liner and conduct a CCTV survey which is not practical"*.

Despite the Complainant retaining and making available to the Provider for inspection the chimney flues that were removed during the repairs to the chimney, the Provider did not have this evidence physically examined by its specialist. The evidence above shows that the Provider had offered a site visit, but seems to have taken the Complainant's responses to be a refusal of such a visit.

I accept that while the Complainant questioned the benefit of a further site visit, and that he could have been more receptive to the Provider's offer to visit and view the flues, he did not refuse such a visit from the Provider. The Complainant's e-mail of 17th December specifically advised: *"I got the chimney taken down and the Flues are here to prove no fire damage to them"*.

The possible cause of the damage has been put down to, either heat damage, fire damage, construction issues with the chimney or storm damage. While it is the Insured that must prove that an insured peril caused the damage and here the Insured has shown some damage resulting from the effects of a storm, it is disputed by the Provider that a storm event caused the cracking to the chimney allowing the ingress of water. The Provider is relying on an exclusionary reason for denying the claim, in that it is alleging that the damage was pre-existing the set up of the policy. The Provider's view is that a fire occurred in the chimney some years prior to the set up of the policy. However, the Provider has not conclusively shown that this is the case. The burden of proof shifts when an exclusion is relied upon and while I accept that on the evidence the Provider's argument of pre-existing damage held some merit, more could have been done by the Provider, and at the earliest opportunity, to establish whether that was in fact the true

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position. I consider that this was a claim where there could have been better co-operation between the parties.

Having considered the matter at length, I take the view that in light of the circumstances surrounding this claim, that this complaint should be substantially upheld. I consider that given the overall circumstances, the outright exclusion of the claim under the policy by the Provider, was unduly harsh and unjust. I consider that this is particularly so as there is no conclusive evidence as to how the chimney was damaged, other than an acceptance by the parties that the weather events did cause the ingress of water to the property.

It is my Legally Binding Decision that this complaint is substantially upheld and I direct the Provider to pay the Complainant the compensatory payment of €4,000 (four thousand euro).

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €4,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** 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

20 August 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,**

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- (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.**

