An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0320
Sector:	Insurance
Product / Service:	Other
Conduct(s) complained of:	Failure to provide correct information Misrepresentation (at point of sale or after)
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a Limited Company in the construction trade. The Complainant incepted through the Provider, a Broker, a Contract Works Insurance Policy with a named Insurer on 14 June 2005, which was renewed annually after that. This policy provides cover in respect of *"HOUSES IN COURSE OF CONSTRUCTION THROUGH TO COMPLETION"*. The policy period in which this complaint falls, is from 14 June 2009 to 12 June 2010.

The Complainant's Case

The Complainant was developing a housing estate in the West of Ireland. In and around 2 January 2010, a water pipe in the attic of one of the dwelling houses in that estate burst due to frost, causing significant water damage that was assessed by the Complainant's Assessor at €47,709.02.

The Complainant submits, as follows:

> *"At the time* [the Complainant] *was taking out the insurance policy,* [it] *specifically asked* [the Provider] *whether houses No. 4 and No. 17 in the estate were insured under the policy as these two houses were near completion but had not yet sold.* [The Provider] *reverted to* [the Insurer] *as the insurance company and their reply which*

> [the Complainant] *received was as per the note attached to the Renewal Notice* [dated 5 June 2009] *stating*
>
> > *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY.*
> >
> > *COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH PERIOD. THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES."*
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> *It was the understanding of* [the Complainant] *that in accordance with said reply that the house was insured as it was not signed off on by the engineer"*.

The Insurer declined the claim under the *"cessation of work"* clause, which states *"the* [Insurer] *shall not be liable in respect of any loss of or damage to any contract site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the company in writing"*, and also under the *"completed pending sale exception"*, which excludes cover for *"loss or damage to any part of the Property Insured after such property has been completed pending sale or leasing other than any private dwelling house completed pending sale for a period of 90 days from the date of its completion or until sold, whichever is the earlier"*.

The Complainant *"objects to the claim being declined and is able to provide the documentary proof of work being carried out on the property within the 90 days period"*. In this regard, the Complainant understood from the note provided by the Provider *"that the house was insured as it was not signed off on by the engineer"*.

The Complainant's complaint is that the Provider furnished the Complainant with misleading information which led the Complainant to understand that the property where the loss occurred was insured, though the Insurer subsequently declined the claim.

The Provider's Case

The Complainant incepted through the Provider, a Broker, a Contract Works Insurance Policy with a named Insurer on 14 June 2005, which was renewed annually after that. This policy provides cover in respect of *"HOUSES IN COURSE OF CONSTRUCTION THROUGH TO COMPLETION"*. The policy period in which this complaint falls, is from 14 June 2009 to 12 June 2010.

The Provider issued a renewal notice to the Complainant dated 5 June 2009, which included a supplementary note that advised, as follows:

> *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY. COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH*

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> *PERIOD. THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES."*

The Provider states that according to its former employee, Ms T., who ceased working for the Provider in 2010, this supplementary note was information that was provided by the Insurer and she relied on this advice in assisting clients as to some of the limitations applicable to their policy. The first two sentences simply repeat policy provisions. The third sentence was believed by Ms T. to be correct as it was provided by the Insurer and she has at all times stated that this paragraph was drafted following a discussion with the Insurer. Despite carrying out an enquiry and a file review, the Provider states that the detailed file does not include any notes or other documentary evidence which would assist with the identification of the Insurer personnel who provided this advice to Ms T. in the first instance.

The Provider notes that the Complainant appears to be relying on the third sentence of the supplementary note, that is, *"THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES"*, to validate an expectation that his claim will be met because of assurances that it contends this sentence provides insofar as the Complainant submits that it understood *"that the house was insured as it was not signed off on by the engineer"*.

While it concedes that the insertion of this third sentence was unhelpful, the Provider contends that it is also an irrelevant sentence as *"UNOCCUPANCY"* is neither a term featured in the Contract Works Insurance Policy document nor any of the reasons provided by the Insurer as to why the Complainant's claim was declined. In addition, the Provider also submits that the mention of a *"DRAWDOWN"* and *"AN ENGINEER SIGNS OFF"* in the sentence is also irrelevant, for it may be that an engineer may never sign off a property and/or that a property may also not ever be the subject of a drawdown from a bank. The Provider considers that it is neither realistic nor reasonable that the Complainant may expect that open-ended cover can be permitted to exist pending all of these situations being satisfied.

In addition, the Provider notes that the same renewal notice dated 5 June 2009 also clearly stated, as follows:

> *"NOTE: PLEASE REFER TO ORIGINAL POLICY DOCUMENT FOR TERMS, CONDITIONS, EXCLUSIONS, ENDORSEMENTS AND WARRANTIES"*.

The Provider states that it is satisfied that this provided the Complainant with appropriate notice to refer to the Contract Works Insurance Policy document to ascertain the terms and conditions attaching to the cover provided by the Insurer.

In this regard, the Provider contends that the Complainant's argument is with the Insurer in that it appears that the Complainant was unable to provide evidence to support its assertion of the completion of the property in question within the 3 month period prior to the loss. That the Complainant has been unable to support its claim is not the Provider's issue and further renders the paragraph as irrelevant.

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The Provider asserts that whilst one sentence in the supplementary note it inserted in the Renewal Notice dated 5 June 2009 does not accurately reflect the wording of the policy, the Provider is satisfied that this sentence is, in any event, irrelevant and does not render the Provider, as Brokers, liable for the Insurer's decision to decline the Complainant's claim.

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 21 August 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, I set out below my final determination.

The complaint at hand is, in essence, that the Provider furnished the Complainant with misleading information which led the Complainant to understand that the property where the loss occurred was insured, though the Insurer subsequently declined the claim.

It is not disputed that the Complainant incepted through the Provider, a Broker, a Contract Works Insurance Policy with a named Insurer on 14 June 2005, which was renewed annually after that. This policy provides cover in respect of *"HOUSES IN COURSE OF CONSTRUCTION THROUGH TO COMPLETION"*. The policy period in which this complaint falls, is from 14 June 2009 to 12 June 2010.

The Complainant was developing a housing estate. In and around 2 January 2010, a water pipe in the attic of one of the dwelling houses that the Complainant was working on burst

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due to frost, causing water damage. The Insurer declined the Complainant's ensuing claim under the *"cessation of work"* clause, which states *"the* [Insurer] *shall not be liable in respect of any loss of or damage to any contract site covered by this policy where work has ceased for a period exceeding 3 consecutive months, unless agreed by the company in writing"*, and also under the *"completed pending sale exception"*, which excludes cover for *"loss or damage to any part of the Property Insured after such property has been completed pending sale or leasing other than any private dwelling house completed pending sale for a period of 90 days from the date of its completion or until sold, whichever is the earlier"*.

The Complainant submits, as follows:

> *"At the time* [the Complainant] *was taking out the insurance policy,* [it] *specifically asked* [the Provider] *whether houses No. 4 and No. 17 in the estate were insured under the policy as these two houses were near completion but had not yet sold.* [The Provider] *reverted to* [the Insurer] *as the insurance company and their reply which* [the Complainant] *received was as per the note attached to the Renewal Notice* [dated 5 June 2009] *stating*
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> > *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY. COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH PERIOD. THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES."*
>
> *It was the understanding of* [the Complainant] *that in accordance with said reply that the house was insured as it was not signed off on by the engineer"*.

The documentary evidence before me confirms that the Provider issued the Complainant with renewal correspondence dated 5 June 2009, which included a supplementary note above.

The Complainant submits that the third sentence of this supplementary note, *"THE INSURANCE COMPANIES IDENTIFY UNOCCUPANCY FROM THE DATE AN ENGINEER SIGNS OFF FOR THE FINAL DRAWDOWN CONFIRMING COMPLETION OF HOUSES"*, led the Complainant to understand that the property that later suffered water damage in and around 2 January 2010 was covered by its Contract Works Insurance Policy insofar that the Complainant submits that it understood *"that the house was insured as it was not signed off on by the engineer"*.

It is not clear to me why the Provider added this sentence into a policy renewal notice that on the one hand it considers was *"assisting clients"* yet on the other concedes was *"unhelpful"* and *"irrelevant".*

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I accept the Provider position that the term *"UNOCCUPANCY"* does not feature in the Contract Works Insurance Policy wording nor does it form part of the Insurer's reasoning for its declinature of the Complainant's claim. Therefore in my view, its addition was unhelpful and confusing.

I believe the Complainant was attempting to understand whether or not certain houses in the development were covered by the policy. I believe the inclusion of the additional confusing and irrelevant sentence had the effect of confusing matters further. It had the potential to cause the Complainant to believe that the houses concerned would be covered until "*signed off on by the engineer*".

It would appear that the inclusion of the third sentence has caused confusion for the Complainant.

However, I must also take into account the two preceding sentences in the supplementary note, that is, *"IT IS NOTED AND AGREED THAT THIS TYPE OF POLICY COVERS HOUSES IN THE COURSE OF CONSTRUCTION ONLY. COVER UNDER THIS POLICY BECOMES NULL & VOID ONCE A HOUSE HAS BEEN COMPLETED FOR MORE THAN A THREE MONTH PERIOD"*. In this regard, it is clear that in order for the property in question to be covered by the terms and conditions of the Contract Works Insurance Policy that the Complainant must satisfy the Insurer that the property was still under construction within three months prior to the loss and as a result.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and accurate, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

Provision 4.1 of the Consumer Protection Code 2012 states that:

> 4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important

I believe the information furnished by the Provider in the renewal notice was not clear or accurate. I believe it confused matters for the Complainant. The Insurer had added a very important exclusion/change to the policy on renewal. I accept that both the Insurer and the Provider brought the added exclusion to the Complainant's attention. The Provider's attempts to "*assist clients"* in understanding this new clause was unhelpful and unclear. I do note that in its same renewal correspondence dated 5 June 2009 the Provider clearly stated, as follows:

> *"NOTE: PLEASE REFER TO ORIGINAL POLICY DOCUMENT FOR TERMS, CONDITIONS, EXCLUSIONS, ENDORSEMENTS AND WARRANTIES"*.

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I accept that the Provider did furnish the Complainant with notice to refer to the Contract Works Insurance Policy document to ascertain the terms and conditions attaching to the cover provided by the Insurer.

While I do not propose to hold the Provider responsible for the Complainant's loss as sought by the Complainant, however, I do believe that compensation is merited given the confusion and inconvenience caused to the Complainant.

For the reasons outlined above, I partially uphold this complaint and direct that the Provider pay a sum of €5,000 to the Complainant.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (b) and (f).***

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 €5,000, 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

23 September 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.