



<b><u>Decision Ref:</u></b>	2019-0332
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Multiple Products/Services
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues
<b><u>Outcome:</u></b>	Rejected

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

**Background**

In May 2011 the Complainant took out a home insurance policy with the Provider in respect of a holiday home. The Complainant renewed that policy annually.

In December 2017, the Complainant's sister was at the property and left the water mains turned on and the central heating on its timed setting. In March 2018, the water in the water pipes froze, which burst the pipe and caused the property to flood. The Complainant notified the Provider who sent a loss adjustor to investigate.

On **12 July 2018**, the Provider wrote to the Complainant declining coverage on the basis that the policy conditions had not been complied with. In particular, the Provider asserted that endorsement E09 specific to holiday homes had been breached, which required the property to have a thermostatically controlled central heating system that could maintain a constant temperature of 5 degrees Celsius.

On **2 October 2018**, the Provider issued its final response letter.

### **The Complainant's Case**

The Complainant takes issue with the application of the policy wording. The Complainant states that in order to have a *'fully functioning thermostatically controlled central heating system'* it is not necessary to have a physical thermostat inside the building.

The Complainant asserts that in this particular case that there is no particular requirement for there to be a thermostat stated in the policy. The Complainant says that a great many properties in this jurisdiction would not have internal thermostats and that the definition used by the Provider would remove many properties from coverage. The Complainant asserts that the particular heating system that applied in his property was sufficient to come within the definition of the policy. The Complainant says that his boiler has a temperature gauge, which can be used to ensure that the temperature does not drop below the 5 degrees Celsius required. The Complainant takes issue with the lack of any engineering evidence that the Provider has submitted. The Complainant's sister has indicated that she set the boiler temperature *'between 50 and stop'* which represented an indoor temperature of 8 degrees Celsius at the material time, and that the central heating timer was switched on, as opposed to the central heating being continuously on. The Complainant argues that this is sufficient.

The Complainant also states that he has been mis-sold the product, if the policy does not cover the loss. The Complainant asserts that the policy never could have covered his particular property in the event of this loss occurring and that if he had known that then he would not have taken out the policy. The Complainant asserts that the requirement to have a thermostat should have been clearly stated in the policy document and that a failure to do so amounts to mis-selling.

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

The Provider states that the terms of E09 of the policy are clear and that if the property was vacant for more than 48 hours, then either the water supply must have been turned off, or the property must have a *'fully operational thermostatically controlled central heating system that is set to maintain a minimum constant temperature of 5 degrees Celsius'*. The Provider states that the Complainant's sister confirmed that she did not turn off the water main. As such, the Provider asserts that the Complainant's central heating system did not comply with the terms of E09. In this regard, the Provider notes that there is no internal thermostat within the property that regulates the ambient temperature. The Provider notes that the system in the Complainant's property allows the Complainant to regulate the temperature of the water in the property, but not the ambient temperature of the property itself. The Provider states that the central heating system was left on its timed setting, which would mean that the heating would come on whenever the timer was set to, rather than the heating coming on when the temperature dropped below a certain point. In that respect, the Provider stated that this could not be considered to be a *'thermostatically controlled'* heating system. The Provider notes that the temperature must have dropped below 5 degrees Celsius, as the water in the pipes froze, which was what caused the damage.

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The Provider has submitted Met Éireann data which demonstrates that there was ice, snow and low temperatures around the county at the relevant time.

The Provider also states that it did not mis-sell the policy, but rather it is using a straightforward definition of the word '*thermostat*'.

The Provider states that each time the policy renewal was sent to the Complainant that it made explicit reference to endorsement E09, which contained the relevant clauses. In the phonecall dated 4 April 2018 pertaining to the lodgement of the claim, a discussion of the endorsement took place.

### **The Complaints for Adjudication**

There are two complaints for adjudication:

1. That the Provider incorrectly refused to admit the claim
2. That the Provider mis-sold the product

### **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 3 September 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.

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Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of his e-mail to this Office dated 14 September, a copy of which was transmitted to the Provider for its consideration.

The Provider did not make any further submission.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

The first complaint is primarily a question of an interpretation of endorsement E09 of the policy, which states that if the property is vacant for in excess of 48 hours, which it was in this instance, that:

- (i) *The water supply must be turned off at the mains and the entire cold water system must be drained down, OR*
- (ii) *The holiday home must have a fully operational thermostatically controlled central heating system that is set to maintain a minimum constant temperature of 5 degrees Celsius or 41 degrees Fahrenheit throughout the holiday home.*

The parties are in agreement that the property was vacant for in excess of 48 hours and that the water mains was not in fact turned off. It is clear, therefore, that the dispute concerns clause (ii). In that regard, I note the following. Firstly, I have considered the photographs of the particular thermostat in question. It is clear that this is a thermostat that relates to the temperature of the water, due to the fact that it scales from 50 degrees Celsius to 90 degrees Celsius. I find as a matter of fact that this thermostat, therefore, regulates the water temperature and not the ambient temperature in the house. I also find that the timer included in the photographs regulates the times at which the central heating is either on or off, and it does not regulate the ambient temperature. I find, therefore, that it is not possible for these two implements taken together to ensure that the ambient temperature in the house stayed above 5 degrees Celsius at the material time.

For example, whenever the timer was not on, the heating in the property would not be on, and the ambient temperature would go down. If there were a thermostatically controlled heating system in the property, then the temperature could be set to 5 degrees Celsius and the ambient temperature would never drop below that.

Even if I accept the timer was switched to the on position meaning that the heating was on 24 hours a day, 7 days a week, it would appear that this was still not sufficient to keep the ambient temperature at 5 degrees Celsius for the simple reason that the pipes actually froze. While I note the Complainant's argument, I have not been provided with evidence that the holiday home had a fully operational thermostat controlled heating system that was set to maintain a minimum constant temperature of 5 degrees Fahrenheit throughout the holiday home.

I do not accept that the ambient temperature stayed in the region of 8 degrees Celsius. I find that this is impossible for the simple reason that the water in the pipes did, in fact,

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freeze at the material time. This would not be possible if the temperature was 8 degrees Celsius. As a matter of contractual interpretation, therefore, I do not believe that this can be considered to be a central heating system that is controlled '*thermostatically*', as the central heating system was not controlled by the relevant ambient temperature.

While the temperature of the water in the property or the system could be controlled '*thermostatically*' while the system was switched on, the ambient temperature of the house could not.

I note the Complainant's assertion in his post Preliminary Decision submission of 14 September that pipes can freeze at normal room temperature because of sudden changes in temperature. However, I have not been provided with any evidence to support this argument or to demonstrate that there was a thermostatic control system to control the ambient temperature in the room.

In respect of the complaint of mis-selling, I find that the fact that endorsement E09 applied to the policy in question was made clear to the Complainant each time that the policy was renewed.

I find that in the phonecall dated 4 April 2018, the Complainant demonstrated an awareness with the endorsement. An insured person should familiarise themselves with such important conditions. I appreciate that there could have been some confusion over the term '*thermostat*' in that the property clearly did have some thermostatic control over the water temperature but not the ambient temperature through the holiday home. I do not find, however, that there was any mis-selling or misrepresentation made by the Provider to the Complainant. Rather this dispute concerned primarily the application of the terms of the insurance policy in question.

For the reasons outlined above, I do not uphold this complaint.

### **Conclusion**

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

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

9 October 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.

