



<b><u>Decision Ref:</u></b>	2020-0027
<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 - accidental damage
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint concerns the Complainant's farm multiperil insurance policy with the Provider.

The complaint is that the Provider wrongfully and/or unreasonably declined a claim made by the Complainant for damage to part of the roof on his dwelling house.

**The Complainant's Case**

The Complainant submits that the roof above the back kitchen of his house was fine for use until **March/April 2015**. At this time, the Complainant states that a tree fell and hit the centre of the roof causing damage to the slates and timber of the roof. The Complainant states that he was away for a few days from his property receiving medical attention and when he returned the damage had occurred.

The Complainant states that he contacted the Provider and following two inspections after a considerable period of time, the Provider declined his claim because the damage was accidental and "*there was no insurance on this storm*".

On **12 October 2015**, the Complainant phoned the Provider to clarify his position following the letter received from the Provider declining his claim dated **6 October 2015**. In this phone call, the Complainant alleged that a tree fell on his roof on **1 April 2015**. He stated that the letter incorrectly notes that he had advised the Provider that in "*early 2014, a branch of a tree had impacted with the slate roof*".

The Complainant stated during this phone call that it was not early 2014 that the branch of the tree impacted with the roof and that the letter should read 'early 2015' instead. During this call, the Complainant states that he accepts that the roof was old and there was wear and tear on the roof but he would have gotten another *"four or five years out of the roof"* had the tree not fallen on it.

In his initial Complaint Form, the Complainant wanted the Provider to make money available to enable the Complainant to buy timber, nails and slates to fix the damage to the roof and stated that this would require €2,200. Since the initiation of the complaint, the Complainant has submitted estimates totalling €6,480 from a contractor and a plumber for works done on the roof above the back kitchen.

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

The Provider states that the insurance policy with the Complainant was inception on **28 March 2008** and had been renewed periodically at the time of claim. The Complainant states that the policy was cancelled on **15 November 2015** by the Complainant.

The Provider states that it was contacted by the Complainant on **10 August 2015** and informed that the roof was damaged in a storm which took place on **1 May 2015**. An inspection of the roof was completed by a loss adjustor for the Provider on **13 August 2015**. The Provider states that this inspection showed obvious wear and tear relating to the roof as well as ongoing water ingress.

After discussion between the Managing Director of the Provider and a loss adjustor for the Provider, the Provider called the Complainant on **8 September 2015** and informed him that it was of the opinion that the problem with the roof related to wear and tear and not storm damage and therefore it would not be making a payment to him. The Provider states that during that phone conversation, the Complainant was adamant that storm damage had been caused to the roof when a tree fell on the roof during storms in **February 2015**. Furthermore, the Provider states that during this call, the Complainant stated that he only became aware of the damage to the roof caused by the tree falling when he removed the tree and noted water ingressing in the corner of the kitchen in **August 2015**.

Further phone conversations took place between the Complainant and representatives of the Provider. During one such conversation on **28 September 2015**, the Provider states that the Complainant stated that a contractor had carried out further investigations on the roof and had determined that the centre of the damaged roof had definitely undergone impact and this was the reason why the extensive damage had been caused and the repairs required. On the basis of this conversation, the Provider advised the Complainant that it would carry out another inspection of the roof.

A second inspection of the roof was carried out by the loss adjustor on **2 October 2015**. The Complainant's contractor was not present for the inspection. During this inspection, the roof structure was exposed by the Complainant by removing a section of the internal kitchen ceiling. The Provider states that it was clearly evident that water had been ingressing through the roof for a considerable period of time due to the rot and decay found to the roof timbers. The Provider states that the Complainant was advised of this on site and told that the second investigation had only re-affirmed the initial findings in relation to the cause of damage.

The Provider stated that in order to afford the Complainant every opportunity to demonstrate that an insured peril had operated, it contacted the Complainant's contractor via telephone on **2 October 2015**. The Provider states that the contractor provided an estimate for the repairs but stated that he would not be able to add anything further to the findings of the Provider.

On **2 October 2015**, the loss adjustor contacted the Complainant explaining to him that the Provider would not be reconsidering its decision to decline liability. This was followed by a letter dated **6 October 2015** which was sent to the Complainant stating that the Provider noted the advices of the Complainant that:

*"In early 2014, a branch of the tree had impacted with the slate roof and it was only when this branch was cut up and removed on 10 August 2015 that you [the Complainant] discovered damage to the slate roof. We further note your recent advices that in March 2015, the roof may also have been impacted by a large branch".*

The Provider states that it was satisfied *"that the damage to the roof is not related to impact by a branch or similar object but rather it is suffering from wear and tear related to its age and that this has resulted in the ingress of water which has occurred"*. The Provider also stated in this letter *"that vegetation had been growing on the slate roof and this had resulted in the disturbance of a number of slates and the migration of vegetation through the roof structure"*. Furthermore, the Provider stated that *"having carried out an internal inspection of the property, it is apparent that rain water has been ingressing for a considerable period of time as we found that roof timbers were suffering from considerable decay and rot"*.

On the basis of the foregoing, the Provider's position remains that it is declining the claim as the damage to the roof was not a result of the operation of an insured peril pursuant to the insurance policy. In a letter dated **28 June 2017** sent to this Office, the Provider states that:

*"The primary reason for our declination is contained not only in the contents of the adjusters report but also evidenced by his accompanying photographs which clearly reveal a roof suffering from the effects of age or wear and tear, as evidenced by the growth of vegetation through it which accelerated the decay and rotting of the roof timbers. The result is that the roof has not sustained an impact as alleged but has for some time because of its condition been unable to protect the interior of the property from the ingress of rainwater."*

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### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider wrongfully and/or unreasonably declined a claim made by the Complainant for damage to the roof above the back kitchen of the Complainant's house.

### **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 11 December 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.

In relation to jurisdiction, the Complainant has provided evidence that the annual turnover of his farm is less than €3 million per year and therefore he falls within the definition of a consumer for the purpose of taking a complaint to this Office.

I note that the farm multiperil insurance policy entered into between the Complainant and the Provider covers *"loss or damage to the farm house and content caused by...storm, tempest or flood"* and damage caused by *"falling trees or parts thereof"*.

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I further note, that while there is confusion on the part of the Complainant as to when exactly between **February-April 2015** the tree fell on his roof, an email dated **31 August 2015** from the investigating loss adjustor to a representative of the Provider confirms that *“there is definite evidence that the roof suffered an impact from the falling tree”*. This email also states that *“the tree obviously wasn’t dead after falling and continued to grow...perhaps this accounts from [sic] the kind of root structure you can see in the photos. When the tree was removed the insured discovered the damage to the roof.”* A further email from the investigating loss adjustor to a representative of the Provider dated **8 September 2015**, recommends a contribution in this case of between €1,200 - €1,500 for the damage caused to the section of the roof where the tree fell.

Therefore, this correspondence from the investigating loss adjustor to a representative of the Provider clearly evidences that:

- (i) a tree has fallen;
- (ii) the tree has caused damage to the Complainant’s roof; and
- (iii) the falling tree explains the vegetation on the roof.

Given the foregoing, it is extremely concerning that the Provider would state in its letter dated **28 June 2017** sent to this Office, that the *“the roof has not sustained an impact as alleged”*. This statement by the Provider is both disingenuous and misleading given the emails exchanged between the representative of the Provider and the investigating loss adjustor.

Having noted the above, I also note that the evidence presented to this Office discloses a likelihood that the Complainant did not act as swiftly as he should have to deal with the fallen tree and this has exacerbated the damage to his roof.

Having regard to the particular circumstances of this complaint, in particular the failings on the part of the Provider to note the comments of the investigating loss adjustor that the roof suffered an impact from a falling tree and the subsequent failure to compensate the Complainant for the damage to his roof as a consequence of that falling tree, I partially uphold this complaint and direct the Provider to make a compensatory payment of €2,500 (two thousand five hundred euro) 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 (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 €2,500, 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**

9 January 2020

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.**