



Decision Ref: 2020-0037

Sector: Insurance

Product / Service: Farm & Livestock

Conduct(s) complained of:
Rejection of claim - fire
Premium rate increases
Rejection of claim

Outcome: Partially upheld

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

The Complainant held a number of policies of insurance with the Provider in respect of his farm. The Complainant made claims under certain of these policies following a fire at his farm in **July 2016**. During its investigation of Complainant's claim, the Provider became aware of certain information surrounding an ongoing family dispute relating to the ownership of the Complainant's farm yard and the cause of the fire. On the basis of this information, the Provider proceeded to cancel four of the Complainant's policies on **16 September 2016**.

The Complainant's Case

The Complainant states that he took out a number of insurance policies with the Provider relating to his farm in **January 2016**. On a night in **July 2016**, the Complainant states that his farm and machinery were set on fire. The Complainant notified the Provider of the fire on **5 July 2016** and the following day one of the Provider's representatives attended his farm. The Complainant states that on **18 September 2016**, he received a cheque from the Provider in the sum of €15.40 which the Complainant states "... was a refund for a JCB which I had just insured approx. 3 weeks previous." The Complainant states that he returned this cheque to the Provider "... along with a notice which I received from [the Provider] on 21st Sept 2016 stating that they were cancelling my farm insurance and that a refund for the JCB would be refunded to me within 5 working days." The Complainant states that the cheque for the JCB arrived three days before the notification letter.

The Complainant states that the letter was dated **16 September 2016** and he did not receive it until **21 September 2016** by registered post. *"Therefore I was not given 10 days notice of cancellation of my policy I was only given 4 days notice."*

The Complainant states that he replied to the Provider on **21 September 2016** advising it that he was not accepting their cancellation of his policy and asked for the reason for its decision to cancel his farm insurance. The Complainant states that on **23 September 2016**, he received a letter from the Provider *"... stating they were giving me 7 days notice of cancellation of cover."* The Complainant submits that *"[t]his letter from [the Provider] was dated 16th/09/2016 and I received it on 23/09/2016 (8 days later) therefore in effect I got no notice of cancellation from [the Provider]."*

The Complainant states that the Provider wrote to him on **26 September 2016**, advising that it would look into his complaint and reply in 20 to 40 days. During this time, the Complainant states that his solicitor was corresponding on his behalf with the Provider.

The Complainant refers to further correspondence with the Provider. In particular, the Complainant refers to a letter from the Provider dated **4 October 2016**, *"... stating 'matters of serious concern arose regarding the operation of your insurance.' To this day we still do not know what these matters are."*

The Complainant states that he received a further cheque in the amount of €15.40 on **17 October 2016** which the Complainant returned to the Provider on the same day.

The Complainant states that he received a letter from the Provider on **22 December 2016**, requesting him to renew his insurance policy. The Complainant's solicitor wrote to the Provider on **28 June 2017** requesting that the arbitration clause in the various policies be invoked. The Complainant states that the Provider replied on **4 July 2017**, advising the Complainant to make contact with this Office.

The Complainant states that he requested that the Provider return the *"... monies for the period from Sept 2016 up to 23/01/2017 (when my policy would have been due for renewal; 7 months into my policy and 5 months from it was due for renewal.)"*

The Complainant outlines the adverse consequences that have resulted from the Provider's conduct in that:

"These events have caused my family and I extreme stress and frustration in an already stressful event of having to deal with the destruction of my farm and business.

I have had my good name and character ruined by [the Provider] and made feel like a criminal by [the provider]."

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The Complainant further states that he has lost his income and that he cannot get insurance from any other insurer because of the conduct of the Provider. The Complainant also states that he wants to be compensated for his loss of earning from **July 2016** to date.

The Provider's Case

The Provider states that the Complainant incepted five insurance policies with it on **28 January 2016**. The Provider states that these policies were paid in full for a period of one year. The Provider advises that at the inception of these policies *"... there was no issue with the information declared by [the Complainant] in the proposal forms received ..."*

The Provider acknowledges that in **July 2016**, the Complainant unfortunately suffered a large fire at his farm. This was a significant loss and resulted in large claims for damage to farm outbuildings and farm vehicles.

The Provider states that its claims department brought to its underwriter's attention two points of concern arising out of the claims process. These were:

"1. The fire originated from a malicious act.

2. [The Complainant] disclosed in statements made by him that there was an ongoing issue and dispute within his family over the ownership of the farmyard."

The Provider wishes to clarify that *"... at no stage was [the Complainant] suspected of any malicious or criminal behaviour in the course of this claim."*

The Provider states that the Complainant's claim proceeded to settlement however, the information in relation to his family dispute together with the cause of the fire being malicious in nature *"... were matters of grave concern to underwriters with regard to the continued operation of [the Complainant's] insurance policies."* The Provider further states that *"[a]s underwriters we perform a control function and we need to display careful risk selection to protect [the Provider]."* The Provider states that *"[w]ith this in mind and in consideration of the background family dispute we invoked the cancellation conditions on [the Complainant's] insurance policies."*

It is submitted by the Provider that the cancellation conditions form part of the contract of insurance and is contained within the policy documents received by the Complainant at the inception of his policies on **28 January 2016**. The Provider then refers to the cancellation provisions contained in certain of these policies. The Provider states that on **16 September 2016**, notices of cancellation were issued by registered post to the Complainant and that there was *"... no return premium in respect of any policies to which a claim was registered in the period of insurance."* The Provider submits that in cancelling the Complainant's policies it acted within the terms of the contracts.

The Complainant's loss adjuster contacted the Provider on **22 September 2016**, to query the content of the notices of cancellation and during the course of telephone conversations between the Complainant's loss adjuster and the Provider, the loss adjuster informed the Provider of his concerns surrounding the cancellations. The Provider states that during this telephone conversation, the reasons behind the cancellations were discussed with the Complainant's loss adjuster.

The Provider states that following on from conversations with the Complainant's loss adjuster and further consideration, it was decided to offer the Complainant a compromise. The Provider states that it was not in a position to consider reinstatement of the cancelled policies but it would consider liability-only insurance in respect of the farm and third parties on farming vehicles.

The Provider states that it was mindful of the Complainant's situation regarding his farming enterprise. However, "*[g]iven the circumstances of the claim this was the only position we could take by giving the minimum insurance cover to enable [the Complainant] to continue carrying out his farming operations.*" The Provider states that its position was relayed to the Complainant when one of its representatives called to the Complainant's farm on **23 September 2016** and followed up with a letter on the same day. The Provider advises that the Complainant did not proceed with this offer.

The Provider states that it received correspondence from the Complainant's loss adjuster on **26 September 2016** querying and disputing the cancellation. The Provider states that this was treated as a formal complaint and acknowledged in writing on **26 September 2016**. The Provider states that on **4 October 2016**, its final position was communicated to the Complainant.

The Complaint for Adjudication

In the course of his submissions to this Office, the Complainant has referred to his son's difficulty in obtaining farm insurance from another financial services provider and the conduct of this financial services provider in dealing with his son. This financial services provider is not the subject of this complaint and therefore the conduct of that financial services provider is not being investigated. Should the Complainant and/or his son have a complaint in respect of the conduct of that financial services provider then a separate complaint could be made to this Office.

The Complainant has also referred to the investigation of An Garda Síochána in respect of the fire that occurred at his farm in **July 2016**. This Office does not have jurisdiction to investigate the conduct of An Garda Síochána as it is not a financial services provider.

Four of the Complainant's insurance policies were cancelled on **16 September 2016** and the fifth policy was cancelled on **28 January 2017**. The Provider states that the fifth policy was not cancelled until **January 2017** because "*... it was overlooked in error at the time.*" The Complainant submitted a Complaint Form to this Office dated **26 March 2016**.

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As the fifth policy was cancelled after the submission of this complaint, I do not consider that the cancellation of this policy forms part of this complaint.

Therefore, the complaint is that the Provider wrongfully and/or unreasonably cancelled the Complainant's insurance policies.

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 3 February 2020, 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.

During the course of his submissions, the Complainant appears to have misunderstood the role and function of this Office. For example, the Complainant states in his submissions dated **11 June 2018**: *"I am putting my trust and faith in you as my advocate to address this chaotic decision made by [the Provider] ..."* and again in a letter to this Office dated **12 June 2018**, the Complainant states: *"I depend on you as my advocate to defend and represent me truthfully and fairly."* It is important to emphasise that this Office is an advocate and does not act for or on behalf of a complainant or provider. My role is that of an objective adjudicator of complaints and I must act in an impartial, unbiased and independent manner in determining whether or not the conduct complained of is contrary to the provisions of the ***Financial Services and Pensions Ombudsman Act, 2017***.

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The Complainant's Policies

Each of the Complainant's policies contain a cancellation clause. These clauses contain different notification periods in order to effect a valid cancellation. I will now set out each of the relevant clauses.

Farm Policy

Clause 13 of the farm policy states:

"13. Cancellation

- (a) The Company may cancel this Policy or any Section thereof by sending seven days' notice by registered letter to the Insured at his/her last known address with pro-rata return of premium provided there have been no claims recorded against the Policy during the current period of insurance.*
- (b) Any request for the cancellation of this Policy, to which the Company agrees, will be subject to an administration charge."*

Commercial Vehicle Policy

The Complainant held two commercial vehicle policies with the Provider. Clause 8 of this states:

"8. Cancellation of Policy

- (a) The Company may cancel this Policy by sending ten days' notice by registered letter to the Insured at his last known address and in such event, provided no claim has occurred, will return to the Insured the premium less the pro rata portion thereof for the period the Policy has been in force.*
- (b) You, the Insured, may cancel the Policy at any time by sending us instructions in writing and returning the Insurance Certificate and Disc on issue. Provided no claim has occurred during the period of insurance, the Company will return the premium for the unexpired period of cover less an administrative charge."*

Tractor Policy

Clause 8 of the tractor policy states:

"8. Cancellation

- (a) The Company may cancel this Policy by sending ten days' notice by registered letter to the Insured at his last known address and in such event will return to the*

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Insured the premium less the pro rata portion thereof for the period the Policy has been in force, provided no claim has occurred.

(b) Any termination of the Insurance to which the Company on request may agree will only operate from the date of return of the Insurance Certificate/Disc on issue. An administration charge applies in respect of cancellation of the Policy."

Notification of Cancellation

By letter dated **16 September 2016**, the Provider wrote to the Complainant in respect of the farm policy:

"We refer to the above policy of insurance and in accordance with the Cancellation Condition of the Policy we hereby tender 7 days notice of cancellation of cover.

The policy therefore will be cancelled and cease to have effect on the expiration of seven days from the date of this letter."

By letter dated **16 September 2016**, the Provider wrote to the Complainant in respect of the first commercial vehicle policy:

"We refer to the above policy of insurance and in accordance with the Cancellation Condition of the Policy we hereby tender 10 days notice of cancellation of cover.

The policy therefore will be cancelled and cease to have effect on the expiration of 10 clear days from the date of this letter.

A cheque in respect of the return of premium of €15.40CR will follow within 5 business days."

By letter dated **16 September 2016**, the Provider wrote to the Complainant in respect of the second commercial vehicle:

"We refer to the above policy of insurance and in accordance with the Cancellation Condition of the Policy we hereby tender 10 days notice of cancellation of cover.

The policy therefore will be cancelled and cease to have effect on the expiration of 10 clear days from the date of this letter."

While the Provider purported to cancel the tractor policy on **16 September 2016**, this letter has not been furnished in evidence. However, it is not disputed that this policy was not cancelled or that the Complainant did not receive a letter from the Provider cancelling this policy.

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Correspondence

By letter dated **4 October 2016**, the Provider wrote to the Complainant following its investigation into his complaint:

“... Following on from our investigations into these claims and together with the information declared in a statement made by you on the 26 August 2016, matters of serious concern arose regarding the operation of your insurances. In light of this we had no option but to invoke the cancellation condition of your insurance policies.

... Furthermore, in compliance with the [cancellation] conditions, there was no return of premium issued in the case of any policy on which a claim had been made during the current period of insurance. ...”

Analysis

The Complainant incepted five policies of insurance with the Provider on **28 January 2016** relating to his farm. Following a fire at the Complainant's farm in **July 2016**, the Complainant made claims under certain of these policies. The Provider paid the Complainant approximately €265,000 in respect of these claims. During its investigation of the Complainant's claim, the Provider became aware of an ongoing family dispute in relation to the ownership of the Complainant's farm yard and that the fire at the Complainant's farm was caused by a malicious act. The Provider then proceeded to cancel four of the Complainant's policies on **16 September 2016** on the basis of this information.

When notifying the Complainant of the cancellation of the various policies on **16 September 2016**, the Provider did not set out the reasons for its decision. Furthermore, in its letter dated **4 October 2016**, while not alleging the Complainant breached any specific terms of the policies, the Provider advised the Complainant in a very vague and general manner that his policies were cancelled because *“... matters of serious concern arose regarding the operation of your insurances ...”* While the Provider advised the Complainant's loss adjuster during a telephone conversation on **22 September 2016** as to the reasons for the cancellation, it did not provide the Complainant with the reasons for its decision to cancel his policies in its letters of **16 September 2016**. Furthermore, during **September 2016**, the Complainant's loss adjuster disputed the Provider's entitlement to invoke the various cancellation provisions yet in the Provider's response dated **4 October 2016** it still neglected to explicitly set out the reasons for its decision. A decision to cancel a policy of insurance has significant implications and consequences for an insured and this was no different in the Complainant's case. Therefore, while the Provider may not necessarily have been required at law or by the terms and conditions of the insurance contract to provide a reason for a decision to cancel a policy, I do not accept that it was reasonable in these circumstances for the Provider in its correspondence to the Complainant not to provide him with the reasons for its decision to cancel his policies.

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The cancellation provisions outlined above vest the Provider with a very broad discretion to cancel a policy once the appropriate period of notice is given. The Provider acknowledges that there were no issues with the information furnished by the Complainant in his insurance proposal forms and neither did the Provider rely on material non-disclosure as a basis for terminating the Complainant's policies. However, the Provider regards the family feud and the cause of the fire as *matters of serious concern* which entitled it to cancel the Complainant's policies. While the cancellation of the Complainant's policies has caused significant interference and disruption to his farming operations, the Provider exercised a commercial discretion to cancel the Complainant's policies.

This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

While the Complainant may not have received the cancellation letters until **23 September 2016**, I accept that the Complainant was given the period of notice as required by the respective cancellation provisions in that the Complainant would cease to be indemnified under the policies 7/10 days from the date of each notification letter and the Provider did not purport to cancel any of these policies before the relevant notice period expired. Furthermore, as the Complainant had previously made a claim under these policies prior to cancellation, I do not accept that he was entitled to a return of premium in respect of these policies.

However, as I have stated above, cancelling a policy of insurance has very serious implications and has caused serious difficulty and inconvenience for the Complainant.

I believe it was unreasonable for the Provider to cancel the policies in the manner in which it did. It would have been more reasonable for the Provider to decide not to renew the Complainant's policies when they expired approximately three months later or, at the very least, to communicate better with the Complainant in relation to the intention to cancel the policies and, in particular, to provide the reason that the policies were being cancelled at such short notice.

I welcome the fact that the Provider later offered a more limited form of insurance to the Complainant. It is most unfortunate that this compromise was not offered in the first place instead of the cancellations that took place without explanation. I believe far greater and better communication with the Complainant at this very difficult time for him was required.

For the reasons outlined above, I partially uphold the complaint and direct the Provider to once again offer the Complainant liability only insurance in respect of the farm and the parts on farm vehicles. It is a matter for the Complainant to consider this offer carefully and decide if he wishes to accept this offer. This offer is to be made available for the Complainant's consideration for a reasonable period, but the Provider cannot be expected to hold the offer open indefinitely.

I also direct the Provider to pay a sum of €3,000 to the Complainant.

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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)(c) 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 rectify the conduct complained of by once again offering the Complainant liability only insurance in respect of the farm and the parts on farm vehicles. It is a matter for the Complainant to consider this offer carefully and decide if he wishes to accept this offer. This offer is to be made available for the Complainant's consideration for a reasonable period, but the Provider cannot be expected to hold the offer open indefinitely.

I also direct the Provider to pay a sum of €3,000 to the Complainant. This sum is to be paid 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**

28 February 2020

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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.