



<b><u>Decision Ref:</u></b>	2020-0057
<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 - subsidence or heave
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint relates to a claim under a House Insurance Policy.

The complaint is that in a telephone call and in a follow up letter the Provider admitted liability in respect of the damage to a septic tank on the Complainant's property, but that it later failed to reasonably accept the claim and failed to reasonably make a payment in respect of the damaged septic tank.

**The Complainant's Case**

The Complainant states that on 13<sup>th</sup> November, 2015 he telephoned the Provider and spoke with the Provider's representative. The Complainant says that he gave the representative his policy number and asked him to check if he had subsidence cover on his policy because he had discovered that his septic tank had subsided/heaved. The Complainant says that the Provider representative went off to check the cover on his policy while he remained on the telephone. The Complainant states that the Provider representative quickly reverted to tell him that he did have subsidence cover on his policy and that his claim would be paid or words to that effect. The Complainant says that naturally he was delighted about this and he asked the representative to confirm what he had told him in a letter so that there would be no denial about the matter at a later stage.

The Complainant submits that he received a letter from the Provider representative dated 16th November, 2015 which stated:

*"We are pleased to confirm that your household policy covers subsidence or heave of the site on which the private house stands or landslip".*

The Complainant says that he felt that this was: *"absolutely 120% clear concise and unambiguous"*.

The Complainant explains that at this time he was in the process of selling his house as he was under a lot of pressure from his bank to do so and he had a very keen buyer who was living and working abroad who was the son of a neighbour who's father was managing the purchase for his son and had full power of attorney to do so.

The Complainant explains that in September 2015 both the father and son had viewed the house with him during which they told him that they definitely wanted to buy the house from him. The Complainant says that they commenced negotiations on the selling price which was quickly agreed at €475,000 by the beginning of November 2015. Quickly after they undertook a full structural survey of the house which also included a septic tank inspection.

The Complainant states that the acting Engineer immediately identified the problem with the septic tank, the buyer still wanted to proceed but with a caveat that an appropriate reduction would be taken off the agreed purchase price of €475,000 to allow for a removal and replacement of the septic tank. The Complainant says that they both got separate estimates of about €20,000 to complete all this work and because he did not have the money available at the time to do the work himself and also because he was under severe pressure from his bank to sell the house he felt the most obvious thing for him to do was to proceed and complete the sale and then go back to the Provider and subsequently process his claim which he felt was already clearly a done deal with the Provider from the letter of 16th November 2015 which he had by now received from the Provider telling him that his claim was covered. The Complainant states that the sale of the house eventually went through in March 2016 with a price reduction of €20,000 down from €475,000 to €455,000 as previously agreed.

The Complainant however, submits that to his absolute dismay the Provider started *"ducking and Diving"* with him to try and get itself out of paying his claim by first trying to insist that because the house was unoccupied when he made the claim in November 2015 it was confining its cover to Fire Only. The Complainant submits however, that when this matter arose he was able to prove to the Provider via a written note from a desludging Contractor who had emptied the septic tank in 2014 and saw evidence of the heave in the tank after he had completed his work.

The Complainant submits that when this was shown to the Provider's appointed Loss Adjusters who, he says eventually in September 2016 adjudicated on the matter by declining his claim by way of a letter of 30th September 2016. The Complainant states that in this letter it made the *outlandish and ridiculous* statement that it was able to see light bulbs floating in the water of his septic tank which he states he can only scientifically assume that this was simply just reflected light from the flash camera the specialist used in photographing the heave in the septic tank. The Complainant states that he is certainly

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absolutely unaware that floating light bulbs in a septic tank is a scientific proof that the subsidence in the tank was not caused by escape of water from its leaking drain pipes.

The Complainant states that this is a ridiculous statement from a firm of Loss Adjusters who were employed solely and absolutely and for one purpose only which was to “protect its employer and paymaster” (the Provider) no matter what the circumstances of the case. The Complainant says that since his claim was declined on 30th September 2016 when the Provider firstly invited him to take his case to the Office of the Financial Services Ombudsman he has reflected very carefully and most maturely about this and he came to the conclusion that he has been “absolutely bullied and blackguarded” by both the Provider and its Loss Adjuster in not paying out his claim after having told him in a very concisely worded letter dated 16th November 2015 at the very commencement of this matter that his claim was covered. The Complainant states that he wrote once again to the Provider and offered to travel to Dublin to meet face to face to try and resolve the refusal of his claim.

The Complainant says that he was rebuffed by a letter received from the Provider on 3th July 2017 saying once again that: *“we believe the best course of action for you as outlined in our letter of 30th September 2016 is to refer your claim to the Financial Services Ombudsman's Office Bureau”*.

The Complainant says that this further rebuff made him very angry so he decided to elevate the matter up to the highest level in the Provider when he emailed the CEO and asked him to have his case revisited and re-examined. The Complainant says that the Provider's CEO did re-examine the matter and reverted personally to him by email on 19th July 2017 stating that the Claims Manager had again examined the file and considered the case further but with the same negative declined result. The Complainant states that the Provider's CEO further told him that he believed that his claim had always been handled properly by the Provider and its decision to decline the claim would not be changed. The Complainant says that he immediately reverted to the Provider's CEO by email again on the evening of 19th July 2017 to remind him once again of the contents of the letter of 16th November 2015. The Complainant says that he was holding reliance on this letter in the matter. The Complainant says he told the Provider's CEO that it was a very clear concise and unambiguous letter with no reference whatsoever to the terms & conditions of his particular policy nor was it written to him on a without prejudice basis and that this particular letter now comprised of the Provider's contract with him.

The Complainant states that the CEO either ignored or declined to deal with this email which he believes says an awful lot of the Provider's position with regard to his claim. The Complainant states that the Provider has deliberately refused to engage any further with him herein. The Complainant says that he has tried his very best to try and resolve this matter directly with the Provider without having to seek independent assistance to do so.

The Complainant wants the Provider to refrain from misleading customers by telling them as in his case that: *“Yes you are covered under your policy”* and then subsequently going to

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extraordinary extremes to try and “wriggle out” of paying claims which, he says, in his case is: “100% above board and Legitimate”.

### **The Provider’s Case**

The Provider states that the Complainant submitted a claim following damage to a septic tank and that the alleged cause of damage was escape of water leading to subsidence of the septic tank.

The Provider states that the insured property was originally constructed in 1974.

The Provider refers to what the Complainant has stated, in an email to the Financial Services Ombudsman dated 20 August 2017. The Complainant stated:

*“In order to achieve a gravity flow from the house (approximately 30 feet away) into the septic tank it obviously had to be constructed much deeper than normal into the ground.*

*Consequently the septic tank was sunk about 25 feet deep into the ground...”*

The Provider states that following an extensive refurbishment of the property in 1995 the property had four toilets which resulted in a,

*“Substantial reconfiguration of the drains into the septic tank. Manholes 1, 2 and 3 were newly constructed as part of the work but manhole 4 was left untouched and as it was since its original construction in 1974...”*

The Provider says that in summary:

- The septic tank and manhole 4 has been in use since 1974.
- Manholes 1, 2, and 3 have been in use since 1995.

The Provider states that it notes the Complainant first contacted the Provider on 16 November 2015 with a general query of whether their policy provides cover for subsidence and landslip. The Provider submits that during the conversation, the Complainant advised.

- He did not believe there was subsidence, but it was a matter for the engineers.
- The Complainant advised he was selling the house and that an engineer for the buyer was concerned about subsidence. The Complainant advised there were cracks at the side of the house, but he was not concerned about subsidence of the house.

The Provider states that following the conversation, a letter dated 16 November 2015 was issued to the Complainant stating:

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*“Thank you for contacting us recently regarding your insurance policy.*

*We are pleased to confirm that your household policy covers you for subsidence or heave of the site on which the private house stands or landslip”.*

The Provider states that the Complainant has taken this letter as confirmation his claim would be paid.

The Provider says that the letter issued to the Complainant dated 16 November 2015 is correct; the policy does provide cover for subsidence or heave of the site on which the private house stands or landslip. The Provider submits that this is detailed on pages 7 and 8 of the policy booklet.

Section 1: Premises	
What Your Policy Covers	Excluding Loss or Damage
11) Subsidence or Heave of the site on which the Private House stands or Landslip	resulting from demolition, structural alteration or structural repair, resulting from faulty workmanship, defective design, the use of defective materials, settlement of newly made up ground and coastal, lake or river erosion, to boundary walls, gates, fences, terraces, patios, driveways, footpaths, swimming pools and tennis courts unless the Private House is damaged at the same time by this cause, resulting from the bedding down of any structure, to solid floor slabs or loss or damage resulting from the movement thereof unless the foundations beneath the external walls of the Private House are damaged by the same cause and at the same time, also excluding the first €650 of each and every loss.

The Provider submits that the policy provides cover when damage occurs in certain specified circumstances.

The Provider says it will not cover every possible cause of loss or damage and will only do so within the terms and conditions of the policy and where a loss is not excluded by those terms.

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The Provider states that in order to be covered by the policy the damage must be caused by one of the events outlined in the insurance policy booklet.

The Provider submits that the onus of proving that a loss was caused by an insured event rests with the Complainant. This is detailed on page 35 of the policy booklet:

*"Claims — Your Duties and Our Rights*

*What you must do*

*Tell Us IMMEDIATELY of any loss, damage or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to Us, together with a completed Claim Form, within 30 days of first notifying Us of the incident".*

The Provider submits that approximately three weeks later, on 8 December 2015, the Complainant contacted the Provider to advise the event he had queried had occurred.

The Provider states that it issued a claim form for completion and received a completed claim form, dated 26 January 2016, on 1 February 2016. The date of damage/loss was noted as 15 November 2015. The description of the damage was noted as: *"damage to septic tank and drainage"*.

The Provider's position is that on 10 February 2016 loss adjusters, appointed on the Provider's behalf, inspected the property. The loss adjusters provided a Preliminary Report to the Provider on 17 February 2016. The Provider says that within the Preliminary Report the Provider was advised the property had been unoccupied since March 2014. The Provider states that it had not been informed of this material fact.

The Provider submits that as the Complainant had not complied with the requirement to inform the Provider of the change in use the information was referred to the Provider's Underwriters. The Provider submits that the requirement is detailed on pages 2 and 34 of the policy booklet:

Page 2:

*"Please advise immediately if the use or nature of your Premises changes or if You do anything which may affect our attitude to the cover provided — for example building an extension, re-roofing, etc".*

Page 34:

*"Change in Risk or Circumstance*

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*You must tell Us in writing IMMEDIATELY of any change, which may affect this insurance or increase the risk of loss, damage or injury as failure to do so could invalidate the cover provided”.*

The Provider states that the Benefit Summary issued with each Home Insurance Renewal also states:

*“WHAT YOU NEED TO DO NOW*

*2. Contact us immediately if there has been any change in any circumstances which may affect the risk or any feature which could influence our continuation of cover or the terms of your policy. If you have any doubt about whether information is relevant, please ring us with the information to ensure your cover is not affected”.*

The Provider says that the Statement of Fact document issued in the Complainant's New Business Pack in January 2012 also states:

*“Material Facts Declaration — Continuing Obligation*

*You accepted that you have a continuing obligation to disclose to [the Provider] such material information immediately on becoming aware at any time during the period of this insurance of any material change that may affect this insurance or increase the risk of loss, damage or injury. You agree that if there is any doubt as to whether or not any information is material, you will disclose it to us”.*

The Provider submits that on 29 February 2016 its Underwriters wrote to the Complainant advising that had the correct occupancy been advised to the Provider the level of cover would have been restricted to Fire only from the next renewal date. The Provider’s position is that the policy was retrospectively restricted to Fire only cover from 7 February 2015.

The Provider says that in a letter dated 2 March 2016 the Complainant appealed the decision to restrict the policy cover to Fire only from 7 February 2015 advising:

*“..in the intervening period since 31 March, 2014 to date the property has been regularly occupied personally by me at least once a week and on different days/nights of each week...”*

The Provider states that a selection of electricity supplier invoices and two water provider invoices were provided as proof in relation to occupancy.

The Provider states that after review of the information provided its Underwriters wrote to the Complainant on 15 March 2016 advising the policy remained restricted to Fire only cover.

The Provider states that restriction to Fire only cover resulted in declinature of the claim. In a letter dated 22 March 2016 the Provider’s loss adjusters advised the Complainant that:

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*“Following review with Insurers, they have now confirmed that had they been made aware the property was unoccupied from March 2014, cover would have been restricted to 'fire only" cover with effect from the renewal date of 7th February 2015. Therefore, on the date of loss i.e. 15th November 2015, 'fire only" cover was operative under this policy”.*

The Provider submits that the date of loss of 15 November 2015 is the date stated on the claim form signed by the Complainant.

The Provider says that in response, it received a letter from the Complainant dated 25 March 2016, appealing the Provider’s decision to reduce the policy to Fire only cover.

The Complainant also stated he had evidence to confirm damage to the septic tank was evident when the tank was de-sludged and emptied in November 2013.

The Provider says that following a request for the information referred to in the Complainant's letter of 25 March 2016 it received a typed statement signed by Mr X (a self-employed desludging contractor) stating he had, on 12 November 2014, noticed:

*“At the end of my process and when the tank was emptied out I did notice whilst closing it up that it had heaved a good bit due to escape of water”.*

The Provider says that the following day the Complainant informed us Mr X had referred to the wrong date in his statement; the correct date was in fact November 2013.

The Provider states that in reviewing the complaint, it notes three dates have been advised as the date of discovery:

- November 2015, stated on the claim form signed by the Complainant,
- November 2014, stated in a statement by Mr X and by the Complainant in the FSPO Complaint Form and
- November 2013 stated by the Complainant in a letter to the Provider dated 25 March 2016.

The Provider submits that given the inconsistency in the dates, it is of the opinion the exact date the damage occurred or was discovered cannot be established. The Provider says that in reviewing the claim, it has considered the evidence on the assumption the damage occurred at a time when the policy was on 'full cover' i.e. events numbered (1) to (11) in the Premises section of the policy . apply to the property. The Provider says that Event (12) would not apply, as it does not provide Accidental Cover for Let Properties. The property was let to tenants from 2009 to March 2014.

The Provider states that the key questions, which must be answered, is whether the damage to the septic tank was the result of any of the events numbered (1) to (11) and whether the damage occurred between 7 February 2012 (the inception date of policy) and 7 February 2015 (the date the policy was placed on Fire only cover).

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The Provider refers to the Complainant's Evidence:

The Provider states that the evidence provided by the Complainant was:

- A survey and report from a drain testing firm dated 5 December 2015.
- An undated handwritten note from Mr X. .
- A statement from Mr X dated 22 March 2016.
- A letter from [the Complainant's engineer] dated 2 August 2016.
- A letter from [the Complainant's engineer] dated 9 October 2017 (furnished) to [the Provider] in February 2018).

The report from the drain testing firm.

The Provider says that the report from the drain testing firm was completed following a hydrostatic drain test at the property on 3 December 2015. The findings of the report are below. The sections underlined are the Provider's emphasis.

*"The first manhole located at the rear of the property has one outlet from a downstairs w.c and a test here showed no significant leak.*

*A test from the first manhole to the second manhole located at the rear of the property showed no significant leak.*

*The second manhole has two other inlets:*

1. *Is from a storm gully located at the rear of the property and a test here showed a major leak.*
2. *Is from a soil vent pipe with a gully online and a test here showed a major leak visible above ground level at the base of the soil vent pipe. The gully online is taking kitchen waste and needs attention with a gap between the gully top and the rising section of the pipe.*

*A test from the second manhole to the third manhole in the yard showed no significant leak.*

*The third manhole has one other inlet from a soil vent pipe with a storm pipe, a 30mm pipe from a wash hand basin, a soil vent pipe with a downstairs w.c online, a storm gully located at the rear corner and a pipe from the fountain area taking surface water and a test here showed no significant leak to the gully top approx. 100mm below ground level*

*A test from the third manhole to the fourth manhole close to the septic tank showed no significant leak.*

*The fourth manhole is in very poor condition with large holes in the benching and major cracking.*

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*There is one other inlet into the fourth manhole that appears to be redundant and no test was carried out here.*

*No test was carried out between the fourth manhole and the septic tank close by. Part of the septic tank wall has collapsed*".

#### **Handwritten note from Mr X**

The undated note, signed by Mr X states:

*"Empty Septic Tank and disposal of tank 14/11/13 at [risk address, for the Complainant]. Payment €150 inc of VAT. Paid in cash".*

#### **Statement from Mr X dated 22 March 2016**

Mr X advises that on 12 November 2014:

*"At the end of my process and when the tank was emptied out I did notice whilst closing it up that it had heaved a good bit due to escape of water".*

The Provider states that Mr X does not elaborate on how he formed the opinion the damage was due to an escape of water. The Provider notes the date referred to in the statement was amended from 2014 to 2013 by the Complainant.

#### **Letter from the Complainant's engineer dated 2 August 2016**

The Complainant's Engineer states:

*"The cause of the collapse is due to ground movement/ground heave".*

The Provider notes the Complainant's engineer does not elaborate on how he formed the opinion the damage was due to ground movement/ground heave.

#### **Letter from the Complainant's engineer dated 9 October 2017**

(Furnished to the Provider as part of the complaint submission to this office)

The Complainant's Engineer states:

*"During the recent sale proceedings of your property above a camera survey of the existing drainage exposed severe damage to Manhole 4, and that this manhole was leaking badly. This manhole is adjacent to the above Septic Tank, and with the escape of water over 20 years, has in my opinion undermined the existing Septic Tank".*

The Provider states that in considering the Complainant's evidence, the key question of whether the damage to the septic tank was the result of an insured event has not been answered..

The Provider states that it accepts the drains/manhole at the property are leaking however the evidence presented by the Complainant has not established a direct link between the leaking drains/manhole and the damage to the septic tank.

**The Provider then refers to its own Evidence, as follows:**

The Provider states that it has considered the evidence provided on its behalf as follows:

- A review by [the Provider's engineer] of the Complainant's evidence:
  - The survey and report from a drain testing firm dated 5 December 2015.
  - Photographic evidence provided by the Provider's loss adjuster.

The Provider states that the following is its Engineer's summary of the evidence, taken from their report dated 13 September 2016. The Provider has underlined the information it considers relevant.

*"At this stage I would argue that the matter of cause is certainly not clear.*

*A review of the photographic evidence clearly indicates collapsed blockwork within the septic tanks, however, the damage lies across the full length of one side of the tank and indeed would appear to be more pronounced at the side opposite to Manhole 4.*

*I am of the opinion that at this stage, there is no evidence to support the argument being put forward by the policyholder's Engineer [Mr Y] that the problem is related to ground movement/ground heave. The ground around the septic tank and indeed around manhole 4 as viewed in the photographs provided by [the Provider's loss adjuster] indicate that there is no clear evidence of localised movement in the ground at a high level.*

*In addition it must be borne in mind that the damage appears to be isolated to one side of the septic tank. I would argue that if the underlying cause was related to ground heave/movement then it would only be reasonable to expect the entire tank to be affected.*

*The arrangement of the pipes within the septic tank raise a number of questions. There are low level pipes in the septic tank which are simply not consistent with a normal pipe arrangement within a tank.*

*The insured's retained representatives are arguing that water has escaped from at or about manhole no. 4 and indeed the condition of the benching within manhole no. 4 is such that it is reasonable to accept that water would escape from at or about this area during normal operating conditions. However, again I would point*

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out that there is no movement of the manhole itself or of the ground around the manhole. In addition the pattern of damage to the tank which appears to be worse further away from MH 4 would not support this argument.

*In summary I note the policyholder's engineer is of the view that the problem is related to ground movement/heave. I am of the opinion that at this stage it has not been substantiated that ground heave/movement is an issue in terms of cause. In addition I would comment that even if ground movement is established as an issue then the extent of cover available under the policy would have to be reviewed as it is clear that the main dwelling house has not been affected by the same event.*

The argument that the damage is attributable to water escaping from manhole 4 adjacent to the septic tank has not in my opinion, as of yet been proven. The damage to the septic tank being more significant away on the opposite side from the leaks within manhole 4 would go against any such argument.

*Finally the piping arrangement within the septic tank raises a number of questions about the original design/construction which would need to be investigated/clarified before any conclusions could be drawn in relation to cause”.*

The Provider submits that in a further email to the Provider's Loss Adjuster dated 14 September 2016 the Provider's Engineer advised that on further review of the photographs,

*“There are 3 light bulbs floating on the surface of the water that currently sits at the bottom of the tank. As there are 2 great big holes in the side of the tank, this water must reflect the external static water table. This water table is above foundation level of the tank and as such it would not be possible for water escaping from a leaking manhole/drain overhead to cause any damage to the foundations of the tank.”*

The Provider says that the Complainant has previously taken exception to the suggestion of lightbulbs in the septic tank, stating in the FSPO complaint form:

*“.. [Provider's Loss Adjuster] made the most outlandish and ridiculous statement that it was able to see light bulbs floating in the water of my septic tank...”*

The Provider's position is that the lightbulbs are clearly visible in the photograph.

The Provider submits that the Provider's Engineer's opinion that the water table is above the foundation level of the septic tank is also supported by the Complainant's comment in their email to the FSPO dated 20 August 2017:

*“ ...in order to achieve gravity flow from the house (approximately 30 feet away) into the septic tank it obviously had to be constructed much deeper than normal into the ground.*

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*Consequently the septic tank was sunk about 25 feet deep into the ground..”*

The Provider states that on review of the complaint, it has considered the claim under the following events:

*“4) Freezing, Escape or overflow of Water from within any plumbing or Heating system, fixed water apparatus or fixed domestic appliance” [Page 5]*

*“1 1) Subsidence or Heave of the site on which the Private House stands or Landslip” [Page 7/8]*

The Provider’s position is that it is satisfied that the Complainant has not proven a direct link between the escape of water from the drains/manhole 4 and the damage to the septic tank.

The Provider states it is also satisfied the Complainant has not proven the damage to the septic tank occurred between:

- 7 February 2012 (the inception of the policy) and 7 February 2015 (the date the policy was restricted to Fire only cover) when the policy provide cover for events numbered (1) to (11) or
- 7 February 2015 and 29 March 2016 (the date the policy was cancelled as the property had been sold) when the policy only provided cover for event (1) Fire.

The Provider submits that the policy provided cover for escape of water and subsidence for three years. The Provider says that the Complainant’s engineer has suggested the water has been escaping from manhole 4 in excess of twenty years.

### **The Complaint for Adjudication**

The complaint is that in a telephone call and in a follow up letter the Provider admitted liability in respect of the damage to a septic tank on the Complainant’s property, but that it later failed to reasonably accept the claim and failed to reasonably make a payment in respect of the damaged septic tank.

### **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.

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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 **28 January 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.

Submissions dated **8 February 2020**, **9 February 2020** and **11 February 2020** from the Complainant and submission dated **10 February 2020** from the Provider, were received by the Financial Services and Pensions Ombudsman after the issue of a Preliminary Decision to the parties. In his submissions the Complainant sets out why he considered the complaint should be upheld. All the submissions were exchanged between the parties and an opportunity was made available to both parties for any additional observations arising from the said additional submissions. The submission from the Provider on **10 February 2020** was an acknowledgement of receipt of the Complainant's two submissions. The Provider confirmed that it had no additional observations. The Complainant's last submission of **11 February 2020** advised that he would await the Legally Binding Decision. The content of the above submissions however have not persuaded me to alter my previous preliminary determination and, consequently, the final determination of this office is set out below.

### **Analysis**

The Provider has raised the issue of whether the Complainant has an insurable interest, in that he had sold the property.

I accept that the Complainant had an interest in the monies he says he agreed with the new owner, to forego in respect of the damaged septic tank. However, this is not the interest that he insured with the Provider. His insurable interest was in the subject matter of the insurance, which was any loss associated with the property which was covered by the policy. Upon the sale of the house, the Complainant no longer had a legal or equitable interest in the house. It is also correct to note that the Provider had no input into the agreement that was made between the Complainant and the new owner as to any reduction in the price paid for the house because of the damaged septic tank.

It is clear that the sale of the house would have made a claim inspection more difficult, in this regard it noted that the Provider's engineer stated, as follows:

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*“If your policyholder hadn’t sold the house then we would be asking you at this stage for permission to appoint an independent engineer .. to investigate ground conditions, the actual structure / build features of the tank and the location of the manhole / drains etc before reaching a definitive conclusion”.*

The Provider’s Engineer’s report indicated that:

- *The case for the damage being attributable to an Escape of Water from manhole 4 is not proven and the fact that the worst of the collapse of the septic tank walls is at the further most point from the alleged source (i.e manhole 4) does not support the proposition*
- *There is no evidence that ground heave impacted anything else in the vicinity and indeed [Engineer] makes the point that it does not even impact the whole septic tank. We had previously addressed the issue re policy cover not applying when the house itself is not impacted.*

The evidence shows that the Complainant first contacted the Provider in November 2015 with a general query on whether his policy provided cover for subsidence and landslip. During the conversation, the Complainant advised:

- He did not believe there was subsidence, but it was a matter for the engineers.
- The Complainant advised he was selling the house and that an engineer for the buyer was concerned about subsidence. The Complainant advised there were cracks at the side of the house, but he was not concerned about subsidence of the house.

A recording of this telephone call has been provided in evidence. Having considered this telephone recording, it is clear that the Provider advised that that the policy did provide cover for subsidence or heave of the site. However, the Provider did also advise that there would be certain conditions that it would not be covered for.

It is also noted that in this telephone call there was no mention by the Complainant of damage to the septic tank or that there would be a claim in relation to such damage.

Following this conversation, a letter dated 16 November 2015 was issued to the Complainant from the Provider, stating:

*“Thank you for contacting us recently regarding your insurance policy.*

*We are pleased to confirm that your household policy covers you for subsidence or heave of the site on which the private house stands or landslip”.*

The Complainant appears to have incorrectly taken this letter as confirmation that a claim in respect of subsidence / heave would be paid. The Complainant argues that the Provider: *“legally admitted liability to [him] in its very first letter of 16th November 2015”*

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I accept that the information given to the Complainant in the telephone call of 16<sup>th</sup> November 2015 and in the letter that issued to the Complainant dated 16 November 2015 was correct, and in no way can the information communicated be taken as the Provider accepting liability for the claim. The policy did provide cover for subsidence or heave of the site on which the private house stands or landslip. This is detailed on pages 7 and 8 of the policy booklet. However, I do not accept the Complainant's position that the Provider legally admitted liability to him when advising him over the telephone and in a follow up letter of 16<sup>th</sup> November 2015 of the extent of cover provided by the policy of insurance. I accept that the Provider was merely setting out what the policy covered and was not admitting liability in these communications.

An insurance policy provides cover when damage occurs to the property, but only in certain specified circumstances. A policy of insurance does not cover every possible cause of loss or damage and will only do so within the terms and conditions of the policy and where a loss is not excluded by the policy terms. I am satisfied that this was correctly communicated to the Complainant.

In order to be covered by a policy of insurance the damage must be caused by one of the events outlined in the insurance policy booklet. The onus of proving that a loss was caused by an insured event rests with the Insured. This is detailed on page 35 of the policy booklet:

*"Claims — Your Duties and Our Rights*

*What you must do*

*Tell Us IMMEDIATELY of any loss, damage or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to Us, together with a completed Claim Form, within 30 days of first notifying Us of the incident".*

I accept that in considering the Complainant's evidence, the key question of whether the damage to the septic tank was the result of an insured event has not been proven..

It is accepted the drains/manhole at the property were leaking however the evidence presented by the Complainant did not establish a direct link between the leaking drains/manhole and the damage to the septic tank.

I also accept that the Complainant has not proven the damage to the septic tank occurred between:

- 7 February 2012 (the inception of the policy) and 7 February 2015 (the date the policy was restricted to Fire only cover) or

/Cont'd...



- 7 February 2015 and 29 March 2016 (the date the policy was cancelled as the property had been sold) when the policy only provided cover for “Fire”.

The policy provided cover for escape of water and subsidence for the period 7 February 2012 to 7 February 2015. The Complainant's own engineer has suggested the water has been escaping from manhole 4 in excess of twenty years. It is also noted that the damaged septic tank wall was not directly adjacent to the leaking manhole.

Having regard to all the submissions from both parties, it is my Legally Binding Decision that the Provider handled the claim in a reasonable manner and reached its decision having considered all the evidence. I accept that the evidence did not support a conclusion that the Complainant had proven that subsidence / ground heave caused the damage to the septic tank over the years when cover for same was in place. Therefore, 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.**

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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 February 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.**