An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0115
Sector:	Insurance
Product / Service:	Household Contents
Conduct(s) complained of:	Claim handling delays or issues
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a home insurance policy with the Provider. During **2017** the Complainant made a claim under the policy. Following the Provider's assessment of the claim, the Complainant formed the view that the Provider had insured a second property under the policy. The Complainant has taken issue with the manner in which the Provider assessed his claim. Furthermore, the Complainant is also dissatisfied with renewal premium and level of cover offered by the Provider following his claim.

The Complainant's Case

The Complainant states that his family holiday home in the West of Ireland was damaged by a combination of storm and rain in **June 2017**. As a result of the storm, water entered the roof of the kitchen and flooded the kitchen floor and the adjacent living room. The Complainant continues by describing the damage that was caused by the flooding. The Complainant submits that *"[t]he amount offered by [the Provider] as a settlement, even before their deductions, is completely inadequate to cover the costs of repairs and replacements."*

Referring to a letter received from the Provider dated **15 June 2018**, the Complainant states in terms of occupancy that the house was always classified as a holiday home for his family and to his knowledge, he was not made aware of any change in the classification of the house. The Complainant points out that he has

> *"… made it clear in written correspondence that I visit the house every two or three weeks and carry out maintenance whenever necessary. … A number of my siblings live next door, inspect it externally daily …"*

The Complainant further states that:

> *"[t]he house could never have been occupied on a full time basis short of developing a facility of bi-location."*

The Complainant asks:

> *"[w]hy does [the Provider] include the misleading page 'Attaching to and forming part of Policy Number … HOLHOME2 – holiday home Endorsement – E09' when it 'is only effective if it is shown on the Policy schedule'? This is quite misleading but is what I required in the first place."*

In relation to the second house located on the property and having insurance cover for only one house, the Complainant queries whether the Provider *"… would … provide such cover were I to transfer ownership of the second house to another person?"* The Complainant states that he does not want or need insurance for the second house.

The Complainant states that his experts have estimated the rebuild costs for both houses and the outhouse to amount to €236,640 while the Provider has estimated it at €275,982. The Complainant advised that the floor area for the house and shed which he wishes to have insured is 127 square metres with an estimated rebuild cost of €155,829 according to the National House Building Calculator.

The Complainant notes that in terms of the letter received from the Provider on **15 June 2018**, no reference was made to the kitchen area where most of the floor damage occurred but only to the living room and a hallway and no reference was made to the prevention of a recurrence of damage.

The Complainant states that the initial settlement offer of €5,502.19 which he rejected, was later increased to €10,843.58 which he again rejected because *"… even taking into account the various deductions it does not come near the actual cost of repairs and replacements."*

The Complainant points out that the premium on his policy increased from €408.49 in a renewal letter dated **6 September 2016** offering *"broad cover",* to €868.39 in renewal letter dated **12 September 2017** offering fire only cover. The Complainant considers this *"[s]omewhat severe considering my main residence and my holiday home had been insured with [the Provider] from 2006 and I had the maximum No Claims Discount."*

In resolution of this complaint, the Complainant wants:

> *"1. The payment of reasonable costs to cover damage and replacements.*
>
> *2. An offer of renewal of cover for one of the houses at reasonable cost. – This house was free of incident in excess of the elven years it was insured by [the Provider], indeed, well in excess.*
>
> *3. Resolution of the difference of opinions regarding rebuild costs."*

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The Provider's Case

The Property

The Provider states that at the time of loss in **June 2017**, the Complainant's policy provided cover for Premises and Contents at the risk address. The Provider refers to the definition of *Premises* at page 4 of the policy. The Provider advises that following a visit by its loss adjuster to the risk address, it was noted that the premises situated on the property was a detached house consisting of a main dwelling built in **1908** with two extensions (a two storey flat roofed extension to the rear, built in **1950** and used as a storage space but not as a habitable space for approximately 20 years and a single storey flat roofed side extension built in **1983** and used as the Complainant's kitchen) and a domestic outbuilding at the rear of the property. The Provider states that based on the measurements taken by the loss adjuster during the site inspection, the premises is 208.79 square metres.

The Provider states that in order to recalculate the rebuild cost of the premises, its loss adjuster took measurements of the main dwelling and both extensions. Following the making of this complaint, the Provider advises that it located the Eircode assigned to property and used it to carry out a search in the Property Registration Authority. The Provider points out that the information gathered from this search indicated that the Complainant is the sole owner of the property and that the relevant property folio has only one property registered on it. The Provider further states that based on the photographic evidence taken at the time of the site inspection, and subsequent investigations, there is only one detached property at the risk address.

The Provider states that at the inception of the policy, the insured property is noted on the proposal form signed by the Complainant as a detached house. The Provider submits that if there were two properties located on the same site as the risk address, this was not disclosed at the inception of the policy. The Provider states that while the Complainant argues that the other property is owned by his extended family, no evidence has been provided to support this and had the building been divided into two legally owned properties this would appear on the property folio.

Nature of Occupancy

The Provider states that when the Complainant incepted the policy, the proposal form signed by the Complainant notes the property at the risk address as being occupied as a second premises. The Provider advises that this type of occupancy applies to properties where a customer owns a second house that is permanently occupied by a relative and where no rental income is derived from the property. The Provider states that a second premises risk must be insured in the name of the title of the owner. The holiday home occupancy applies to properties that are intermittently occupied by either the customer or their family members.

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The Provider states that the documentation issued to the Complainant at each year's renewal included a reminder that the property was

> *"… insured and occupied as a 'second premises-occupied by family members only'. We enclose your renewal notice on this basis. Please contact us before the renewal date and let us know if the above occupancy situation has changed."*

The Provider states that at no point was it notified of a change in occupancy of the property. The Provider further advises that the occupancy of the property did not affect the claim settlement offer.

Value of the Property

At the time of loss, the Provider advises that the insured premises were covered for a rebuilding value of €144,200. The Provider points out that when the policy was first incepted in **October 2006**, the *Premises Sums Insured* was €230,000. This sum was reduced by the Complainant to €180,000 in **2011** and to €140,000 in **2012**. The Provider sets out the loss adjuster's calculation for the value of the premises based on the total floor area of 208.79 outlined above, multiplied by a rate of €1,238 per square metre which gives a value of €258,482.02. A value of €17,500 is attributed to the outbuilding. This gives a total value of €275,982.02.

Assessment of the Claim

Following notification of the claim on **11 July 2017**, the Provider appointed a loss adjuster to deal with the claim on its behalf. An inspection of the property was carried out on **20 July 2017**. The loss adjuster wrote to the Complainant on **21 July 2017** seeking an estimate for repairs and a roofer's report. On **30 August 2017**, the loss adjuster received notice that the Complainant had appointed a loss assessor to deal with the claim on his behalf. On **15 September 2017**, the loss assessor submitted the requested documentation together with a claim submission of €18,113.13 (€15,603.13 for building works and €2,510 for contents).

Following a review of the loss assessor's submission, on **9 October 2017** the loss adjuster submitted a gross settlement proposal to the loss assessor of €9,272.64 noting the deductions for underinsurance and policy excess. The net settlement amounted to €5,502.19.

On **19 December 2017**, the loss assessor declined the settlement proposal and requested a review of certain areas of works regarding the kitchen units, electrics, roof repairs, drying works and contents. The loss adjusted reviewed the settlement offer and issued a revised gross settlement proposal amounting to €11,930.25 with a net settlement of €6,962.41. On **10 January 2018**, having not reached an agreement, the loss adjuster and the loss assessor arranged to re-inspect the property.

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A re-inspection was carried out on **19 January 2018**. The Provider states that additional allowances were made after the re-inspection for tiles in the kitchen, skirting and redecoration in the living room, two hardwood doors, service electrical installation, contents of the kitchen, damage to a piano and the costs of the cooker, fridge freezer and cleaning. A further revised gross settlement proposal of €17,874.64 was issued on **19 January 2018** with a net settlement of €10,593.58. The Provider has set out the basis for the calculation of each of the above settlement proposals and how underinsurance was calculated and applied in each case as set out on page 35 of the policy. The Provider submits it is satisfied that a full assessment of the damage was made by its loss adjuster. The Provider states it received a letter from the Complainant dated **22 May 2018**, expressing his dissatisfaction with the settlement amount offered and enclosed an estimate of repairs supplied by a contractor for €46,342.05 excluding contents.

Renewal Premium

The Provider states that the Complainant's **2016** policy renewal was issued at a premium of €408.49, covering the premises at the risk address for €144,200 and contents for €15,450 with the occupancy of the property being noted as second premises. A maximum No Claims Discount of nine years was also included in the price.

Following notification of the Complainant's claim and the information received from the loss adjuster regarding the size of the property and the value at risk, letters issued to the Complainant on **26 July 2017** and **12 September 2017** advising the Complainant that the property was underinsured and that if he did not respond, the **2017** renewal would be implemented with the increased sums insured as suggested by the loss adjuster.

The Provider states that the renewal was issued to the Complainant with the premises insured for €275,982 and contents for €15,913, with a premium of €868.39. The Provider also advises that as a result of the open claim, in line with the policy terms and conditions, the Complainant's No Claims Discount was reduced to two years.

The Provider advises that insurance policies are reviewed on a yearly basis and renewal premiums are subject to rate changes that occur throughout the year. The Complainant's renewal premium increased in **2017** due to rate changes, however, the main reason for the increased premium was due to the fact that the premises were insured for a higher value and the No Claims Discount was reduced to two years.

The Provider states that it received correspondence from the Complainant dated **20 November 2017**, advising that the property was *"[f]or most of the time … unoccupied."* The Provider advises that following this information, it informed the Complainant that it could offer a new quotation for the property but as it was unoccupied, the cover offered would be fire-only cover. The Provider states this is an insurance market standard, for unoccupied properties.

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The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration, insofar as it:

1. wrongly provided cover for a second house located on the property;

2. incorrectly calculated the floor area of the Complainant's house causing it to be underinsured;

3. wrongly and/or unfairly assessed the Complainant's claim; and

4. wrongly and/or unreasonably increased the renewal premium in respect of the policy in **September 2017** and offered fire-only cover.

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 **4 March 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, the final determination of this office is set out below.

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The Policy

The Complainant signed the Provider's completed proposal form on **16 October 2006**. In the *Property Details* section, the property address is given and the property is described as an almost 100 year old detached house and as being a *second premises*. The sum insured in respect of the premises was €230,000.

The Complainant received annual renewal letters in and around September of each year. From **September 2007** to **September 2011** and in **September 2013**, the second paragraph of each of these letters read as follows:

> *"We note from our records that the above property is insured and occupied as a 'second premises – occupied by family members only'. Your renewal is issued on this basis. Please contact us before the renewal date and let us know if the above situation has changed."*

The format of the renewal letters changed somewhat from **September 2012**, when the second page of these letters advised the Complainant to:

> *"Please review all of the information in your renewal schedule and inform us immediately of any inaccuracies, because such information may impact on your premium."*

Further to the above, in the renewal letter dated **6 September 2016**, referring to the renewal schedule, the Provider advised the Complainant to:

> *"Please read this schedule and advise us immediately if any details are incorrect."*

From around **September 2012**, the Complainant began to receive renewal schedules. These schedules contained the following advice in respect of disclosure of material facts:

> *"We would draw your attention to the serious consequences of failure to disclose all material facts, including changes to any data already provided which have occurred since policy inception or the last renewal date. Such facts are those which we would regard as likely to influence our assessment or acceptance of this insurance. If you are in doubt as to whether or not a fact is material, it should be disclosed."*

In addition to the foregoing, in **September 2015** and **September 2016**, the renewal schedule also began to describe the property as follows:

> *"This property is a second premises occupied by family members."*

The Complainant also received an enclosure relating to the holiday home endorsement (E09) which sets out the circumstances as to when a property is considered to be occupied as a holiday home. The endorsement further states that it is only effective *"… if it is shown in the Policy schedule."* I note that the Complainant's renewal schedules did not contain the holiday home endorsement.

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On **26 July 2017**, the Provider wrote to the Complainant informing him that its loss adjuster advised that the building sum insured of €144,200 may have been understated. The Provider advised the Complainant to review the sum insured, provided details of the Chartered Surveyors' website and that it was the Complainant's responsibility to ensure that the sums insured were adequate. The Provider wrote to the Complainant on **12 September 2017**, advising that as it had not received a response to the previous letter, it was increasing the sums insured in line with its loss adjuster's recommendations to €275,982 and that such changes would be effective from the renewal date on **9 October 2017**. In a further letter dated **12 September 2017**, the Provider advised the Complainant that his renewal premium was €868.39.

The Policy Booklet (Ref: 260 SCH 01.14 KD)

In the *Definitions* section of the policy *Premises* is defined as follows:

> *"**Premises***
> *The Premises is defined as:*
> *(a) the private house, including fixtures and fittings therein and thereon. The private house must be constructed of brick, stone or concrete and roofed (at least 70%) with slates, tiles, concrete, asphalt or metal,*
>
> *and*
>
> *(b) domestic outbuildings, garages, …*
>
> *The Premises, as defined above, must be:*
> - *occupied and used for domestic and residential purposes only,*
> - *situate at the address noted on the schedule."*

The cover offered by the policy in respect of the premises and the contents are said to be subject to the terms, conditions, limits and exclusions set out in the policy (as set out at page 6 in terms of *Premises* and page 16 in terms of *Contents*).

The Provider's *Loss Settlement Basis* as outlined in the policy booklet, in the context of the premises is subject to the following provision on underinsurance:

> *"If at the time of any loss the sum insured under Section 1: Premises is considered by Us to be less than the actual reinstatement value of the Premises We may reduce the settlement of your claim by the same percentage that the Premises is underinsured by."*

The policy also provides at page 43 that the insured is responsible for ensuring that the sums insured under the policy are adequate.

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Finally, in the *Endorsements* section, at Page 51, it states at "*E41 – No Claims Discount"* that:

> *"… If you make a claim during the Period of Insurance your No Claims Discount will reduce to nil years."*

Correspondence

In a letter to the Provider dated **19 October 2017**, the Complainant states:

> *"A misunderstanding appears to exist in relation to the floor area of my house which is a three bedroom, two storey house with a flat roofed kitchen. The confusion emanates from the fact that a house which is owned and used by our extended family exists at the rear of my house and is structurally independent of it.*
>
> *… I was always of the opinion that the insurance cover for the … house applied to the roadside house only. I now learn that cover also applied to our family's house etc. For clarity I wish to describe both properties.*
>
> *… I now wonder, as a result of the misunderstanding, if the annual premium I have been paying was always too high? …"*

On **23 November 2017**, the Provider wrote to the Complainant as follows:

> *"We are pleased to confirm that we can offer you a new quotation for your property … Please note that as this property is unoccupied we will offer fire only cover."*

In a further letter to the Provider dated **23 January 2018**, the Complainant states:

> *"As explained, my house and shed have a total floor area of 1,549.8 square feet (144 square metres). The annual premium over the eleven years it was insured with [the Provider] was always higher than that of my house … I felt that this was because it was a holiday home and therefore not permanently occupied. To my recollection the floor area of both houses was never mentioned to me over the years and only arose when my claim was submitted.*
> *…*
>
> *As far as the [insured property] is concerned it will be occupied again as a holiday home when the maintenance is completed. …"*

On **24 March 2018**, the Complainant wrote to the Provider as follows:

> *"… I would simply like to point out that we are dealing with two semi-detached houses one of which I believed I had insured, the other I did not wish to have insured. As explained, there is no internal connection between the two houses, similar to semi-detached houses in a street. They are totally independent of each other with their own separate entrances/exits, gates, etc. I had never intended that the second house be insured as it is a mass concrete block … and contains no furnishings or furniture…."*

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In an email between the Provider and the loss adjuster dated **29 May 2018**, the loss adjuster advised the Provider that:

> *"The Assessor appears to accept the specification that has been used as the basis for calculating settlement proposals but additional items may be included following his discussions with the Insured."*

Site Inspection Report

The loss adjuster's site inspection report dated **20 July 2017** states at page 2:

> *"[The Complainant] advised that while occupied a number of years ago, the storage rooms are no longer used as a habitable space."*

The report also notes the following on page 3 in respect of each of the extensions:

> *"Kitchen (single storey extension LHS) 4.14 x 6.55 2.55 high 2 x /single doors and 1 x double door*
>
> *…*
>
> *1950 2 storey extension to rear (usage now limited to storage space)"*

Internal Memo

A memo of an internal phone message dated **8 February 2018**, has been submitted by the Provider and states:

> *"There is a separate unit at the back in the [loss adjuster's] diagram and the insured advised this is a separate living area.*
>
> *… wanted to clarify if this has a door between the properties or separate entrance and the roof structure of it also.*
> *…*
>
> *The section at the back is a concrete roof with a 2 storey building. [The loss adjuster] did not pay much attention to it as there was damage to it which had been ongoing for some time and he disregarded this from the claim.*
>
> *The extension to the front is the kitchen of the main property."*

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Analysis

The Storage Area

The Complainant maintains the position that the Provider provided cover for a second house located on his property. There appears to be some confusion as to what the second property consists of. In a letter dated **19 October 2017** the Complainant states that: *"The confusion emanates from the fact that a house which is owned and used by our extended family exists at the rear of my house and is structurally independent of it. … I was always of the opinion that the insurance cover for the … house applied to the roadside house only. I now learn that cover also applied to our family's house etc."* However, in a letter dated **24 March 2018** the Complainant appears to be referring to the two storey extension and explains that *"I had never intended that the second house be insured as it is a mass concrete block … and contains no furnishings or furniture…."*.

When the Complainant incepted his policy, he sought cover for a property located at the risk address. There is no evidence to suggest that the Complainant advised the Provider that there was more than one property located at this address, that the larger extension was regarded by him as a separate property or that he wished for only one such property or portion of the property, to be covered by the policy.

Furthermore, I am not satisfied that there is in fact more than one property covered by the policy. The Provider has submitted a copy of the Folio for the Complainant's property which identifies the Complainant as the full owner of the property. There is no indication that there is more than one property located on the Folio.

In a rough diagram prepared by the Provider's loss adjuster; the Complainant's house is adjoined by two extensions. One of these extensions appears to be used as a kitchen and the second is a large two storey unoccupied and unfurnished rear extension. I am satisfied that the main building and these extensions together with the outbuilding, comprise the insured property.

Therefore, I do not accept that the Provider wrongly provided cover for the entirety of the premises, including the 2-storey extension constructed in the 1950s, which the Complainant has described as a structurally independent "second house".

The Floor Area

The Provider assessed the Complainant's claim on the basis of the floor area of the main building and the two extensions with a separate monetary provision being made for the outbuilding. The specific measurements used by the Provider have not been disputed by the Complainant's loss assessor. While the Complainant has disputed the floor area used in the assessment of his claim, he has not provided any diagram outlining the measurements he has used to calculate the floor area. In the Complainant's submissions outlined above, he states that the floor area of his house and shed is 127 square metres however, in a letter dated 23 **January 2018**, the Complainant estimates the floor area of these buildings as144 square metres.

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As noted above, I am satisfied that the insured property comprises the main building including each of the two extensions and the outbuilding. I am also satisfied that the measurements attributed to each of these buildings by the Provider are reasonable. Therefore, I do not accept that the Provider incorrectly calculated the floor area of the insured property.

Claim Assessment

The Complainant submits that the Provider wrongly and/or unfairly assessed his claim. The Provider assessed the Complainant's claim on the basis of the floor area of the property and made a separate provision for the outbuilding. As outlined above, I have found that the correct property was insured and that the Provider correctly estimated the floor area of the property. As also noted above, the Complainant's policy contains an underinsurance provision and this was applied when calculating the settlement amount of the Complainant's claim. Underinsurance is calculated by reference to the building sum insured and the value at risk. The more closely aligned these figures, the less a settlement amount will be reduced due to underinsurance. At inception, the building sum insured was €230,000. From 2012 to 2015, the sum insured was €140,000 which increased to €144,200 in 2016. The policy makes clear that it was the Complainant's responsibility to ensure that the sums insured were adequate. Furthermore, the Complainant was provided with a renewal schedule at each renewal date which outlined the sums insured under the policy. The Complainant has not made available any evidence from his assessor or from any other expert which would suggest that his claim was wrongly and/or unfairly assessed. Therefore, I am not satisfied that the Complainant's claim was incorrectly assessed.

Premium Increase

It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the re-negotiation of the terms of a policy of insurance which is a matter for the Provider and the Complainant and does not involve this Office whose role is an impartial adjudicator of complaints. 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.

The Complainant made a claim under his policy in **June 2017**. Following this claim, the Provider advised the Complainant that the sums insured under his policy may be underinsured and advised that this be increased to approximately €275,000. It is also a term under the Complainant's policy that his No Claims Discount is re-set to zero following a claim. At the time of the Complainant's renewal in **September 2017** he had a No Claims Discount of 2 years. Having considered these matters and the Provider's explanation, outlined above, I am not satisfied that the Provider wrongly and/or unreasonably increased the Complainant's renewal premium. Furthermore, I am not satisfied that the Provider's decision to offer fire-only cover, given the details which emerged regarding the occupation of the premises, was wrongful or was contrary to the provisions of the ***Financial Services and Pensions Ombudsman Act 2017***.

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On the basis of the evidence available, I do not consider it appropriate to uphold any aspect of 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

30 March 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.