



<u>Decision Ref:</u>	2020-0131
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Mis-selling (insurance) Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a home insurance policy.

The Complainant's Case

The Complainant submits that she telephoned the Provider in **August 2011** to ask about home insurance on a *"holiday home"*, stating that the property was *"a concrete structure"*. She states that during this call the Provider asked a number of questions regarding the property to be insured, including the material the property was constructed from. When asked if the property was *"standard construction bricks and mortar"*, the Complainant states she replied *"it's timber and then.... plastered outside"*. The Complainant contends that she told the Provider that the roof was *"steel cladding....in sheets"*, and that the Provider then referred the matter to the underwriters before reverting to her to advise her of the premium cost.

The Complainant submits that she telephoned the Provider again in October 2011, stating that she had received the Provider's proposal. She states that during this call, the Provider wanted to *"run through the details"* of the previous calls again, and, after doing so the Provider stated that the premium was *"still the same"*. The Complainant contends that she paid in full on the phone, using her daughter's credit card, and that the Provider *"put [her] on cover straight away"*.

The Complainant asserts that she made a claim for damage to her property, caused by a “freak storm” in **January 2016**, but that her claim was repudiated by the policy underwriters and the policy voided from inception. She submits that despite her advising the Provider (when proposing for insurance) that the property was “a mobile home with chicken wire fixed on [the] outside and plastered to secure and insulate it” that the Provider documented that it was constructed from “bricks and blocks”. The Complainant states that she had written on the Provider’s proposal form that it was a “mobile home 40ft outside walls have been treated with chicken wire & plastered & insulated it is on its axles & can be towed”.

The Complainant wants the Provider to pay for the cost of repair of damage caused to her property by a “freak storm” in January 2016, namely the sum of “€33,500”.

The Provider’s Case

The Provider contends that it furnished the Complainant with an insurance proposal form which faithfully recorded the details disclosed by her in the relevant phone calls, to the effect that the property was built with bricks and mortar. The Provider relies on the fact that the Complainant did not seek to correct or amend this insurance proposal form.

The Provider submits that the Complainant stated during her quotation call in October 2011 that the roof of the property to be insured was “steel cladding”, and that this information necessitated a referral to the policy underwriters. The Provider states that the underwriters confirmed that the “steel cladding roof was not an issue”. The Provider further states that the Complainant was asked during the abovementioned quotation call whether her property “was built with brick and mortar” and that the Complainant “confirmed it was”.

The Complaint for Adjudication

The complaint is that the Provider:

1. Recorded an incorrect description of the Complainant’s property when taking her details for an insurance proposal, resulting ultimately in the underwriters voiding her policy from inception;
2. Proffered below-par customer service throughout.

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 13 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.

Audio Evidence

The Provider has furnished recordings of various phone calls had between the Provider and the Complainant. It will be useful to set out certain details from these calls hereunder:

12 August 2011

Complainant (C): *I want to get an enquiry about home insurance on a holiday home. Now it's a concrete structure, it's not a mobile or a caravan.*

Provider (P): *Ok and do you have any home insurance?*

C: *I have the house insurance is already with you.*

...

P: *And where is this house?*

C: [The Complainant provides the address of the property]

...

P: *What year was this house built?*

C: *It's about 10-year old now.*

/Cont'd...

P: *Is it standard construction bricks and mortar?*

C: *It's, eh, timber and then plastered outside*

P: *Timber frame with brick and plaster around it, is it?*

C: *Yeah, that's probably the way I should describe it.*

P: *Is your roof either slate or tiles?*

C: *Its not tiles, its cladding, steel cladding.*

P: *How would you describe that now?*

C: *It's like, it's in sheets, what do you call that stuff they used to put on roofs years ago?*

P: *Galvanised*

C: *Galvanised yeah, but it's not, it's a different product altogether, a lot of it is used on warehouses and stuff like that.*

...

24 October 2011

P: *And what year was it built?*

C: *What would it have been...*

P: *Let me see what we had, we had '01 here*

C: *Yeah*

P: *The last time.*

C: *Well that would be near enough*

P: *In around then anyway*

C: *Around 12 years yeah*

P: *Ok and its all standard construction with bricks and mortar?*

C: *Eh yes, the...*

P: *And the roof is slates or tiles?*

/Cont'd...

C: *Mortar...yeah, the roof is like tiled*

P: *That's grand. And there is also roof made of steel cladding as well*

C: *That's right.*

...

Analysis

The Complainant's complaint form to this office states the following:

Home Insurance Proposal Form that I discussed with [the Provider] shows it was a mobile home with chicken wire fixed on outside & plastered to secure & insulate it.

...

[The Provider] have shown according to them that it was built of bricks & mortar. I had written on the proposal form it was a [brand name redacted] Mobile Home & was on its axles but had been plastered.

Though she may well have had no intention to mislead the Provider, the Complainant is in fact the author of the confusion and misinformation that permeated the inception of this policy. The Complainant relies on having advised the Provider, on the face of the 'Home Insurance Proposal Form' (referred to below) that the dwelling was a mobile home. However, in the course of the first phone call between the Complainant and the Provider regarding the arrangement of insurance, the first thing which the Complainant stated was that the house was made of concrete and was "not a mobile or caravan". This information was volunteered by the Complainant at the outset of the call and was not prompted in any manner by any question from the Provider. The information, insofar as she stated that the dwelling was made of concrete, and insofar as she stated that the dwelling was not a mobile home, was incorrect and is entirely inconsistent with the information which the Complainant maintains was made available in the 'Home Insurance Proposal Form'.

Later in the same call the Complainant appeared to provide somewhat different information when she stated that the dwelling was made of timber. However immediately thereafter, the Complainant agreed that the property had a timber frame "with brick and plaster around it". This was also incorrect.

The Complainant was given a transcript of the phone call in question. Insofar as I understand it, the Complainant's explanation for her initial comments in the phone conversation of 12 August 2011 (as set out in handwritten comments on the transcript) is that the remarks stating that the house was not a mobile home related to her primary residence, and not to the holiday home for which she was seeking insurance. Having listened to call several times, I don't accept this. The comments very clearly in my opinion, related to the property in respect of which the Complainant was seeking an insurance quote.

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The Complainant did not correct the incorrect information in the course of the subsequent phone call of 24 October 2011. On the contrary, it was re-confirmed, albeit in a very brief exchange, that the dwelling was made of “*bricks and mortar*”. Thereafter, the Provider furnished the Complainant with a ‘Home Proposal Form’ which contained the information relayed by the Complainant in the phone calls described above including confirmation that the property was “*built of brick, stone or concrete*”. This form requested the Complainant to correct any errors and to return the form signed. The Complainant returned a signed form without any amendments.

With regard to the ‘Home Insurance Proposal Form’ referenced by the Complainant, in a letter to this office dated 10 October 2017, the Complainant relays as follows with regard to the form which she states was given to the Provider in 2011:

When packing & disposing of paperwork in my move to [the holiday home] I found the Proposal Form which was forwarded to [the Provider] for house cover.

A copy of the ‘**Property Owners Insurance Proposal Form**’ to which the Complainant was referring was enclosed with the letter to this office of 10 October 2017 and this form included the following handwritten entry in the ‘Additional Information’ box:

“[Brand name redacted] Mobile Home 40ft outside walls have been treated with chicken wire & plastered & insulated it is on its axles & can be towed.”

The form provided by the Complainant is unsigned. The Provider disputes ever receiving this form and maintains that it was first brought to its attention in the course of this office’s investigation of this complaint. Indeed, the Provider goes on to point out that the form is not a form produced by the Provider and therefore it is not a form the Provider could have sent to the Complainant. The Provider has instead furnished a signed version of a ‘Home Proposal Form’ (as discussed above) which it states it sent to the Complainant and which was returned to it and which contains no references to the dwelling being a mobile home.

In a letter to this office dated 22 October 2018, the Complainant states as follows:

I did not check the details of the proposal form as I had paid the premium by credit card on the conversation which I had with them.

In a different letter to this office dated 25 May 2019, the Complainant states as follows:

I would not have any reason to question the proposal form as I had my policy documents and I never had a problem on any of my other documents.

...

...that with the Policy Document so I did not check the proposal form. I had a number of policies with the Provider I never had a problem with them so I trusted them that all was right.

/Cont’d...

These comments are not consistent with the Complainant's earlier statement that she reviewed the proposal form and made the handwritten entry describing the dwelling as a mobile home.

In all the circumstances, I am satisfied that the Complainant, on two separate occasions, provided incorrect information to the Provider as regards the nature of the dwelling in respect of which insurance was sought. Terms were offered to the Complainant on the basis of the incorrect information provided by the Complainant and I am satisfied that the Complainant did not at any point correct these details. In such circumstances, having discovered that the policy terms were extended on the basis of a completely inaccurate description of the insured property, I am satisfied that the Provider was entitled to deem this inaccuracy to be a non-disclosure of a material fact and to decline the Complainant's claim and to void the policy from inception.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainant, I am not in a position to uphold the 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**

8 April 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.