An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0140
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Failure to provide product/service information Delayed or inadequate communication Poor wording/ambiguity of policy Disagreement regarding Settlement amount offered
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants incepted a home insurance policy with the Provider on **5 October 2013.** On **21 April 2018,** the Complainants discovered a leak in their property.

This complainant concerns the decision by the Provider to rely on the average clause contained in the Complainants' policy. The Complainants state that this clause was not brought to their attention at the time of inception of their policy.

The Complainants further complain that the Provider proposed unreasonably low claim settlement amounts.

The Complainants' Case

The Complainants held a home insurance policy with the Provider. On **21 April 2018,** the Complainants discovered a leak in their property. The Complainants *"lifted the carpet and discovered a large wet area in the concrete".* The Complainants contacted a plumber who *"advised that the leak had spread over a large area over a period of time".*

The Complainants contacted a loss assessor who visited the Complainants property on **23 April 2018,** and again on **4 May 2019**, accompanied by a representative of the Provider.

The Complainants state:

> *"On Friday 18 May 2018 while attending another conference [a third-party broker] with whom I arranged my home insurance) contacted me.*
>
> *She advised that the Provider had notified them that I had submitted a claim, but their assessor had advised that I was under insured. She suggested that I up cover to €232,000.00 until renewal at no additional cost. I discussed this with her and increased cover"*

The Complainants submitted a claim to the Provider under the home insurance policy. The Complainants' Public Loss Assessor advised the Complainants that:

> *"he had supplied all that was required for the claim which he advised was for €20,000.00".*

The Complainants state that they were never advised of or shown the claim details. The Complainants further state that on **11 June 2018** they contacted the Provider and were advised that as they had engaged an assessor the Provider could not talk to the Complainants.

The Complainants state:

> *"What is currently on offer after fees is €8,364.70 to cover plumber, replacing pipes, concrete, carpet and underlay for corridor and hall. Flooring for four bedrooms and wardrobes in at least three maybe four, also skirting in corridor, hall and bedroom. While I understand that as far as the Provider is concerned, we are underinsured by as they state a third, this offer is a joke".*

The Complainants agreed to *"accept the paltry offer in order that we might get our home back to some standard of comfort for Christmas".* The Complainants state that they were never advised about the rebuild costs when taking out the insurance policy either directly or through a broker.

The Complainants state that their home insurance policy was due for renewal on **5 October 2018** and they had no choice but to renew with the Provider as no one would provide a quote while there was a claim outstanding.

<u>The Provider's Case</u>

The Provider states that the Complainants' policy was incepted and subsequently renewed through an intermediary with a start date of **05 October 2013.** The Complainants' policy provides cover for the Complainants' home and contents.

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The Provider states that the sum insured on the date of loss was:

> *"Buildings: €200,000*
> *Contents: €40,000"*

The Provider states that its policy records indicate that prior to this complaint being raised, the Complainants had not raised any queries or objections to the information contained with the policy documentation.

The Provider notes that the Complainants have admitted that they did not read the full terms, conditions, limits and exclusions of the policy before confirming acceptance of the contract of insurance.

The Provider states that the onus rests with the Complainants to read all policy documents. The Provider further states that the fact that the Complainants did not read the relevant provision does not prevent the Provider from relying on it.

The Provider states that the average clause has always formed part of the Complainants' policy since inception in **October 2013**. The average clause is set out in the Complainants' schedule of insurance.

> *"HW22 – Average Clause – Building & Contents*
>
> *For any event insured relating to your Building and Contents, if at the time of any loss or damage, the Contents are worth more or the Buildings reinstatement cost is more than the declared sums insured, then you will be your own insurer for the difference and will bear a proportionate share of the loss".*

The Provider states that its loss adjustor attended the Complainants' property on **04 May 2018** to carry out a site inspection following the report of the damage being caused as a result of a leak on an underfloor heating pipe. The Provider states that this included determining if the sum insured was sufficient in order to verify the claim. The Provider states that the initial investigation carried out by its loss adjustor determined that the Value at Risk (VAR) should have been €332,354. This would be the cost to rebuild the house in the event of a total loss.

The Provider states that the Complainants' home was only insured for €200,000 which meant that the Complainants had underinsured the property by a significant amount.

In a letter dated **08 May 2018** the Provider wrote to the Complainants' public loss assessor advising it that the property was underinsured. The Provider also wrote to the Complainants' broker advising that the property was underinsured. As a result of this, the Complainants increased the sum insured to €332,000 on **22 June 2018.**

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The Provider states that at each renewal the Complainants were advised in writing to check that the building sum insured accurately reflected the cost of replacement as new. The Provider further states that it provided guidance on where to seek this information.

The Provider states that the following text appears on each renewal since the inception of the Complainants' policy on **05 October 2013**:

> *"**We strongly recommend** therefore that you review all of your policy sums insured carefully before you renew your policy with us to ensure that your buildings sum insured reflects current rebuilding costs for your house, and that the contents sum insured is adequate for replacement as new".*

The Provider states that the Complainants were provided with the policy booklet that contains the following definitions:

> ***"Buildings***
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> *Your home and its fixtures and fittings, interior decorations, swimming pools (but not outdoor spas and hot tubs), fuel, septic and service tanks, terraces, patios, decks, paths, driveways, tennis courts, walls, fences and gates for which you are legally responsible, all within the boundary of your home".*
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> ***Contents***
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> *Household goods, personal belongings and valuables, including personal money up to the limit shown in the schedule; within your home which you or any member of your household own or for which you are responsible. The most we will pay for Contents in your domestic outbuildings is shown in your schedule".*

The Provider states that the contents cover on the policy at the time of the claim was €40,000. This amount was set by the Complainants.

The Provider states that it has sympathy for the position that the Complainants find themselves in as a result of the underinsurance however, it cannot ignore the fact that they have freely admitted that they did not read the full terms, conditions, limits and exclusions of the policy before confirming acceptance of the contract of insurance.

The Complaint for Adjudication

The complaint for adjudication is that the Provider never advised the Complainants about the rebuild costs when taking out insurance and did not alert or explain to the Complainants to the presence of an average clause. The Complainants complain that the Provider proposed an unreasonably low claim settlement figure and reduced this settlement figure through use of the average clause. The Complainants further complain that the Provider stated that it could not talk to the Complainants as the Complainants had engaged an assessor.

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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 Complainants were 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 11 March 2020, outlining my preliminary determination 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.

The Complainants made a claim under their home insurance policy following a leak in their property on **21 April 2018.** The Complainants were advised that their property was underinsured in **May 2018** and increased their cover to €332,000 until renewal.

Following the submission of the Complainants' claim to the Provider. The Provider made an offer of €8,364.70 to cover plumber, replacing pipes, concrete, carpet and underlay for corridor and hall.

I note from the documentary evidence before me that the Complainants have submitted a report dated **07 July 2018** where the total cost of the repair and restoration work is €12,216.70.

I further note that the Complainants state that they were never advised of the existence of an average clause in the policy. The Provider states that since the Complainants' policy inception on **05 October 2013** to present, the average clause was contained in the policy endorsement.

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This 'HW22 Average Clause endorsement is set out in the policy schedule which was provided to the Complainants when the policy was purchased, at each policy mid term amendment and at each subsequent policy renewal to present.

I must therefore accept that the average clause was communicated to the Complainants. The responsibility rests with the policy holder to read the terms and conditions attached to the policy.

The Complainants state that they were never advised about the rebuild costs when taking out the policy. I note that under *"Extra notes to Section 1":*

> *Index-linking*
>
> *We continuously monitor a number of rebuilding and household goods indices and will adjust your building and contents sums insured each year using the index that we feel best protects you against the effects of inflation. However, in doing this we do not take account of the significant differences in customers' homes and* ***we strongly recommend that you work out your rebuilding costs using the Society of Chartered Surveyors' guidelines and carry out an inventory to work out the replacement costs of your home contents. We will be happy to adjust your sums insured in line with this.*** *You can find helpful guidelines on the Society of Chartered Surveyors' website".*

I must accept that all the relevant information in relation to the Complainants' policy was contained in the policy documentation provided at inception and each subsequent renewal dates.

The Complainants are unhappy that the Provider proposed an unreasonably low claim settlement figure. I note from the documentary evidence before me that the Value at Risk (VAR) was calculated at €332,354. The Complainants' home was insured for €200,000. I further note that a discussion took place on **22 June 2018** between the Complainants' public loss adjustor and the Provider's loss assessor in relation to the calculation of the VAR. The Complainants' public loss adjustor believed that VAR should be reduced as he did not consider the property to be a full dormer bungalow. The Complainants public loss assessor calculated the VAR as €281,256. The Provider's loss adjustor agreed to alter the VAR to €288,782 following a site inspection.

By email dated **07 June 2018** from the Provider's loss assessor to the Complainants' public loss assessor offering a settlement amount in the sum of €8,428.61. The Complainants agreed to accept this sum.

The Complainants further complain that the Provider stated that it could not talk to the Complainants as the Complainants had engaged an assessor. I note from audio evidence the First Complainant telephoned the Provider on **13 June 2016.** The First Complainant advised the claim handler of the difficulty she was having in relation to her public loss assessor.

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The claim handler advised the First Complainant that it had appointed a third party to deal with the claim on the Provider's behalf and therefore the Provider was not in possession of the information that the First Complainant was requesting.

On the basis of the evidence before me, I do not believe that the Provider acted wrongfully.

Rather, in my opinion, the Provider has dealt with this matter at all times in a reasonable fashion. Despite being under insured, the Provider's loss adjustor agreed to alter the VAR following submissions from the Complainants' loss assessor and a site inspection.

In relation to the Provider not dealing with the Complainants directly, once the Complainants decided to appoint their own assessor, I accept that the appropriate channel of communication was through that assessor.

For the reasons outlined above, 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

6 April 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.