An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0152
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Rejection of claim Rejection of claim- non-disclosure (life)
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a life insurance policy with the Provider in **July 2008**. At the time of proposing the policy, the Complainant's occupation was recorded as *bricklayer* and cover was offered to the Complainant on this basis. In **April 2016**, the Complainant made a claim under the policy for *Absence from Work Benefit*. On his claim form, the Complainant described his occupation as *labourer/groundworker* and subsequently confirmed to the Provider in **May 2016** that this was his occupation at the time of his application for cover. The Provider declined the claim and revoked the Complainant's *Absence from Work Benefit* on the basis that had the Provider been aware of the Complainant's actual occupation when the policy was incepted, it would have not have offered *Absence from Work Benefit* as it did not offer such cover to people employed as labourers/groundworkers.

The Complainant's Case

The Complainant sets out as follows:

> *"The Claimant, it is claimed stated that he was a brick layer when his occupation is that of a bricklayers labourer/labourer. The Respondent relies on Paragraph of the Policy which deals with 'Absence from Work Benefit'. Therein it is stated that the Respondent may not indemnity the policy if there is a change in circumstances. The Respondent is now attempting to refuse indemnification."*

It is stated that the Complainant objects to the Provider's refusal to indemnify him on the basis that:

> *"1 The Claimant was employed in the construction industry. Further, the Claimant was working as a bricklayers labourer/labourer which carries with it similar levels of occupational risk to that of a bricklayer. 2 Any miss quoting of the Claimants occupation was done in error and in no way was designed to mislead. The implication of the Respondents refusal to indemnify is that the Claimant miss stated his occupation for the purpose of obtaining cheaper premiums. This is untrue and unfair. If the Claimant wised (sic) to mislead for the purposes of obtaining cheaper premiums he would of chosen many other occupations less hazardous to the construction industry. Further, the Claimants occupation is broadly aligned to the that (sic) of a bricklayer. 3 The Claimant has at all times acted honestly and sincerely in the matter."*

In resolution of this complaint, the Complainant wants *"[f]ull payment of the sums due"* of €6,514.28.

The Provider's Case

The Provider advises that its Insurance and Investment Manager (**the manager**) met with the Complainant on **21 July 2008**. During this meeting the manager completed a personal review of the Complainant and based on the information provided, it was recommended that the Complainant consider taking out a Personal Retirement Savings Account and, as he was expecting a child later that year and had no other cover in place, it was also recommended that the Complainant consider taking out life insurance which the Complainant decided to do.

The Provider states that the manager asked the Complainant a series of questions relating to his personal financial circumstances, including his occupation. The Provider explains, at that time, it was necessary for occupational details to be manually entered into a free text box on its system. There was no dropdown list of potential occupations to choose from. The Provider submits, referring to the personal review form, that the Complainant confirmed his occupation as that of a bricklayer.

When completing the application form and to facilitate the underwriting of the Complainant's policy, the Provider states that the Complainant was also required to answer a series of questions relating to his health and lifestyle. The Provider submits, similar to the personal review, that the responses to many of the questions asked on the application form, including occupational details, needed to be manually recorded. The Provider points out that the Complainant confirmed on the application form that he was employed as a bricklayer. The Complainant also confirmed this occupation involved manual work, that the *"Heaviest Lift is Normal Blocks"* and that he did not work at heights greater than 10 feet.

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The Provider advises that when all of the Complainant's responses had been recorded by the manager, the application form was printed, reviewed and signed by the Complainant. By signing the application form, the Provider submits that the Complainant confirmed his acknowledgement of a number of declarations relating to his duty to disclose all material and relevant facts. The Provider explains that the Complainant was also provided with a quotation during the meeting. The Provider identifies a number of paragraphs setting out *Important Information* in relation to the policy. These have been set out by the Provider in its submission.

Following the meeting, the Provider states that the Complainant forwarded the completed application form to it in order to be underwritten. The Provider explains that in light of the occupation disclosed and in the absence of any serious medical conditions, cover was offered at ordinary rates. The Provider wrote to the Complainant on **28 July 2008** enclosing the policy schedule, conditions and important information booklet. The covering letter invited the Complainant to review the policy documents and to contact the Provider if he wished to make any changes. The policy schedule confirmed that the policy was held in the name of the Complainant for a 20 years term with a monthly premium of €40.76. The benefits were stated to be life cover of €5,000, additional critical illness benefit of €75,000 and *Absence From Work Benefit* of €300 per week subject to the policy conditions. The Provider states that the policy schedule also confirmed the Complainant's occupation to be a bricklayer. The Provider then cites a number of conditions contained in the policy and information booklet.

The Provider explains that it has no record of the Complainant making contact with it following receipt of the policy documents and submits that it is important to note that statements were provided to the Complainant each year after the commencement of the policy. Each annual statement reminded the Complainant that for a full description of the benefits, conditions and exclusions relating to the policy, he should refer to the policy conditions.

The Provider advises that on **11 April 2016**, it received a telephone call from the Complainant where he outlined that he had been out of work since **January 2016** and wished to make a claim under the policy for absence of work benefit. The Complainant was advised during the call that a claim needed to be submitted within one month of the absence occurring and was also advised that a claim form would be posted to him and he should complete and return the form with a note explaining why the claim had not been submitted sooner.

The Provider submits that the Complainant received the claim form on **12 April 2016** and he telephoned the Provider that day to advise that he was having difficulty obtaining medical information from his GP. The Complainant was asked to complete the form as fully as possible and the Provider would liaise with his GP to obtain any additional information required. The partially completed form was received on **26 April 2016** and on **4 May 2016**, the Complainant contacted the Provider for an update on his claim.

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The Provider states that the Complainant was informed during the call that the claim form had been received and it was being assessed. The Complainant was also told that a written update would be provided to him in the coming days.

During the initial review of the claim form, the Provider explains it was noted that the Complainant confirmed his occupation to be that of a *"Labourer/Groundworker"* and that his duties involved *"Building, General Lifting, Labourer."* As the Complainant had confirmed that he was a bricklayer when he proposed for the policy and as the policy was underwritten on that basis, the Provider wrote to the Complainant on **9 May 2016** requesting that he provide answers to two questions relating to his occupation. The Complainant responded on **10 May 2016**, stating he was a *"Labourer 2002 – Present time"* and *"Im working as a Labourer since starting in 2002 – to present time."* The Provider states that taking these replies into consideration, it wrote to the Complainant on **16 May 2016** to inform him that it was removing the *Absence from Work Benefit* from his policy and that his claim was not payable.

The Provider advises that its records reflect that before the Complainant received the letter of **16 May 2016**, he had telephoned the Provider on **17 May 2016** requesting an update on his claim. The Provider advises that the Complainant was informed that his claim had been assessed but regretfully it was being declined as the Provider did not offer *Absence from Work Benefit* to labourers as the type of work performed by labourers is more hazardous than that of a bricklayer.

The Provider advises that it did not hear anything further from the Complainant and a letter was issued to him on **13 June 2016** to confirm that following the removal of *Absence from Work Benefit* from the policy, his monthly premium would be reduced to €30. The Provider states that while not obliged to do so, the letter enclosed a cheque in the sum of €997.82 which represented a refund of the premiums the Complainant had paid in respect of *Absence from Work Benefit*.

Some eight months later, the Provider explains that it received a letter from the Complainant's solicitors dated **1 February 2017** requesting copies of the policy terms and conditions, and information regarding the Provider's appeals mechanism. The letter also outlined that the cheque was being held by them and it had not been cashed. The Provider states that it responded on **21 February 2017**. This response is set out in the Provider's submission. The Provider states that it did not hear from the Complainant or his solicitors and wrote to the Complainant's solicitors on **25 October 2017** to advise that the cheque was out of date and could be re-issued if required. The Provider advises that the Complainant's solicitors wrote to it by letter dated **21 November 2017** disputing the decision to decline the claim. The Provider states that it responded on **19 December 2017**.

The Provider explains that cover was offered to the Complainant on the basis of the information provided by him on the application form. The Complainant confirmed his occupation as that of a bricklayer and by signing the application form, the Complainant confirmed the accuracy of the information provided.

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The Provider states that the policy schedule reflected the Complainant's occupation as a bricklayer and the policy documents highlighted the importance of notifying the Provider if any of the details were incorrect and in respect of the *Absence from Work Benefit*, specifically outlined that cover was being offered based on the occupation stated on the application form. The Provider points out that the covering letter to the policy documents invited the Complainant to contact the Provider if he wished to make any changes or if he had any questions in relation to the policy. The Provider states that the policy documents also highlighted the fact that the policy could be cancelled within the first 30 days if the Complainant was unhappy with it for any reason.

The Provider does not accept that the work of a bricklayer carries a similar level of risk to the work of a labourer. The Provider advises that the Complainant's occupation was only relevant insofar as the underwriting of the policy was concerned and was not a factor taken into account for the purposes of preparing a quotation, the contents of which are prescribed by regulation. From an underwriting perspective, the Provider explains that the work performed by a labourer is deemed to be unskilled heavy manual work which carries a higher level of occupational risk to the work of a bricklayer which is deemed to be skilled manual work. In light of the higher level of risk associated with the work performed by a labourer, the Provider does not and has never offered *Absence from Work Benefit* to labourers. The Provider states that this is not dissimilar to other providers in the market. The Provider submits that had the Complainant confirmed at the outset that he was a labourer it would not have been possible to offer him cover for *Absence from Work Benefit* and the decision to remove this cover was merely reflective of the decision that would have been made at the outset had the Complainant confirmed his occupation as a labourer.

The Provider explains that while *Absence from Work Benefit* was removed from the Complainant's policy, no adjustment was made or any rating applied to other benefits covered under the policy and as noted above, a reduction was also applied to the monthly premium. The Provider advises that while the policy remains in place, no premiums have been paid by the Complainant since **March 2016**. The benefit charges are currently being taken from the value that remains on the policy and once this value has been exhausted, the policy will lapse.

<u>The Complainant's Response</u>

The Complainant's solicitor furnished a response to the Provider's submissions by letter dated **25 November 2019**, stating as follows:

> ***"1. Completing the Application Form***
>
> *… when [the Complainant] was answering the necessary questions for the application for Income Protection Insurance, it was the [Provider's manager] who was inputting the details manually into the online application.*

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There was no drop down box available and [the Provider's manager] inputted the occupation as 'bricklayer'. He proceeded to ask [the Complainant] a number of questions about his occupation including the weight of his heaviest lifts and the height he worked at.

There is no suggestion from the Company that these latter questions were answered inaccurately.

The said meeting with [the Provider's manager] took place in July 2008, some 11 years ago and [the Complainant] fairly admits that his recollection of same is hazy. [The Complainant] believes he may have described his occupation as 'bricklayer's labourer' to [the Provider's manager].

[The Complainant] has no experience within the insurance business and would have been entirely unaware of any underwriting criteria with regard to different occupational classes. [The Complainant] would have had no reason to provide an inaccurate answer with regard to his occupation and there was no advantage to him doing so.

The Company states that had they been aware that he was employed as a 'labourer' he would not have been offered income protection.

It is respectfully submitted that in circumstances where there are two similar occupations within an industry, one which would be covered by income protection and one which would not, the onus is on the insurance company to make this known to the customer and to ensure that there are no misunderstandings as to the customer's exact occupation.

It is further submitted that this is even more essential where no drop down boxes of potential occupations are available to choose from and where the occupation is being entered onto the form by another party.

2. Policy Documents

It is accepted that [the Complainant] received the Policy documents and that his occupation is listed as 'bricklayer' therein. Again [it] is submitted that [the Complainant] would not have appreciated the significance of this error as it has not been explained to him that there was a substantial difference between 'bricklayer' and 'labourer' in terms of underwriting criteria.

…

None of [the Provider's] assumptions are predicated upon [the Complainant] being a bricklayer. A clear reference to his employment as a bricklayer is this section would have put [the Complainant] on notice that a discrepancy in his occupation could render his policy void.

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The Company also makes reference to the fact that each year [the Complainant] received statements from the Company in relation to the Policy …

None of these statements include any reference to [the Complainant's] occupation.

…

When [the Complainant] manually completed the claim form and the subsequent request for further information by the Company, he stated his occupation as 'Labourer/Groundworker' on each occasion.

There was no hesitation in providing this information, [the Complainant] provided it without any reluctance on the claim form and answered the request for further information within one day of receiving same.

It is submitted that this is indicative of the bona fides of [the Complainant] and clearly shows he had no knowledge of the discrepancy surrounding his occupation and the significance thereof.

The Company have not provided any evidence to show that, had they been aware of [the Complainant's] true occupation, he would have been automatically declined cover.

The onus was on the Company (through [the Provider's manager]) to ensure that [the Complainant] was aware of the importance of stating accurately his occupation. The occupations of bricklayer, brickie, bricklayer's labourer, ground worker are often conflated and it is respectfully submitted that the Company should have ensured [the Complainant] was aware of the distinction between them for underwriting purposes.

Had [the Complainant] been informed at the time he could not be covered by the Company he could have taken steps to seek cover elsewhere. …"

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably declined the Complainant's claim under the policy.

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.

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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 23 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Complainant's representative to this Office dated 25 March 2020.

2. E-mail from the Provider to this Office dated 26 March 2020.

3. E-mail from the Provider to this Office dated 2 April 2020.

The above submissions were exchanged between the parties.

Following consideration of these additional submissions and all the submissions and evidence furnished by the parties to this Office, I set out below my final determination.

21 July 2008 Meeting

A number of documents were completed during the meeting that took place between the Complainant and the Provider's manager on **21 July 2008**. On page 2 of *Personal Review* document, the Complainant's occupation is recorded as *bricklayer*.

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The *Our Recommendations and Reasons Why for* document states:

> *"After considering the information provided by you in the Personal and Financial Review this document outlines our recommendations.*
>
> *…*
>
> *The actions, if any, you have decided to take based on our recommendations, will be contained in your completed Proposal(s). If you disagree with any of the recommendations please contact me and I will discuss with you further. …"*

Application Form

The Complainant signed an application form dated **21 July 2008**. This form contains a number of declarations and conveys certain important information regarding the Complainant's application. Starting at page 8, the Complainant signed the following declaration:

> *"**Disclosure Declaration***
>
> *The insurance intermediary has provided me with:*
>
> 1. *Part 1 of the quotation, incorporating client specific details and the number of this quotation is 53 and*
>
> *2. Part 2 of the quotation, which provides further relevant information."*

Page 9 of the application form sets out certain important information:

> *"**IMPORTANT INFORMATION***
>
> ***I understand** the following:*
>
> ***Failure to disclose all material facts could render your contract void. Material facts are those which an insurer would regard as likely to influence the assessment and acceptance of a proposal for insurance. If you are in doubt as to whether certain facts are material such facts should be disclosed."***

A *Needs Analysis* is outlined on page 10 as follows:

> *"**NEEDS ANALYSIS***
>
> ***I understand:***
>
> 1. *the quote given to me, which my Insurance & Investment Manager has discussed with me.*

/Cont'd…

2. *any needs analysis produced is based on information I have provided by any means and that if I have declined to provide certain information, this may affect the needs analysis produced. I have decided to take out this policy.*

3. *the long term nature of this plan.*

4. *a copy of the personal financial review and/or a copy of all information provided in my application is available on request."*

Finally, page 11 contains the following declarations:

*"**I declare** that*

1. *I have disclosed all relevant facts; and*

2. *to the best of my knowledge, all statements made on this application form and during the sales process (whether recorded electronically or in writing) made by me are true and completed.*
   …

***I agree** to the following:*

1. *all of the statements made on this application form (whether recorded electronically or in writing) and others made by me in connection with this application shall form the basis of the contract between you and me. …"*

Quotation – Part 2

Part 2 of the quotation states:

"A.(6) Can the policy be cancelled or amended by the insurer?

Policies are based on information given in the proposal form and other information and we may refuse any claim if it appears that material information was not disclosed or was untrue. By material information we mean information which would affect the terms we offer you or which would affect our decision to issue you with a policy.

If there is a change in occupation, we reserve the right to change the terms or the premiums charged under the Life Cover, Critical Illness, Critical Illness Plus, Broken Bones and Absence from Work sections.

…

A.(8) Additional information in relation to your policy

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Optional benefits available on policy

Part 1 of your personal quotation will set out which protection benefits have been included in the calculation of the premium. When you apply for cover, the insurer will look at the information on the application form and, based on that and other information, decide the rates to offer you and / or to exclude certain benefits. The benefits applicable to your policy will be set out on the policy schedule. …"

Policy Brochure

A warning is contained on page 19 of the policy brochure which states:

*"**Please remember***

We won't be able to pay out if you give incorrect information or failed to disclose all relevant information when you took out your policy. The same applies if you did not tell us about a material fact that would have affected our decision to accept your application and to issue a policy to you. If you are in doubt as to whether any information should be entered on your application form, please include it. …"

Policy Documents

The Provider wrote to the Complainant by letter dated **28 July 2016** enclosing a number of policy documents. The letter states:

"We suggest that you study these documents closely. If you wish to make any changes to your Policy, please write directly to our Customer Service Department at the above address. …

If you want to discuss your plan, please call us on our Customer Service number …"

Policy Schedule

The Complainant's policy schedule states:

*"**This form shows your specific Policy details.** …*

This policy records that [the Provider] will in consideration of the payment by the Policyholder to the Company of Contributions as provided herein, grant the benefits described in this Policy in accordance with the particulars below and subject to the Conditions attached hereto and to any Endorsements to the Policy, which Conditions and Endorsements are to be deemed part of this Policy.

…

Occupation: *bricklayer …"*

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Policy Conditions

Section A of the policy conditions state:

> *"**2. Legal Basis***
>
> *For the policy to be valid, we require full and true disclosure in the proposal form and in any medical or other statements made by the policyholder or life assured in connection with the proposal form. …*
>
> *If there is any misrepresentation or failure to disclose material facts by or on behalf of the policy holder or life assured, the policy is void and all premiums paid will be retained by us. …"*

Section C deals with the benefits under the policy:

> *"**5. Absence from Work Benefit***
>
> *… In accepting a life assured for Absence from Work Benefit, we have taken account of his or her occupation as stated in the proposal form. If that occupation is changed, or the life assured starts a new occupation or if the life assured becomes unemployed you must inform us in writing of this. Depending on the new circumstances we may cancel Absence from Work Benefit, make changes to these conditions or revise the cost that is being paid for the benefit. …"*

Important Information Booklet

The *Important Information* booklet advises on page 3 to:

> *"**Check your Policy Schedule***
>
> *Please check the Policy Schedule, in conjunction with your policy conditions, to ensure that the details shown are correct …*
>
> *If the details are incorrect please inform us in writing of any changes that are required …"*

Claim for Absence of Work Benefit

The Complainant submitted a *Claim Form* dated **14 April 2016** in respect of an accident that occurred in **January 2016**. Section 2 of the form asks certain questions in respect of the Complainant's occupation:

> *"What is your current occupation?* *Labourer/Groundworker*
>
> *…*

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Please provide a description of your normal working duties to include details of any physical work you carry out:

Building, General Lifting, Labourer."

The Provider wrote to the Complainant by letter dated **9 May 2016** requesting that he complete the enclosed questionnaire. The Complainant was asked to confirm:

"1. If the occupational duties you disclosed at inception were accurate (i.e. a bricklayer)

Labourer 2002 – Present time.

2. What date did you change occupation from bricklayer to labourer?

Im working as a labourer since starting in 2002 – to present time."

Declinature of Claim

The Provider wrote to the Complainant on **16 May 2016**, to advise him that his claim was being declined and that *Absence from Work Benefit* was being removed from his policy.

The letter states:

"I note on your original application form dated 21 July 2008 your occupation was stated as a bricklayer. Our Chief Medical Officer has reviewed the information which you supplied. Had we been aware that you were a labourer, I regret to advise that we would not have been in a position to offer you Absence from Work benefit. Therefore, we have removed these benefits from your policy. Unfortunately, I regret to inform you that in this instance there is no claim payable.

We understand that removal of this benefit may be very disappointing to you, but we hope you will understand that our decision is merely a reflection of the one we would have made in July 2008 if, at the time, we had been afforded the opportunity to make a true assessment of your occupation.

…

Our actuaries are now calculating the revised premium payable on this policy taking into account the benefits we would have offered from the outset. As soon as they revert we will contact you to confirm your new premium. …"

The Provider wrote to the Complainant on **13 June 2016**, enclosing a premium refund of €997.82 in respect of the premiums paid toward the *Absence from Work Benefit*.

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The Complainant's solicitors wrote to the Provider on **1 February 2017** to advise that the Complainant was rejecting its decision and stated that the claim required further review. Following this, there was an exchange of correspondence between the Complainant's solicitors and the Provider. The Complainant's solicitors wrote to the Provider by letter dated **21 November 2017**, setting their position out in the following terms:

> *"From the documentation supplied to us by our client, we are satisfied that nowhere in any of the written documents, supplied by the bank at the time this policy was put in place and when it was signed by our client, was there any exclusion from the policy for a labourer.*
>
> *From the documentation supplied to us, in particular page 3 of 5, headed "Quote Date 21/07/2008" it is stated very clearly that your Quotation is based on the following assumptions (see paragraph 6 of your document) that the Insured is male and is not a smoker. The terms and conditions of the policy were never explained to our client and under law the Contra Proferentum Rule applies. Not one of those assumptions is predicated upon our client being a bricklayer.*
>
> *Accordingly, the purported action taken by yourselves to refuse our client cover, on the basis that he is a labourer and not a bricklayer, is in breach of contract …"*

Analysis

It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the underwriting conditions associated with a policy of insurance which is a matter within the commercial discretion of the Provider and does not involve this Office as an impartial adjudicator of complaints. I will not interfere with the commercial discretion of a financial service provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

The Provider explains that it has certain underwriting criteria. In the context of *Absence from Work Benefit*, this is effectively based on an applicant's occupation. The Complainant's policy was incepted on the basis that his occupation was that of a bricklayer. The Provider explains that it does not offer such cover to labourers due to the nature of this occupation and had it been aware of the Complainant's actual occupation at the proposal stage, it would not have offered this type of cover to the Complainant.

The evidence in this complaint is that the Complainant was a labourer since **2002** and that he was not employed as a bricklayer at the time the policy was proposed/incepted. This information was known to the Complainant at the time of proposing and inception the policy. When the Complainant was responding to or answering questions in respect of his proposal/application, I am satisfied that he was obliged to answer those questions to the best of his ability.

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Furthermore, when completing the proposal/application form and when furnished with the various policy documents, in particular the policy schedule, the Complainant was encouraged and obliged to ensure that the information recorded on and contained in these documents was accurate and correct. If the information was incorrect then the Complainant should have made the Provider aware of any inaccuracies.

In light of the fact that the Complainant was employed in the construction industry, I am satisfied that he knew or ought to have known that the occupation of a labourer/bricklayer's labourer was quite distinct from the occupation of a bricklayer. Furthermore, I find it difficult to reconcile the information provided at the proposal/inception stage of the policy with the information that was contained in the Complainant's claim form. The Complainant's occupation was described as bricklayer at proposal/inception however, when completing his claim form and in subsequent correspondence, the Complainant described his occupation as a labourer and also confirmed he was never employed as a bricklayer. If the Complainant understood the nature of the questions regarding his occupation when completing the claim form and responding to the Provider's subsequent queries, I am satisfied that it is reasonable to expect him to have understood the nature of the questions surrounding his occupation at the time the policy was being proposed/incepted. While the point has been made that the Provider's system did not contain a drop-down list of occupations, I do not accept that this prevented the Complainant from properly describing his occupation or caused his occupation to be incorrectly recorded. Since the Complainant's occupation had to be manually entered on the Provider's system, I do not see any limitation on the Provider's ability to record the Complainant's occupation as labourer as opposed to bricklayer.

I do not accept that the Provider was obliged to explain to the Complainant the underwriting consequences associated with being a bricklayer or labourer/bricklayer's labourer. First and foremost, the Complainant, as I have stated above, was obliged to describe his occupation to the best of his ability. If he had done, I accept that *Absence from Work Benefit* would not have been offered as part of his policy. Furthermore, I cannot see the logic of requiring the Provider to explain the underwriting consequences in respect of the two occupations or any other occupation potentially associated with this type of construction/building work in circumstances where the Complainant's occupation had been described as a bricklayer – an occupation for which *Absence from Work Benefit* was acceptable pursuant to the Provider's underwriting criteria.

Viewed as a whole, the documentation furnished to and signed by the Complainant, some of which I have set out above, clearly communicates the need to provide accurate and correct information when applying for insurance cover in order for the Provider to properly assess an application and determine whether and/or to what extent, to offer cover.

It is stated by the Complainant's solicitors that the Complainant *"… believes he may have described his occupation as 'bricklayer's labourer' to [the Provider's manager]."* This is a speculative statement and there is no evidence to suggest the Complainant advised the Provider that he was a bricklayer's labourer.

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If he did in fact do so and it was incorrectly recorded by the Provider, there is no evidence of any attempts on the part of the Complainant to notify or inform the Provider that his occupation was incorrectly recorded. Furthermore, I consider that the Complainant had sufficient opportunity to review the documentation relating to his policy to ascertain whether or not the information on which cover was being offered was correct prior to the policy coming into effect or shortly thereafter. While I am satisfied that no assertions or allegations are being made that the Complainant acted dishonestly at the proposal stage, there is no evidence to suggest that the Complainant disagreed with the details comprising his application for cover or that he made any attempts to query or inform the Provider as to the correct nature of his occupation.

Furthermore, the Complainant signed certain documents containing a number of warnings/important information expressing the need to disclose all relevant information. Additionally, section C of the policy conditions states: *"In accepting a life assured for Absence from Work Benefit, we have taken account of his or her occupation as stated in the proposal form."* The Complainant acknowledges receiving the various policy documents which he was also advised to *study closely*. Therefore, I accept that the Provider made appropriate efforts to make the Complainant aware of the basis on which cover would be provided under the policy and the need to provide accurate and correct information.

Having considered the evidence and submissions in this complaint, I cannot accept that the question as to Complainant's occupation was answered to the best of the Complainant's ability. Whether this was inadvertent or otherwise, the unfortunate consequences are the same.

Therefore, as *Absence from Work Benefit* cover was offered on the basis of incorrect information which was not the fault of the Provider, I must accept that, in the circumstances of this complaint, the Provider was entitled to revoke *Absence from Work Benefit* cover and decline the Complainant's claim.

I note that while the Provider was not required to do so, it had issued a cheque with a refund of the €997.82 in premiums paid by the Complainant for the Absence from Work aspect of the policy. After I issued my Preliminary Decision, I was informed that the cheque is now out of date, as it was never cashed by the Complainant when originally issued. The Provider has since confirmed it will reissue the refund by cheque or an electronic fund transfer, whichever is preferred by the Complainant. I welcome this action on the part of the Provider. This is now a matter between the parties.

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.

/Cont'd…

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

22 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.