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| <u>Decision Ref:</u> | 2020-0197 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Household Buildings |
| <u>Conduct(s) complained of:</u> | Rejection of claim Delayed or inadequate communication |
| <u>Outcome:</u> | Partially upheld |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a home insurance policy with the Provider.

The Complainant's Case

In and around **16 January 2017**, when she recalls there being “*a horrendous storm that day*”, the Complainant says that her neighbour called to her door to inform her that the boundary wall between her property and the adjacent property, was leaning at a dangerous angle over her neighbour’s tarmacadam drive and electric gates. She advises that her neighbour’s son, a builder, told her that he could repair the wall and that they could split the cost 50/50. The Complainant initially assumed that half the cost of the repairs would be of such an amount that she would not submit a claim under her home insurance policy. By **May 2017**, however, the neighbour had told the Complainant that she would have to arrange herself to repair the wall and bear the full cost.

The Complainant, having previously raised the matter with the Provider by telephone in **January/February 2017** and on a number of occasions in the intervening period, telephoned the Provider on **10 May 2017** to advise that the neighbour had informed her that they were no longer prepared to pay half the cost of repairing the wall. The Provider registered a claim for the Complainant and assigned a Loss Adjuster.

The Complainant states that during his site inspection on **16 May 2017**, the Loss Adjuster advised that she had a valid claim and that she should now obtain from a builder, a report as to the cause of the damage, along with a repairs estimate. In this regard, the Complainant notes that *“of the builders I contacted, most declined without even inspecting, as they were unwilling to provide a report on the cause [of the damage]. One [builder] provided an estimate only, but it was for c. €28k”*.

The Complainant’s Solicitors wrote to her neighbour on **12 July 2017** regarding the damaged wall and as they did not respond, a second letter issued on **18 September 2017** advising,

“Our client and her Insurers will not accept responsibility for anything other than 50% of the repair and maintenance of [the boundary wall].”

In addition, the Complainant’s Solicitors recommended that she ask the Provider to have the boundary wall repaired immediately and that the Provider then pursue her neighbour to recover 50% of the cost. The Complainant put this to the Provider by telephone on **22 June 2017** but notes that

“this was not acceptable and I was told they “can’t take on full cost of wall”. It did however, offer to give me my half of the cost of the repairs, which I could then hold until my neighbours reverted with a plan of action. [The Provider] felt this would close the claim. However, legal advice was against me accepting my 50% now, so I declined”.

The Complainant also notes that

“at the end of September [2017], another man called to see the wall – a full nine months after the damage occurred and naturally the wall continues to lean further, pulling away from the adjoining wall. Unfortunately, my neighbours were away, so he did not get to speak to them, nor go onto my neighbours’ driveway. This was a very brief visit of perhaps ten minutes and then he left, without any discussion with me”.

The Complainant then states that *“out of the blue”* on **21 November 2017**, the Loss Adjuster telephoned to advise that the Provider was now declining cover. The Provider then wrote to the Complainant on **11 December 2017** to advise that the damage to the wall had been ongoing for some time and was therefore gradual in nature and not the result of a single one-off event, thus her policy provided no cover in respect of the loss.

In addition, the Provider also advised the Complainant that during its previous conversations with her, it had only discussed the matter of ownership of the wall and that the issue of cover was never raised. In this regard, the Provider states that it did advise the Complainant that as the damaged wall was a boundary wall, she would only be able to claim for 50% of the repair costs, but that at no time did it advise her that such a claim had been accepted.

The Complainant, however, states that the Provider and its Loss Adjuster had “*confirmed cover from day of inspection & subsequent telephone calls but six months later suddenly decline liability*”. In this regard, in her letter to this Office dated **29 July 2019**, the Complainant submits, *inter alia*, as follows:

“[The Loss Adjuster] assured me it is a boundary wall and repairs are covered by my insurance, adding something to the effect – “That’s what insurance is for”. [The Provider Agent, Mr C.] later told me they would cover 50% of the total cost, the wall being a boundary wall”.

Having received a copy of the Provider file upon request, the Complainant notes, for example, Mr C.’s record of her telephone call with the Provider, created at 12:53 on 19 September 2017, which states, *inter alia*, as follows:

“[The Complainant] advised is the wall 50/50 or is it 100% hers and the neighbours think it is 100% hers. I advised it is a shared/party/boundary wall and therefore costs are split between the both sides. I queried with [the Complainant] if she sent in estimates and advised once estimates received we can issue letter advising our settlement offer is such a figure and as it is a boundary wall we are liable for 50% and therefore our offer is 50% of the figure”.

In her letter to this Office dated **25 April 2018**, the Complainant states that the Provider telephoned her that day and said

“they’d reviewed my case and improper issues were noted, so for today only, they’re offering me a sum in the order of €300 to compensate, but their November decision to decline my claim still stands”.

Furthermore, the Complainant notes that her next home insurance renewal notice dated **23 January 2018** quoted a renewal premium of €831.68, which was significantly higher than the €489.24 premium she had paid the previous year.

As a result, the Complainant purchased new cover online from the Provider on **29 January 2018** for just €590.33, some €240 cheaper than the renewal premium offered, even though she had increased the value of her property when completing the details online for the new policy.

The Complainant then received a telephone call from the Provider in **mid-February 2018** advising that she had not renewed her home insurance policy. In this regard, the Complainant told the Agent that

“ it had been renewed with [the Provider], using their online facility and gave her details. [The Agent] asked why I’d used the online facility and I replied that online prices are discounted, so it was cheaper than the figure quoted in their Renewal Letter of 23 Jan 2018.”

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The Agent then advised the Complainant that the reason for the premium differential was that there was still a live claim in respect of the wall on policy Xxxxxxx, which the Complainant did not declare online when purchasing her new cover. In this regard, the Complainant questions how there could still have been at that time, a live claim on her policy record, when the claim had previously been declined by, in the first instance, the Loss Adjuster in November 2017, and later by the Provider in December 2017.

The Complainant states *"I was 100% honest with the [Provider and Loss Adjuster] but do not feel they are now being the same with me"*.

The Provider's Case

Provider records indicate that the Complainant telephoned the Provider on **10 May 2017** regarding the damage to a 50-foot section of a 7-foot high concrete boundary wall between her property and the adjacent property. The Complainant had reported this some months earlier to the Provider, as having occurred on 16 January 2017 as possible Storm Damage. The Agent registered a claim. The delay in claim notification was explained by the Complainant as being attributable to issues experienced between her and her neighbour in terms of the ownership of the boundary wall.

The Provider instructed its Loss Adjuster on **10 May 2017** and an appointment was made with the Complainant for a site inspection on **16 May 2017**. The Loss Adjuster met with the Complainant and took note of the information she provided, in terms of the circumstances surrounding the loss and its cause, along with details of the issues to have emerged between her and her neighbours, in the context of ownership of the boundary wall and responsibility for the repairs.

The Complainant produced a letter to the Loss Adjuster dated **27 April 2017** that had been sent to her neighbours, wherein she alerted the neighbours to the fact that a builder had attended that day to examine the wall with a view to preparing an estimate for repairs. The Complainant explained the builder's concern that the wall was in danger of imminent collapse and sought clarification from the neighbours, as to the date the damage was first discovered by them.

The Provider says that in the course of his inspection, the Loss Adjuster carried out a detailed examination of the damaged boundary wall and the main dwelling, in accordance with normal operating procedures. This site inspection took approximately one hour and included the taking of photographs and dimensional measurements as well as the sketching of impacted areas.

The Loss Adjuster observed clear evidence of a notable lean in the boundary wall and most particularly in the areas close to a neighbours' entrance driveway. The wall, which appeared old, was observed to be part retaining (earth built up higher on one side than the other) and with one area showing displacement between sections of the wall.

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There was no clear evidence of storm damage and no evidence of recent cracking or recent movement. The latter is typically observed in a difference of discolouration between older exposed and weathered sections of the wall and areas of more recent collapse or movement such as might arise in the course of a storm. In the circumstances, the Loss Adjuster was unable to determine the precise cause of the damage and he believed that further investigation would be necessary to enable the matter to be considered appropriately and for the Provider to be in a position to positively rule in or out, the occurrence or contribution of storm damage.

The Provider says that as the cost of professional fees incurred in preparing a claim is not included in her policy cover, the Loss Adjuster requested the Complainant to secure (i) an appropriate professional report confirming the cause of damage and he also sought (ii) a contractor's estimate for the proposed building repairs. The amount of a claim remains a consideration in any evaluation that might arise as to whether a claim is covered or not and if so, to what extent. The Provider notes that a request for an estimate is not an admission of liability and on this occasion the Loss Adjuster considered the request for both a professional report on causation, along with a repair estimate, as appropriate.

Before concluding the site inspection, the Loss Adjuster furnished the Complainant with a copy of a Customer Charter Document explaining the claims process and his contact details as well as the Provider's Customer Service contact details, in the event that she was in any manner dissatisfied. He also furnished the Complainant with a Checklist Document detailing the documentation required to enable her claim to be considered, namely, the request for both a contractor's estimate for repair and a report detailing the cause of damage. The Complainant signed copies of both documents on **16 May 2017** to confirm that they had been received.

In addition, the Provider says that the Loss Adjuster wrote to the Complainant on **17 May 2017** confirming his involvement and seeking the claims documentation previously requested. In this correspondence, the Loss Adjuster also alerted the Complainant to his observation that current sums insured on the policy were, in his opinion, inadequate and recommended that they be reviewed for future cover purposes.

On review of this file by the Provider and discussion with the Loss Adjuster, he had a very clear recollection of this matter and of his meeting and discussions with the Complainant. He was able to provide clear detail of his findings and advised that when he examined the wall, he could find no direct evidence of storm damage and in the circumstances sought a report on causation and a repair estimate, to enable the matter to be considered further, in order to conclusively rule in or out the possibility that the occurrence of storm had caused or been a contributing factor to the wall's condition.

The Loss Adjuster is adamant that he did not confirm to the Complainant, as suggested, that the damage to the wall was covered by the policy, nor did he say words to the effect that *"yes it does, that's what insurance is for"*, as also suggested.

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Upon his return to his office after the site inspection, the Loss Adjuster undertook online searches of Met Eireann records to identify the occurrence of storm conditions on **16 January 2017** or in the days leading up to or following this date, but no evidence of storm conditions was identified for the days in question.

The Provider considers that the requirement of a report on cause and its importance to the further consideration of the Complainant's claim, is reinforced by the correspondence it received it from her own building contractor, M. B. dated 4 July 2017. This stated that he would not be able to provide a report on the causation or on the current state of the boundary wall and that it was, in his view, essential that a qualified engineer or building surveyor inspect the current condition of the wall and provide a detailed report before the commencement of any works. This contractor did quote the repairs cost as €28,478.85 inclusive of VAT, for estimate purposes only.

The Provider notes that as the wall is a shared boundary wall the Complainant is only responsible for 50% of the full cost, which would therefore be the limit of any indemnity due under her home insurance policy, the neighbour being responsible for the remaining 50%. The only time that full payment would be made in a claim regarding a shared boundary wall is where the Provider insures both properties and both parties wished to claim. As a result, the Provider paying for the full damage to the wall in this instance would be outside the scope of the policy cover and contrary to principles of insurance. In this regard, the Provider notes that during a telephone call with the Complainant on **22 June 2017**, it reiterated that it was only liable for 50% of the damage and no specific claim settlement offer was made, as no estimate had been received at that point.

The Provider notes that between May and September 2017 the Complainant sought to secure a report as to the cause of the damage to the boundary wall, as requested. In this regard, she was repeatedly frustrated in her attempts to do so and was let down by builders who either did not attend as arranged or having attended, advised that they were not in a position to report on the condition of the wall or the cause of the damage. Throughout this period, the Loss Adjuster maintained close communication with the Complainant, speaking with her by telephone with follow up in writing on a regular basis.

The Provider says that by late **September 2017**, the Complainant had still not succeeded in securing the required report and sought the assistance of the Provider. Notwithstanding that such costs to prepare a claim are not provided for under her policy cover, the Provider, on foot of an earlier request from the Complainant and in the absence of meaningful progress, agreed to arrange to fund an independent engineering inspection. As a result, a Structural Engineer inspected the wall on **29 September 2017** in an effort to assist the Complainant in determining the cause of the damage to the boundary wall, necessary to allow policy cover to be determined.

In the resultant Preliminary Report on Boundary Wall dated **5 October 2017**, the Structural Engineer advised that there was a very significant lean in the boundary wall alongside the neighbour's driveway, rendering it unstable, dangerous and at risk of collapse at any time. In this regard, he advised that the neighbour should be advised that the wall was dangerous, temporary fencing should be erected in the vicinity and the adjacent driveway should not be used until the wall was made safe. He noted that a second driveway was available to the neighbour that could be used.

The Engineer noted that the wall did not appear to be leaning over its entire length but rather that the lean was along the part of the wall (approximately 20 metres in length) where the height of retained ground against it was in the order of 1.4 – 1.7 metres. The wall was approximately 250mm thick above ground level, the thickness below ground level could not be accessed or measured. The Engineer advised that if the thickness below ground level was the same as that above ground level, as was likely, then a 250mm wall thickness would only adequately support ground retaining to approximately 0.5 metres.

The Provider says, in addition, that the Engineer advised that the lean in the wall had the appearance of occurring gradually over time due to lateral ground pressure behind the wall. No evidence of sudden movement such as fresh cracking was observed that would indicate that the lean had recently occurred. The Engineer also advised that the localised cracking at the corner of the wall closest to X. Road appeared to be due to pressure from the tree roots beside the wall at that location. In addition, he concluded that the reported timber decay to the neighbour's gate was unrelated to the movement in the wall.

On receipt of this Report, the Provider and the Loss Adjuster carefully reviewed all of the information and concluded that there was no evidence of damage caused by Storm in January 2017 as originally claimed; rather the evidence indicated that the damage to the wall had occurred gradually over a period of time due to lateral ground pressure mainly and due to the pressure from tree roots in one location also.

In the circumstances, it was established that the loss was not covered and that the Complainant's claim would regrettably have to be declined. The Loss Adjuster telephoned the Complainant on 21 November 2017 to advise of the decision to decline liability and explained the rationale to this determination, and this decision was also issued to her in writing the same day.

In this regard, the Provider notes that Section 1, '**Buildings**', of the applicable Household Insurance Policy booklet provides, *inter alia*, at pg. 8, as follows:

"We will cover You by payment or, at Our option, by reinstatement, replacement or repair, for loss or damage to the Buildings by any of the causes listed in Section 1 subject to the terms, conditions and exclusions set out in this policy ...

Your Policy covers loss or damage to the Buildings arising from the following causes:

...

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INSURED CAUSES ...

3. Storm or flood ...

EXCLUSIONS

We will not cover loss or damaged caused ...

iv by any gradually operating cause”.

In addition, the Provider notes that Section 9, ‘**Claims**’, of this booklet provides, *inter alia*, at pg. 45, as follows:

“YOUR DUTIES

What You must do

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

The Complainant was issued with policy renewal terms on 23 January 2018 for a premium of €831.68. This was the renewal rate based on the risk being renewed and no claims loading applied. The Complainant then chose to incept a new policy with the Provider rather than renew her existing policy. In this regard, different rates are offered for new business and it is for that reason that the premium was lower when she took out a new policy. However, the Provider notes that her claim relating to the boundary wall is still open as its decision to decline is under appeal by the Complainant by way of her complaint to the Financial Services and Pensions Ombudsman, and therefore the claim ought to have been declared by the Complainant when incepting her new insurance policy, which it was not.

The Provider reviewed the Complainant’s claim and ensuing complaint as part of a subject matter access request and the handling of her initial complaint to the Provider was considered to be poor. The handler of the initial complaint was then asked to review the file in its entirety and contact the Complainant in relation to the service issues that she had. Regrettably this was poorly handled and the Provider accepts that it did not explain to the Complainant why it was contacting her at that time and on what basis it was offering her the sum of €300.

Having fully reviewed this matter, it remains the Provider’s position that there is no evidence of the operation of an insured peril, in this case Storm. Accordingly, the Provider is satisfied that it declined the Complainant’s claim in accordance with the terms and conditions of her home insurance policy.

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However, the Provider has apologised for some service issues that the Complainant encountered. The discussions around establishing ownership of the wall distracted from pushing forward to establish if an insured event had in fact occurred and if the Provider would therefore be dealing with the Complainant's claim under her policy. In addition, the engineering evidence obtained in October 2017 was not actioned as swiftly as it should have been. Furthermore, the Provider accepts that the Complainant's subsequent complaint following the claim declinature was poorly dealt with, and it accepts that this service is not the service that she is entitled to expect.

In recognition of these difficulties and in an effort to resolve this matter, the Provider offered the Complainant a customer service payment in the amount of €2,500.

The Complaint for Adjudication

The Complainant's complaint is that the Provider wrongly or unfairly declined cover in respect of damage to a boundary wall on her property, after it had previously confirmed cover to her on a number of occasions.

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 **29 April 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The complaint at hand is, in essence, that the Provider wrongly or unfairly declined cover in respect of damage to a boundary wall on the Complainant's property, after it had previously confirmed cover to the Complainant on a number of occasions.

In this regard, the Complainant held a home insurance policy with the Provider. In and around 16 January 2017, when she recalls there being "*a horrendous storm that day*", the Complainant's neighbour called to her door to inform her that the boundary wall between her property and the adjacent property was leaning at a dangerous angle over the neighbour's tarmac driveway and electric gates. The Complainant advises that the neighbour's son, a builder, told her that he could repair the wall and that they could split the cost 50/50. The Complainant initially assumed that half the cost of the repairs would be of such an amount that she would not submit a claim under her home insurance policy. By May 2017, however, the neighbour had told the Complainant that she would have to arrange herself to repair the wall and bear the full cost.

The Complainant, having previously raised the matter with the Provider by telephone in January/February 2017 and on a number of occasions afterwards, then telephoned the Provider on **10 May 2017** to advise that the neighbours had informed her that they were no longer prepared to pay half the cost of repairing the wall. The Provider registered a claim for the Complainant and assigned a Loss Adjuster.

The Complainant states that during his site inspection on 16 May 2017, the Loss Adjuster advised her that she had a valid claim and that she was now to obtain from a builder, a report as to the cause of the damage, along with a repairs estimate. The Complainant encountered difficulty finding a building contractor to provide a report as to the cause of damage, though she did obtain a quote for repairs in the amount of €28,478.85 inclusive of VAT, for estimate purposes only. Eventually, in an effort to progress matters, the Provider agreed in **September 2017** to arrange and fund an independent engineering inspection of the wall, notwithstanding that such costs were not provided for under the policy cover, and this inspection took place on 29 September 2017.

The Complainant then states that "*out of the blue*" on 21 November 2017, the Loss Adjuster telephoned to advise her that cover was being declined as it was determined that the damage to the boundary wall had been ongoing for some time and it was therefore gradual in nature and not the result of a single one-off event. Her policy provided no cover in respect of such a loss.

The Complainant, however, states that the Provider and its Loss Adjuster "*confirmed cover from day of inspection & subsequent telephone calls but six months later suddenly decline liability*". The Loss Adjuster is, however, adamant that he did not confirm to the Complainant, as suggested, that the damage to the wall was covered by the policy. In addition, the Provider notes that during its previous telephone calls with the Complainant, it had only discussed the matter of ownership of the wall and that the issue of cover was never raised.

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In this regard, the Provider states that it did advise the Complainant that as the damaged wall was a boundary wall, she would only be able to claim for 50% of the repair costs, but that at no time did it advise her that such a claim had been accepted.

In my opinion, there are two elements to this complaint. Firstly, the FSPO must determine whether the Provider declined the Complainant's claim in accordance with the terms and conditions of her home insurance policy and secondly, this office must decide whether the Loss Adjuster and/or the Provider had confirmed to the Complainant prior to the claim declination that her loss (50% of the repair costs) would be covered by her policy.

In relation to the first element of this complaint, that is, whether the Provider declined the Complainant's claim in accordance with the terms and conditions of her home insurance policy, I have listened to a recording of the telephone call that the Complainant made to the Provider on 10 May 2017, during which the Agent first registered a claim. I note that this Agent confirmed at the outset that he had before him a record of the Complainant having telephoned previously regarding a lean in the boundary wall between her and her neighbour's property. (The Agent on a later telephone call on 18 May 2017 confirmed that according to Provider records, the Complainant first rang the Provider regarding the wall on **13 February 2018**).

It is clear from this recording that the Complainant had been trying to deal with the matter herself but she advised the Agent that

"[my neighbour's] insurance company thinks it's not their wall, they're not even partly responsible for it...it looks like I'm going to have to go to you lot and see – I still have a builder coming tonight at 7 o'clock, let him come and look at it and see what he would suggest – but it looks like I'm going to hand it over to you, do you know, have to hand it to yourself, we've got to find out whether this, I suppose, is it a party wall? I don't know how these things go".

I note that the Agent advised the Complainant that he would register a claim for her and appoint a Loss Adjuster, who would come to assess the damage. He also advised that she needed to obtain a report from a building contractor stating the cause of damage, as it would have to be an insured peril, and that the Loss Adjuster would determine if that was the cause and stated, *"That is the most important part"*. In addition, the Agent also advised that the Complainant needed to obtain an estimate for the repairs and that she was *"not to carry out full repairs just yet because we can't confirm cover over the phone"*. Furthermore, I note the following exchange:

Agent: *... you can put in a claim under your policy, what'll happen is, the, your insurance company will, well like I said, if it is determined that it is storm damage, you can only claim for 50% of the construction of that wall, ok?*

Complainant: *Ok -*

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Agent: *And then the neighbours ... their insurance company will have to pay the other 50%. So your insurance company will approach them anyway to pay the other half because they are liable for the other half of the wall.*

The Loss Adjuster carried out his inspection of the boundary wall on 16 May 2017 and the Provider has advised that he was unable to determine the precise cause of the damage. He believed that further investigation would be necessary to enable the matter to be considered appropriately and for the Provider to be in a position to positively rule in or out, the occurrence or contribution of storm damage.

In this regard, I note from the documentary evidence before me that Complainant signed a Policyholder's Checklist document at that meeting, which advised, as follows:

"To assist in the prompt investigation and resolution of your claim, the following documentation is awaited at the earliest opportunity ...

- ✓ *Contractor's estimate for proposed building repairs, with VAT number ...*
- ✓ *Other –
Report ...*

I confirm receipt of this document and understand the information that is required to progress my claim".

I note that home insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, Section 9, '**Claims**', of the applicable Household Insurance Policy booklet provides, *inter alia*, at pg. 45, as follows:

"YOUR DUTIES

What You must do

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

[Emphasis added]

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It is an insurance standard that the onus rests on the policyholder, as the insured, to show that the loss suffered was the result of an insured peril, in this case, that the damage to the boundary wall was due to storm damage. I note from the documentary evidence before me that the Complainant has not, in this instance, satisfied that requirement.

I note that the Provider agreed with the Complainant in September 2017 to arrange to fund an independent engineering inspection of the boundary wall, notwithstanding that such costs were not provided for under the policy cover. I am satisfied that this was a reasonable approach for the Provider to adopt at that time, given that the Complainant had herself been unable to obtain a report from a building contractor, outlining the cause of the damage to the wall, as first requested by the Loss Adjuster during his site inspection on 16 May 2017.

I note that following his inspection of the damaged boundary wall on 29 September 2017, the Engineer concluded in Section 4, '**Opinion**', of the Structural Engineer Report dated 5 October 2017, as follows:

4.1 There is a very significant lean in the boundary wall alongside the neighbour's driveway. The wall is leaning into the driveway. The wall is unstable, dangerous and would appear to be at risk of collapse at any time.

4.2 The neighbour should be advised that the wall is dangerous and that the driveway should not be used until the wall is made safe. The area around the wall should also be fenced off to prevent access close to the wall. We understand that there is a second driveway to the neighbour's property that could be used.

4.3 The wall does not appear to be leaning over its entire length. The lean is along the part of the wall (approximately the 20m length closest to [X. Road]) where the height of retained ground against the wall is in the order of 1.4m to 1.7 m.

4.4 The wall measures approximately 250mm thick above ground level. The thickness could not be measured below ground level and it is not possible to determine if the wall below ground level is constructed as a proper retaining wall or simply as a 250mm thick boundary wall. We would suggest that the latter is more likely.

4.5 If the wall is a 250mm thick boundary wall below ground level, it is totally inadequate to retain the height of the ground on the insured's side of the property. A 250mm thick concrete/blockwork wall would only be capable of safely retaining around 0.5m of ground.

4.6 The lean in the wall had the appearance of occurring gradually over time due to lateral ground pressure behind the wall. We did not observe any evidence of sudden movement in the wall (fresh cracking etc) which would indicate that the lean occurred recently.

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4.7 *The localised cracking at the corner of wall closest to [X. Road] appears to be due to pressure from the tree roots beside the wall at that location.*

4.8 *The reported timber decay damage to the neighbour's gate is unrelated to the movement in the wall".*

I am satisfied that it was reasonable for the Provider to conclude from the contents of this Report that the Complainant's loss, that is, the damage caused to the boundary wall, was as a result of gradual deterioration, which I note is specifically excluded from cover, by the terms and conditions of the Complainant's home insurance policy.

In this regard, Section 1, '**Buildings**', of the applicable Household Insurance Policy booklet provides, *inter alia*, at pg. 8, as follows:

"We will cover You by payment or, at Our option, by reinstatement, replacement or repair, for loss or damage to the Buildings by any of the causes listed in Section 1 subject to the terms, conditions and exclusions set out in this policy ...

*Your Policy covers loss or damage to the Buildings arising from the following causes:
...*

INSURED CAUSES ...

3. *Storm or flood ...*

EXCLUSIONS

We will not cover loss or damage caused ...

iv ***by any gradually operating cause"**.*

[Emphasis added]

Accordingly, I am satisfied that the Provider declined the Complainant's claim in accordance with the terms and conditions of her home insurance policy and its action in doing so was not wrongful.

In relation to the second element of the complaint at hand, that is, whether the Loss Adjuster and/or the Provider had confirmed to the Complainant prior to its decision to decline the claim that her loss (50% of the repair costs) would be covered by her policy, I note that the Complainant states that the Provider and its Loss Adjuster "*confirmed cover from day of inspection & subsequent telephone calls but six months later suddenly decline liability"*.

In this regard, in her letter to this Office dated 29 July 2019, the Complainant submits, *inter alia*, as follows:

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"[The Loss Adjuster] assured me it is a boundary wall and repairs are covered by my insurance, adding something to the effect – "That's what insurance is for"."

It is not possible for this Office to ascertain what specifically was discussed between the Complainant and the Loss Adjuster during his site inspection on 16 May 2017. Indeed, in her email to this Office dated 31 January 2020, the Complainant herself acknowledges this when she submits,

"the important conversation between [the Loss Adjuster] and I in May 2017 in my home, following his detailed inspection of the broken wall, is obviously not among those recorded [conversations], but very clear in my memory."

In addition, also in her letter to this Office dated 29 July 2019, I note that the Complainant further submits, *inter alia*, as follows:

"[The Provider Agent, Mr C.] later told me they would cover 50% of the total cost, the wall being a boundary wall."

In this regard, having listened to a recording of the telephone call that took place between the Agent (Mr C.) and the Complainant on 22 June 2019, I note the following exchanges:

Complainant: *Why don't you, because of the urgency of the work, get it done and you look for the 50% back from the neighbours?*

Agent: *You see, that's the thing, we don't know who the neighbour's insurers are*

...

If you got the prices for ...You send him on that and he'll send you out the settlement letter and it'll explain in it we are only liable for half

...

As I said, if you get prices for [the Loss Adjuster], estimates, send them on to him, he'll obviously review it, he'll come back to you with a settlement offer and in that settlement offer he'll say because it's a boundary wall insured we are only liable for half of the costs ...

Complainant: *Could you lot take it on board then, as I say, have it done, leave me out of it, and then -*

Agent: *Oh, take on the whole price?*

Complainant: *Yeah, but then you claim the other half back from them?*

Agent: *That's, yeah, but you see, we wouldn't take the whole price on because it's not, this is the whole argument, it's a boundary wall, so, we, as the insurer, are only liable for half*

/Cont'd...

...

We can't take on the full cost of the wall because the neighbour is responsible for half".

As a result, I have formed the opinion that is somewhat understandable that the Complainant understood from these exchanges that her claim had been accepted and that the Loss Adjuster would send her out a settlement offer relative to the estimate once this was submitted, and that the unresolved issue was the issue of who would be responsible for the other 50% of the cost of the repairs.

In addition, I also note from the documentary evidence before me that the Agent (Mr C.) made a record of an internal telephone call that he had with a Claims Handler (Ms L.) on 6 July 2017, as follows:

"Spoke to L. ... No point in appointing engineer as no advantage. I advised that LA [Loss Adjuster] inspected and was happy that peril occurred. L. advised we are liable for 50%".

This file record suggests to me that this Agent (Mr C.) who himself had spoken with the Complainant during the above cited telephone call on 22 June 2019, was under the impression that the Loss Adjuster had determined that an insured peril had taken place and thus that there was no necessity in appointing an engineer to further investigate the Complainant's claim.

Furthermore, having listened to a recording of a later telephone call that the Complainant made to the Provider on 19 September 2019, I note the following comments made by the Agent (Mr C.):

Agent: *As I said, what we could do is, em, we can send, send you out a cheque for half of the amount*

...

I don't know if you recall, I said to you, if you send in the estimates to [the Loss Adjuster] he'll come back to you with, say, our, we have revised your figures and our settlement offer is blah blah blah. We will, we will issue you, eh, 50% which relates to this. And then I said, you could show that then to your neighbour, you could send them in a copy of it."

In this regard, I note from the documentary evidence before me that the Agent (Mr C.) made a record of this telephone call on 19 September 2017, which states, *inter alia*, as follows:

"[The Complainant] advised is the wall 50/50 or is it 100% hers and the neighbours think it is 100% hers. I advised it is a shared/party/boundary wall and therefore costs are split between the both sides.

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I queried with [the Complainant] if she sent in estimates and advised once estimates received we can issue letter advising our settlement offer is such a figure and as it is a boundary wall we are liable for 50% and therefore our offer is 50% of the figure”.

The Provider acknowledges that its discussions with the Complainant throughout May, June, July, August and September 2017 around establishing ownership of the boundary wall, distracted the Provider from pushing forward to establish if an insured event had in fact occurred and if it would therefore be admitting the Complainant’s claim under her policy.

Whilst I appreciate that the Provider was at that time seeking to assist the Complainant with her concerns regarding the ownership of the boundary wall, having listened to the recordings of these telephone calls furnished by the Provider, I consider that it was evident that the Complainant was operating under the belief that her claim was being covered by her home insurance policy - the claim being 50% of the cost of repairs to the boundary wall - and that the only issue to be resolved for her, was who was responsible for the other 50% of the cost.

It is regrettable that the Agent (Mr C.) did not recognise this or clarify the matter by clearly pointing out to the Complainant that irrespective of who was responsible for the boundary wall, cover had not yet been confirmed in the matter.

I also appreciate that the Provider was trying to assist the Complainant re the ownership of the wall, but I am of the opinion that the Provider lost sight of the fact that ownership of the wall was secondary to whether an insured peril had in fact occurred. This was the question which the Provider first and foremost ought to have sought to have resolved, before all other issues, and it ought to have repeatedly made that issue clear to the Complainant and steered her in that direction. Instead, I consider that taken collectively, the telephone exchanges the Complainant had with the Provider, throughout the Summer of 2017, did nothing to dissuade her of her somewhat understandable belief that her claim had been accepted.

I am satisfied that this series of interactions, together constitute a particularly poor level of service to the Complainant and it is therefore my intention to uphold this element of her complaint. I note that the Provider has apologised for some service issues that it had already identified that the Complainant had encountered, and that it increased the €300 customer service compensatory payment it had offered the Complainant in April 2018, to €2,500 in July 2019.

However, having considered the circumstances of the complaint at hand and having regard to what was the ongoing nature and extent of the poor level of service that the Complainant received in this instance, I consider it appropriate to partially uphold this complaint.

Finally, the Provider sent the Complainant a home insurance renewal notice dated 23 January 2018 offering a renewal premium of €831.68, which the Complainant notes was significantly higher than the €489.24 premium she paid the previous year. The Provider has advised that €831.68 was the renewal rate based on the risk being renewed and that no claims loading had been applied. As a result, the increase in premium of €342.44, representing a 70% increase, is very surprising.

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Nevertheless, a home insurance policy is a contract like any other, it is based on the legal principles of offer, acceptance, and consideration. Each year, a Provider may offer terms (which includes the premium it intends to charge for the cover offered) and these terms can be accepted by those seeking insurance, who then elect to pay the premium requested, which represents the consideration aspect of the contract. I note that the Complainant did not pay the renewal premium and thus her existing home insurance policy with the Provider, expired.

It is my Decision therefore, on the evidence before me that this complaint is partially upheld. The Provider was entitled to decline the Complainant's claim and, consequently, the records for this policy that the Complainant previously held, will not disclose a successful claim for benefit. The compensatory payment I am directing is to mark the Provider's poor communication with the Complainant, as a result of which she was given to believe that the claim had been admitted.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €8,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

25 May 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.

