



Decision Ref: 2020-0206

Sector: Insurance

Product / Service: Household Buildings

Conduct(s) complained of: Rejection of claim

Outcome: Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainant holds a farm multi-peril insurance policy with the Provider. The policy period in which this complaint falls, is from 18 November 2017 to 17 November 2018.

The Complainant's Case

The Complainant's Loss Assessor notified the Provider on 17 October 2018 that a chimney fire on 21 September 2018 had caused cracking to the chimney stack and gable wall of her property, costing €13,535 to repair.

In its letter dated 12 March 2019, the Complainant's Loss Assessor advised, as follows:

"We have been appointed by [the Complainant] in relation [to] an insurance claim involving a chimney fire at her residence, with damage discovered on 21st September 2018 ...

[The Complainant] is insured with [the Provider] since November 1976.

We submitted a claim to [the Provider] on behalf of the insured...Loss Adjusters was appointed by [the Provider] and carried out an inspection of the damage.

A CCTV survey was carried out by [A. Chimney Repairs] employed by the insured. The disc was provided to the Loss Adjusters. In addition we provided a report from [A. Chimney Repairs] which confirmed that a vertical crack was evident from the top to the bottom of the chimney – which would demonstrate a recent chimney fire".

In this regard, the Report obtained from [A. Chimney Repairs] dated 5 February 2019 states as follows:

"I carried out a detailed inspection and CCTV survey of the chimney stack at [the Complainant's] residence. There is a vertical crack from top to bottom which in my opinion would demonstrate there was a recent chimney fire. Photographs were taken at the time of inspection. The fire has caused extensive damage".

However, following its Loss Adjustor's inspection, the Provider declined the Complainant's claim as it concluded that because the camera survey footage obtained from the Complainant revealed that there was no damage internally to the unlined flue, the external damage would not have occurred due to a chimney fire. In addition, the Loss Adjustor had also obtained a Google image of the Complainant's property taken in July 2009 which clearly shows that there was already cracking in the same gable wall at that time, indicating that the cracking was historic and ongoing in nature.

The Complainant seeks for the Provider to admit her claim.

The Complainant's complaint is that the Provider wrongly or unfairly declined her insurance claim.

The Provider's Case

Provider records indicate that the Complainant renewed her farm multi-peril insurance policy with the Provider on 18 November 2017.

The Complainant's Loss Assessor reported to the Provider on 17 October 2018 that a chimney fire had caused cracking to the chimney stack and gable wall of her property on 21 September 2018.

The Provider-appointed Loss Adjuster carried out an inspection on 7 November 2018, during which the Loss Assessor reported that on 21 September 2018 a chimney fire had started in the solid fuel range in the kitchen and that the Complainant shut down the air supply to the range and the fire burned itself out. The fire brigade service did not attend the scene. The Loss Adjuster observed a vertical crack on the external gable wall of the Complainant's property.

In order to validate the loss being claimed for, the Loss Adjuster requested that the Complainant arrange for a CCTV camera survey of the chimney stack and flue to be carried out. This survey was carried out by [A. Chimney Repairs] on 26 November 2018 and submitted to the Loss Adjuster on 17 December 2018. The Provider notes that an examination of the camera survey revealed an unlined chimney flue in a satisfactory state of structural repair with no evidence of damage arising from a chimney fire.

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The Provider also engaged the services of Structural Engineer Mr S. B. to provide his expert opinion on the cause of the damage. His inspection was of a visual nature and he did not attend the Complainant's property.

Having examined the CCTV camera survey and photographs, the Structural Engineer surmised that there was no visual damage to the flue as a result of a once off chimney fire and gave his opinion that the cracking to the gable wall as viewed was historic in nature and predates any alleged chimney fire.

The Provider notes that [A. Chimney Repairs] submitted a brief report dated 5 February 2019 wherein it advised, *"There is a vertical crack from top to bottom which in my opinion would demonstrate there was a recent chimney fire"*. The Provider cannot understand how [A. Chimney Repairs] is coming to this conclusion as there is no internal damage to the chimney to reflect the external damages. In this regard, the Provider notes that its Loss Adjuster has confirmed that the Complainant's Loss Assessor has agreed that there is no evidence of damage or internal cracking to the unlined flue liner from review of the CCTV camera survey footage.

In addition, following subsequent investigations, the Loss Adjuster found that the cracking to the gable wall of the Complainant's property now being claimed for was clearly evident in a Google Earth survey as far back as July 2009. The Provider notes that the photographs the Loss Adjuster obtained during his inspection on 7 November 2018 also confirmed his finding that the damage evident in the Google Earth survey matches the cracking now present. In this regard, the Provider is satisfied that it is clear from the July 2009 Google image of the property that there is an ongoing issue with the gable wall of the property.

As a result, the Loss Adjuster concluded that all evidence pointed to the external cracking to the gable wall being historical in nature and certainly not the result of a recent chimney fire or any other insured peril under the policy terms and he wrote on behalf of the Provider to the Complainant's Loss Assessor on 14 February 2019, as follows:

"As you are aware, in order to successfully pursue a claim, it must be demonstrated that the loss or damage being claimed for occurred as a result of the operation of an insured peril subject to the Terms and Conditions of the Policy.

The claim is based on the proposition that a chimney fire caused cracking of the gable wall of the property in which the unlined chimney flue serving a solid fuel range in the kitchen/dining room is contained. CCTV survey footage has been provided of the interior of the flue which does not indicate any damage there, consistent with the occurrence of a chimney fire. A report from [A. Chimney Repairs] has been presented in support of the claim, which refers to a "vertical crack from top to bottom", suggesting that this demonstrates that there was a recent chimney fire event. However, Google Maps images from 2009 show that at least some of the cracking was present at that point. Furthermore, our examination of the cracks indicates that they are located to the right and left of the flue and soot box whereas cracking resulting from a chimney fire would, in our view, have followed the line of the flue.

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In the circumstances, we believe that the cracking is historical in nature and not the result of the operation of an insured peril.

As a result, we must decline liability on behalf of Insurers”.

The Provider notes that the Complainant’s insurance policy, whilst providing a wide range of covers, does not cater for any losses which are directly attributable to ongoing deterioration, wear and tear or gradual weathering. It states that any claim made under a policy of insurance must fall for consideration within the parameters of the scope of cover defined in that policy and is subject to the terms and conditions applicable to that policy. The standard of proof required to substantiate a loss is that before a claim is accepted, the Insured must be in a position to demonstrate that the reported loss was caused by an insured peril or event and not as a result of any other causes.

The Provider notes that the external cracking to the gable wall is highly visible and that the Structural Engineer states that the cracking is historic in nature. It states that taking these circumstances into account, it is plain that the damage was evident for some time, however the Insured never notified the Provider of the matter. In this regard, the terms and conditions of the Complainant’s policy requires that any occurrence which might give rise to a claim must be immediately reported to the Provider.

In view of the foregoing, the Provider states that it is satisfied that it declined the Complainant’s claim in accordance with the terms and conditions of her farm multi-peril insurance 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. 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.

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A Preliminary Decision was issued to the parties on 18 May 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 complaint at hand is that the Provider wrongly or unfairly declined the Complainant's insurance claim. In this regard, the Complainant renewed her farm multi-peril insurance policy with the Provider on 18 November 2017.

The Complainant's Loss Assessor reported to the Provider on 17 October 2018 that a chimney fire had caused external cracking to the chimney stack and gable wall of her property on 21 September 2018.

The Provider appointed a Loss Adjuster who carried out an inspection on 7 November 2018, during which he obtained photographs of a vertical crack on the external gable wall of the Complainant's property.

I note that the Loss Adjuster requested that the Complainant arrange for a CCTV camera survey of the chimney stack and flue to be carried out. This survey was carried out by [A. Chimney Repairs] on 26 November 2018.

I note that both parties accept that there is no evidence of internal cracking to the unlined chimney flue in the camera survey footage.

In this regard, I accept the Provider's position that where a chimney fire causes external cracking to a gable wall, it would be reasonable to expect to see internal cracking to the unlined chimney flue.

I note that in his Report dated 7 October 2019, Mr S. B., the Structural Engineer engaged by the Provider, states, as follows:

"I was furnished with the [A. Chimney Repairs] Camera Survey by...the Loss Adjusters acting on behalf of the Insurers. This Survey involved lowering a Camera internally through the Chimney from the Stack and then lowering the Camera from the Stack down to the bottom of the Flue so as to record the condition of the Chimney Flue along its length. I viewed a DVD of this Camera Survey.

This Camera Survey also included an External Inspection of the Chimney Stack.

Findings:

(a) Chimney Stack / Breast / Structure:

The Chimney Stack is constructed of what appears to be Mass Concrete with a painted Render Dash finish. The Stack has been capped with a cast in-situ double concrete capping with the 3 No. Flue Pots set within this capping. Based on my viewing of the Chimney Stack & the Gable Wall as shown in the Camera Survey carried out by [A. Chimney Repairs], I am of the Opinion that the Chimney Stack and the Gable Wall which abuts the Chimney Structure, in their current condition, are in a poor state of Structural Repair.

I base this Opinion as follows:

- i. There is Horizontal Cracking visible to the top of the Concrete Capping to the Chimney Stack. This Cracking emanates from the interface of the 3 No. Clay Flue Pots and the Concrete Capping and appear to be running in two directions away from the Clay Flue Pots.*
- ii. There is Horizontal and Vertical cracking evidence to the Concrete Capping to the Chimney Stack. In my Opinion, this Cracking is a continuation of the Cracking described at (i) above.*
- iii. There is Vertical Cracking evident to the Gable Wall running from Roof Ridge to Ground Level. There is also visible evidence of widespread spalling and de-lamination to the Render Dash finish to the Gable Wall. In my Opinion, this cracking is a continuation of the Cracking described at (i) and (ii) above.*

Given the pattern of same, I am also of the Opinion that Foundation Settlement is also likely to be a contributory factor. The Gable Wall appears to have been constructed in Random Rubble.

A number of attempts appear to have been made to remediate the Cracking to the Gable Wall. Based on my Inspection of the Camera Survey, I am of the Opinion that these Remedial Works have been unsuccessful and the cracking has re-opened.

(b) Chimney Flue:

Based on my viewing of the Camera Survey, I am of the Opinion that the capping and the top Flue pots to the Triple-Flue Chimney Stack were constructed without any flexible expansion layer between same, rendering the Flue pots and the concrete capping susceptible to cracking as a result of the normal operation of the Chimneys.

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Note: based on my viewing of the Camera Survey, I can confirm that the Flues, which are Rectangular in profile, are constructed in Mass Concrete [and] have not been lined with Clay Flue Liners.

In my Opinion, the Vertical Cracking as viewed on the face of the Gable Wall has originated in, and continued from, the Cracking on the Concrete Capping to the Chimney Stack.

(c) Based on my viewing of the Camera Survey, I would comment as follows:

In my Opinion, there is no visual damage to the Flue as a result of a one-off Chimney Fire.

N.B. Based on my experience and my viewing of the aforementioned Camera Survey, I am of the Opinion that the Cracking as viewed to the Chimney Stack, Concrete Capping and Gable Wall to same is historic, i.e. it predates any alleged Chimney Fire.

N.B. Based on my professional experience, I am of the Opinion that a Chimney Fire, of sufficient calorific and thermal intensity, will cause expansion and cracking to the Flue, with consequent movement damage and cracking to the surrounding Structure.

Based on my Viewing of the Camera Surveys, and taking into account the extent of visual evidence provided by same, I am of the Opinion that the Unlined Chimney Flue is in a satisfactory state of structural repair, as viewed on the aforementioned Camera Survey.

In my Opinion, the Cracking as viewed is as a result of gradual deterioration of the Chimney Structure, as distinct from the Flue, and Gable Wall over the considerable period of time since the Original Construction.

It should also be taken into account that it is likely, in my Opinion, that the 3 NO. Chimney Flues within the Chimney Structure were in ongoing user for a long period of time after construction leading to significant Expansion and Contraction between the 3 NO. Flues and the Chimney Structure.

I have not been advised as to the extent or duration of the alleged Chimney Fire, or has to how this alleged Chimney Fire was extinguished.

Summary:

Based on my viewing of the Camera Surveys as presented to me, and not taking into account items and issues covered up and therefore visually inaccessible to me, I am of the Opinion that:

- (a) Any recent Chimney Fire, which may have occurred, was not of a thermal intensity sufficient to cause structural damage to the Chimney Flue, and surrounding masonry blockwork.*
- (b) The Chimney Flue / Structure, as observed on the aforementioned Camera Survey, remains intact along its entire length.*
- (c) The Flue to the Single-Flue Chimney, the Chimney Stack and the Concrete Capping to same, are the Original Installation and date from the construction of the Dwelling House”.*

The onus rests on the policyholder, as the insured, to show that the loss suffered was the result of an insurable peril, for example, accidental damage. I am not satisfied that the Complainant, in this instance, has fulfilled this requirement.

In addition, I note that the Provider has presented photographic evidence from a Google Earth survey from July 2009 showing the cracking to the gable wall of the Complainant's property now being claimed for. There is no evidence before me indicating that the Complainant disputes this photograph. In this regard, the Loss Adjuster emailed the Complainant's Loss Assessor at 14:46 on 10 January 2019, as follows:

“I note that there is cracking of the gable wall, but that would appear to be historical as evidence by the attached screenshot of a Google Maps image from 2009”.

In his responding email at 12:57 on 1 February 2019, I note that the Loss Assessor does not reference the Google image but states, as follows:

“I would again refer you to the photographs taken by the Insured's building contractor – as you will note the cracking noted on the photographs is fresh and new”.

I accept that it was reasonable for the Provider to conclude from the evidence before it, which includes the photographs obtained by its Loss Adjuster during his inspection on 7 November 2018 as well as the July 2009 Google image of the property that he located online and which is on file, that the external cracking to the gable wall was historic and ongoing in nature and thus predated any chimney fire which may have occurred in and around September 2018.

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The Complainant's insurance policy, like all insurance policies, does 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, I note that Section 1, 'Farm Dwellinghouse & Contents', of the applicable Farm Multi-Peril Insurance Policy Document provides, among other things, at pgs. 10 -11, as follows:

"Loss of or damage to the Farm Dwellinghouse and/or contents caused by:- ...

13. *Accidental Damage cover to the Buildings of the Farm Dwellinghouse in addition to the events covered under Items (1) to (12) of this Section excluding loss of damage caused by:
 - a) *wear and tear or gradual deterioration ..."**

In addition, I note that the 'Claims Conditions' section of the applicable Policy Document provides, among other things, at pg. 5, as follows:

"The Insured's obligations

- A) *On the discovery of any circumstance or event which may give rise to a claim under this policy, the Insured must:***
 - i) *Notify the Company immediately, either in writing or by telephone. If the Insured is not involved personally in an event, the Insured must advise the Company within 48 Hours of becoming aware of such an event, providing all details the Insured is aware of or has obtained"*

As a result, I accept that the Provider declined the Complainant's claim in accordance with the terms and conditions of her farm multi-peril insurance policy.

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

9 June 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.