



<u>Decision Ref:</u>	2020-0305
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The deceased had renewed a home insurance policy with the Provider on **19 November 2017**, which was valid for one year. He later died in **August 2018**.

The deceased's son, hereafter 'the Complainant', advises that he first discovered a pool of water in front of the oil range in the kitchen of the deceased's property in **September 2018**, whilst he was in Ireland for the funeral.

The Complainant's Case

The Complainant's contractor, B. Electrical notified the Provider on **9 October 2018** by way of its online claim notification service, of the loss that is the subject of this complaint, as follows:

"Description of Damage or Loss

Initially a leak in front of stove was seen. When stove was examined in order to find source, it was discovered that boiler was leaking. Stove had to be disconnected and moved to ascertain this.

Estimate of cost to repair

€approx 3900 for reconditioned unit. Fitting etc not included".

The Complainant's contractor later estimated that a replacement oil range would cost €6,499 with additional costs totalling €880, including VAT.

Following its assessment, the Provider concluded that the damage to the cooker unit itself was excluded from policy cover as the damage was due to a gradually operating cause/wear and tear, which is specifically excluded by the policy. The Provider did, however, make a claim settlement offer in the amount of €650 on **11 December 2018**, this being the maximum 'Trace and Access' amount payable under the policy following an escape of water.

The Complainant rejected this claim settlement offer and complained to the Provider that he was dissatisfied that the cost of replacing the cooker unit itself did not fall within the scope of cover provided by the policy. Following its assessment of this complaint, the Provider withdrew its claim settlement offer of €650 on **13 February 2019** as it had concerns "*on the documentation provided in substantiation of the claim being made and the manner in which policy information was sought under false pretences*".

In this regard, the Complainant advises in the Complaint Form he completed on **7 May 2019**, as follows:

"I am resident in the UK, this is my late father's house, where I was residing for his funeral.

- 1. I discovered water on the floor in the kitchen.*
- 2. I employed an Engineer [B. Electrical] to investigate as I had to return to the UK.*
- 3. The Engineer wrote the report.*
- 4. I didn't have my father's policy number so asked the Engineer to contact [the Provider] to see if they would give out the number so as a claim could be made.*
- 5. [The Provider] said no re-Data Protection.*
- 6. Meantime, I spoke to my brother who lived with my father for a few years a while back and he said where [the policy number] might be and he was correct.*
- 7. I gave the number to the Engineer and he completed an online claim form for me.*
- 8. [The Provider] contacted me and I instructed them to deal direct with the Engineer as I was in the UK and could not answer any of the questions.*
- 9. [The Provider] made an offer after many emails asking them to get on with it and I turned [the offer] down.*
- 10. After the second offer, I asked for a review as I was not happy. [The Provider] reviewed it and issued a Final Response Letter.*
- 11. Circumstances have dictated the outcome thus far, I do not reside in Ireland. There seems to be some miscommunication between parties etc. but this most*

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[definitely] *not a fraudulent claim. I have proven beyond any doubt who I am and where I live*".

The Complainant

"would like this resolved ASAP due to the deterioration of my property because of a mad amount of time for [the Provider] to pay an amount that will cover my outlay to the Engineer and his work so far and payment for a replacement stove. This is also the reason I cannot let the property as it is not liveable until there is heating and cooking facilities working."

The Provider's Case

Provider records indicate that it was first notified on 9 October 2018 by way of its online claim notification service of the loss that is the subject of this complaint, as follows:

"When did Damage or Loss occur?"

25-09-2018

Description of Damage or Loss

Initially a leak in front of stove was seen. When stove was examined in order to find source, it was discovered that boiler was leaking. Stove had to be disconnected and moved to ascertain this.

Estimate of cost to repair

€ approx 3900 for reconditioned unit. Fitting etc not included".

The Complainant's contractor later estimated that a replacement oil range would cost €6,499 with additional costs totalling €880, including VAT.

A desktop investigation was carried out and the Loss Adjuster acting on behalf of the Provider wrote to the Complainant on **5 November 2018** seeking additional information in order to consider the claim further, namely, an estimate of repairs, the measurement of the affected area(s), photographs of the damage and a plumbers report outlining the cause and extent of the damage, including a detailed estimate of repairs.

The Provider says that following a review of the report from the Complainant's contractor, *B. Electrical* dated 12 November 2018 and the photographs submitted, the Loss Adjuster determined that a site inspection would not be necessary, as it was established that the cooker unit was leaking in more than one area which resulted in excessive rust and corrosion throughout the unit. The Loss Adjuster thus concluded that the damage to the cooker unit was the result of a gradually operating cause/wear and tear, which is specifically excluded by the policy terms and therefore fell outside the scope of cover provided by the deceased's policy.

The Provider is satisfied that the initial claim settlement offer of €650 made on **11 December 2018** represented the maximum amount payable under the 'Trace and Access' section of

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the deceased's policy. The Complainant rejected this settlement offer of €650, as he sought the cost of the cooker unit, to be covered by the policy.

Upon receipt of this complaint, the Provider says that it commenced a thorough investigation into the matter. Following its review, clarification was sought from the Complainant on a number of points by way of letter dated **4 February 2019**, namely,

- (i) the full details (registered address and contact number) of *B. Electrical* which compiled the report outlining the cause and extent of the damage of the cooker unit,
- (ii) an explanation as to why VAT was charged on the estimate compiled by *B. Electrical* considering that the VAT number provided was invalid, and
- (iii) an explanation as to why Mr B. of *B. Electrical*, who did not have authorisation to discuss the policy at that time, telephoned the Provider's customer care team on **1 October 2018**, prior to the notification of the loss, attempting to obtain policy information, whilst purporting to be the Complainant.

The Provider says that the Complainant and Mr B. of *B. Electrical* duly submitted email responses to these queries. Unfortunately, the Provider noted that the responses received were not satisfactory and it took the view that rather than bringing clarity on the matter, the responses only served to raise additional concerns regarding the documentation provided in substantiation of the claim being made and the manner in which policy information was sought under false pretences.

For that reason, by way of letter dated **13 February 2019**, the Provider formally withdrew the claim settlement offer of €650 previously made to the Complainant. The Provider notes that at no stage during the claim or complaint process did it reference the Complainant as a fraud or state that a fraudulent claim had been presented.

The Provider is satisfied that it correctly assessed the claim made under the deceased's home insurance policy and that it subsequently withdrew its claim settlement offer and declined the claim on the basis that the Complainant had failed to comply with the claim conditions set out in the terms and conditions of the deceased's policy.

The Complaint for Adjudication

The Complainant's complaint is that the Provider wrongly and unfairly assessed the home insurance claim, and then withdrew its claim settlement offer and declined the claim.

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

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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 **18 August 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 Complainant's complaint is that the Provider wrongly and unfairly assessed his home insurance claim, and then later withdrew its claim settlement offer and declined the claim.

The policyholder, the Complainant's late father, had renewed his home insurance policy with the Provider on 19 November 2017, and that policy was valid for one year. Some 9 months later on in August 2018, the Complainant's father died.

The Complainant advises that in **September 2018**, whilst he was in Ireland for his father's funeral, he first discovered a pool of water in front of the oil range in the kitchen of the deceased's property. The Complainant advises that his contractor, *B. Electrical* notified the Provider on **9 October 2018** by way of its online claim notification service, of the loss that is the subject of this complaint, as follows:

"When did Damage or Loss occur?"

25-09-2018

Description of Damage or Loss

Initially a leak in front of stove was seen. When stove was examined in order to find source, it was discovered that boiler was leaking. Stove had to be disconnected and moved to ascertain this.

Estimate of cost to repair

€approx 3900 for reconditioned unit. Fitting etc not included".

The Complainant's contractor later estimated that a replacement oil range would cost €6,499 with additional costs totalling €880, including VAT.

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I note that the Complainant's contractor, *B. Electrical*, stated amongst other things in the report it furnished to the Provider dated **12 November 2018**, as follows:

"I called to investigate a leak at the above address from the front of a Stanley Super Star oil cooker. It was established that the leak was coming from the rear of the cooker so one of the adjacent kitchen floor units adjacent to cooker had to be removed to gain access.

A small leak was found from top primary flow pipe (photograph 1). The heating system was drained and cooker disconnected in order to move it out as the state and condition of floor (photograph 1 + 2) to the rear of the cooker suggested there was possibly another source/leak. Once cooker was pulled out the back panel was removed to reveal extensive rust + corrosion adjacent to where pipe connection was made (photograph 3). A pressure test on boiler revealed where a further leak was found".

As a result, I am satisfied that it was reasonable for the Provider-appointed Loss Adjuster to conclude from the contents of this report and from the photographs submitted with it, that the cooker unit had been leaking in more than one area, which resulted in excessive rust and corrosion throughout the unit, and thus that the damage to the cooker unit was the result of a gradually operating cause/wear and tear.

In this regard, I note that any loss or damage arising from wear and tear or a gradually operating cause is specifically excluded by the policy terms and therefore falls outside the scope of cover provided by the deceased's policy.

The deceased's home insurance policy, like all insurance policies, did not provide cover for every eventuality; rather the cover was subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

The '**General exceptions of the policy**' section of the applicable Home Insurance Policy Document states, amongst other things, at pgs. 10-11, as follows:

"We will not pay for the following ...

5. Wear and tear, loss in value or gradually operating cause

Any loss or damage arising from wear, tear, rust or corrosion, gradual loss in value or anything happening gradually, including damage caused by gradual water damage from faulty seals or grouting, the upkeep costs or normal decoration, mildew, rising damp, dry or wet rot, moth, vermin, insects, atmospheric or weather conditions".

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Section 1A, 'Building cover', of this Policy Document from Page 16 states, amongst other things, at pg. 18, as follows:

"What is covered

8. Escape of water from any fixed water or heating installation or domestic appliance.

What is not covered ...

- *Loss of damage to any part or appliance from which the water leaked caused by wear, tear or gradual deterioration ...*

9. Leaking of oil from any fixed oil installation.

What is not covered ...

- *Loss of damage to any part or appliance from which the oil leaked caused by wear, tear or gradual deterioration ...*

In addition, **Section 1B, 'Contents cover'**, of the applicable Policy Document from Page 25 also states, amongst other things, at pg. 26, as follows:

"What is covered

8. Escape of water from any fixed water or heating installation or domestic appliance.

What is not covered ...

- *Loss of damage to any part or appliance from which the water leaked caused by wear, tear or gradual deterioration ...*

9. Leaking of oil from any fixed oil installation.

What is not covered ...

- *Loss of damage to any part or appliance from which the oil leaked caused by wear, tear or gradual deterioration".*

Having determined that the damage to the cooker unit was the result of a gradually operating cause/wear and tear, which is specifically excluded by the policy terms and therefore falls outside the scope of cover provided by the deceased's policy, I note that the Provider then made the Complainant an initial claim settlement offer of €650 on 11 December 2018. In this regard, **Section 1A, 'Additional benefits – buildings'**, of the applicable Policy Document states at pg. 22, as follows:

"18. Trace and access

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We will pay up to €650 for the necessary removal or replacement of any part of the buildings to repair any fixed household water or heating installation which has caused an escape of water or oil”.

I note that the Complainant rejected this claim settlement offer and complained to the Provider that he was dissatisfied that the cost of replacing the oil range itself, was not covered. Following its review of the matter, the Provider wrote to the Complainant **on 4 February 2019**, as follows:

“As part of my investigation into the complaint made, it is standard protocol to review and validate policy cover and any supporting documentation or information provided in support of the claim being made. I would therefore request written confirmation of the following:

- 1. Full contact details of [B. Electrical] (Registered address, contact number).*
- 2. Explanation why VAT has been charged on the estimate/report from [B. Electrical] yet the VAT number provided on the estimate is invalid.*
- 3. As you are no doubt aware, our telephone calls are recorded for training and verification purposes. I would therefore request an explanation why [Mr B.] with contact number 087 [XXXXXXX], telephoned our customer care team on 01 October 2018 querying policy cover whilst purporting to be [the Complainant]?*

Upon receipt of a written response to the above we will be in a position to consider this matter further”.

In this regard, it is clear from the recording of the telephone call on **1 October 2018** that the following exchange took place:

Caller: *Hello, my name is [the Complainant]. If I give you a policy number, can you tell me if my father has renewed it, he’s in hospital at the moment and he’s worried that he may have overlooked it*

Agent: *Have you authorised to discuss the policy with us? Have you a name authorised here?*

Caller: *Em, I’m his son – I don’t know if he’s, like I said, he’s in hospital at the moment and he just asked me to make sure that its paid up”.*

It is accepted by the parties that this caller was not the Complainant. It was the Complainant’s contractor Mr B. purporting to be the policyholder’s son and in this regard, I note that the policyholder was not in hospital at the time of the call on 1 October 2018 as purported, but had already died on 29 August 2018.

Whilst the Complainant later notified the Provider that his contractor had his authority to deal with the Provider with regard to the claim, I note that no such authorisation had been confirmed by the Complainant to the Provider at the time of this telephone call on 1 October

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2018, which was made after the reported date of loss of 25 September 2018, but prior to the claim notification on 9 October 2018.

In addition, within the documentary evidence available, I note the Complainant's emails of 6 February and 11 February 2019 and the Complainant's contractor email of 12 February 2019, that were sent in response to the Provider's correspondence of 4 February 2019. Having considered the contents of these emails, I am of the opinion that it was reasonable for the Provider to conclude that these responses did not fully address the specific concerns raised in its letter of 4 February 2019 and in this regard, in its correspondence to the Complainant dated **13 February 2019**, I note that the Provider set out its final position, as follows:

"In support of the claim being made a document dated 12 November 2018 from [B. Electrical] was submitted and this outlined the investigations carried out upon discovery of the damage and the costings involved. By way of letter dated 04 February 2019 clarification was sought from you on a number of points in order to consider matters further and you duly responded to the queries raised, as did [Mr B. of B. Electrical]. However, at this point I must advise that the responses received are not satisfactory in this case and rather than bringing some clarity to this matter has served to raise additional concerns. These concerns are focused on the documentation provided in substantiation of the claim being made, and the manner in which policy information was sought under false pretences. I specifically refer to a telephone conversation which took place prior to the notification of this claim in which [Mr B.] who did not have authorisation to discuss the policy, attempted to obtain policy information while purporting to be [the Complainant]. As a large organisation and as part of our legal obligations under General Data Protection Regulations, data protection issues are taken very seriously.

In this regard I refer to the general conditions of the policy which states:

"Claim Conditions

You or any other person claiming under this policy must comply with the following claim conditions in order to avail of the cover provided by the policy. You must not act fraudulently and must assist us to exercise our rights.

If you or anyone else claiming under the policy does not comply with these conditions or does not assist us, we may at our option cancel the policy or refuse to deal with your claim or reduce the amount of any claim settlement.

1. Your obligations

B. Within 30 days after an event, or within any further time period as we may allow in writing, you must give us at your own expense:

- Receipts, invoice and further proof of your claim as we may reasonably require together with (if requested) a declaration of the truth of the claim and of any matter related to it".*

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We must therefore advise that at this point we are unable to proceed any further with the claim being made and accordingly the settlement offer of €650 made by [the Provider] on 11 December 2018 is formally withdrawn. We will not be making any further offers of settlement in this matter ...”

Having considered the evidence made available by the parties, I am satisfied that in withdrawing its claim settlement offer of €650, the Provider acted in strict accordance with the terms and conditions of the deceased’s home insurance policy.

The evidence before me does not bear out the Complainant’s contention that the Provider acted unfairly in its assessment of the claim. Neither do I accept, on the basis of the details outlined above, that the Provider acted in any way wrongfully in withdrawing the settlement offer previously made. Whilst I am conscious that the Complainant will be disappointed with this outcome, and stresses that he wishes to recover on a legitimate claim, I am satisfied that taking account of the evidence which I have outlined above, there is no reasonable basis upon which it would be appropriate to uphold this complaint against the Provider.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 September 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.