



<u>Decision Ref:</u>	2020-0361
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Rejection of claim - late notification Rejection of claim - storm
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a home insurance policy held by the Complainant

The Complainant's Case

The Complainant contends that his roof suffered storm damage in “early **2018**”. The Complainant states that “*it was only when water came thru [the] roof that [he] realised the damage*”.

The Complainant asserts that in the summer of **2018** he proceeded to “*repair the roof myself*” in order to rectify the damage as it was his “*intention to replace the window without going thru [his] insurance*”. The Complainant states that his initial opinion of the damage had been that “*the damage was to flashing on a velux window*”. However, the Complainant contends that following further investigations by his carpenter, it became apparent that “*the damage was greater than expected*” and as a result, the decision to claim on his home insurance policy was made in **July 2018**.

The Complainant asserts that the “*damage was reported [to the Provider] when it was visible*” and that “*the damage was only discovered*” during the course of the work to repair the damage during the Summer of **2018**.

The Complainant contends that the insured property had been completely renovated and re-roofed in 2000:

“The existing roof slates were removed from the house when I moved to it [in] 2000. New roof felt was fitted, new pattens and the old slates put back on. I fitted the new Velux windows on the valley side to let in light to upstairs landing. The house was completely renovated. All plaster removed, rewired, re-plumbed, windows replaced. Complete fit out to a very high standard”.

The Complainant states that a regular maintenance schedule is in place in relation to the roof of his property and that he *“clean[s] the valley and gutters every year at Christmas when [he is] off work”*.

The Provider’s Case

The Provider says that the Complainant notified the claim to his insurance broker on **3 July 2018** who in turn notified the Provider on **4 July 2018**. The Provider appointed a loss adjustor who inspected the damage on **9 July 2018**. At the time of the Provider’s inspection it would appear that work was underway to remedy the damage. The Provider states that:

“it was noted that scaffolding was in place, workers were on-site, and repairs were already at an advanced stage. The roof had been stripped, slates were removed, a new valley board had been installed and a new Velux window had already been installed”

The Provider declined to admit the claim and has cited:

“...a clear and serious breach of the policy conditions. The late notification of the claim coupled with the fact that the works were already at an advanced stage prior to our inspection has prejudiced our position regarding the loss”.

The Provider has made available a timeline of events which I have summarised as follows:

2 January 2018	<ul style="list-style-type: none">• Date of Loss as reported by the Complainant
4 July 2018	<ul style="list-style-type: none">• Complainant’s Broker informed the Provider of the claim.• The Provider appointed a Loss Adjuster.• Loss Adjuster contacted the Complainant to arrange an on-site inspection.
9 July 2018	<ul style="list-style-type: none">• On-Site inspection at the Complainant’s property.
11 July 2018	<ul style="list-style-type: none">• The Loss Adjuster sent the Provider their preliminary report.

13 July 2018	<ul style="list-style-type: none">• The Loss Adjuster informed the Complainant and the Complainant's Broker that the claim was going to be declined due to a breach of the terms and conditions of the policy.
16 July 2018	<ul style="list-style-type: none">• The Complainant issued a letter and photographs to his broker and advised that he was not happy with the Loss Adjuster's report.
17 July 2018	<ul style="list-style-type: none">• The Complainant's broker sent a copy of the Complainant's letter and photographs to the Loss Adjuster.• <i>The</i> Loss Adjuster called the Complainant's broker to discuss. He advised that the photographs were taken after repair works had commenced. He explained that the case had been reviewed; the policy was incepted on 07 November 2017, the Date of Loss was noted as 02 January 2018, but the claim was not notified until July 2018 and works were already underway. The Loss Adjuster was satisfied that the claim must be declined.• The Loss Adjuster issued the Claim Declinature letter to the Complainant and a copy was sent to his broker.
19 July 2018	<ul style="list-style-type: none">• The Provider received a call from the Complainant. He advised that he was dissatisfied with the declinature of the claim. The Provider asked the Complainant if he wanted to make a complaint however, he did not wish to do so at that time. The Provider advised that the matter would be reviewed again, and the Provider would come back to him.
25 July 2018	<ul style="list-style-type: none">• The Provider contacted the Complainant and informed him that it was satisfied that the claim was correctly declined.
11 June 2019	<ul style="list-style-type: none">• The Provider received an email from the Complainant. He advised that he had contacted the Office of the Financial Services and Pensions Ombudsman which in turn advised the Complainant to request a Final Response Letter from the Provider.• The Provider called the Complainant to discuss the complaint.• The Provider issued a complaint acknowledgement letter to the Complainant.
18 June 2019	<ul style="list-style-type: none">• The Complainant contacted the Provider for an update in relation to the complaint. The Provider responded and informed the Complainant that investigations were ongoing.

/Cont'd...

19 June 2019	<ul style="list-style-type: none">• The Provider issued a Final Response Letter to the Complainant.
---------------------	---

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined to admit and pay the Complainant's claim. The Complainant wants the Provider to reimburse him for the costs of the:

1. Repair of damage to his roof, to the sum of €12,000;
2. Redecorating following repairs, to the sum of €3,000.

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 **24 September 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Provider was informed that a Storm is likely to have damaged the Complainant's property on or around **2 January 2018**. I note in that regard that **Storm** is referenced within the Insurance Policy on page 4 of the policy booklet:

/Cont'd...

“OPTION A – HOME COVER

Buildings and Contents

1 We will pay for loss of or damage to your Buildings and Contents caused by any of the following events

Events

.....

(c) Storm or Flood but not

- (i) by frost*
- (ii) to fences and gates*
- (iii) caused by water entering your home due to wear tear or deterioration”.*

I further note that on page 29 of the Policy Booklet under ‘Claim conditions’ the policyholder is obliged to take the following actions:

“ACTION BY THE POLICYHOLDER

- 1. You shall on the happening of any event which could give rise to a claim under this Policy*
 - (a) give immediate notice in writing to the company and in respect of any occurrence giving rise to or which might give rise to injury, inform the company immediately within 14 days of the happening of such occurrence*
 - (h) produce to us such books of account or other business books or documents or such other proofs as may reasonably be required by us for investigating or verifying the claim*
 - (i) in respect of loss or damage to the property insured deliver to us at your own expense a claim in writing with such detailed particulars and proofs such as may be reasonably required and (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith within*
 - o 30 days of the event – All Other Sections or such further time as we writing allow may in.”*

The Complainant’s claim was initially assessed by the Provider under ‘OPTION A – HOME COVER – Buildings and Contents’ under “(3) Storm or Flood”. The term ‘storm’ is not defined within the policy.

The Provider has stated in its submissions that:

/Cont’d...

“When the LA attended on 09 July 2018, strip out works were already well underway and the Velux window, which the Complainant believed was the source of the water ingress, had already been replaced prior to the claim being notified to us.

Given that the repairs were already at an advanced stage prior to our inspection, this had completely prejudiced our position and we have been unable to verify the validity of the claim by way of physical inspection of the damages. In addition, no evidence such as images of the damages prior to works being carried out were provided by the Complainant. Because of these actions, we have been prevented from determining:

- 1. The cause of the damage*
- 2. The nature and extent of the damage as well as validating the scope and quantum of the required repairs*
- 3. When the damage is said to have occurred.*
- 4. If subsequent weather events after the date of loss such as ‘The Beast from the East’ in February 2018 caused additional damage and/or worsened existing damage”.*

Based on the evidence submitted to this office, I am of the view that the Provider was prejudiced by the Complainant’s delay in reporting the claim. The Complainant became aware of the damage on or around **2 January 2018** and did not report the damage to his broker until 6 months later on **3 July 2018** who in turn reported the damage to the Provider on the **4 July 2018**.

Furthermore the Loss Adjuster noted in his letter to the Complainant that:

“The reason for the declinature is, having carried out our site inspection and on review of the details gathered by us it is our opinion that the position of Insurers has been prejudiced as the alleged damaged roof was stripped of slates, lead and velux window before our site inspection.

The loss date has been advised to have been 01st January 2018. From review of claim instruction details we note the loss was advised to your broker on the 03rd July 201[8]. Your insurer instructed our office on the 04th July 2018 with our site inspection taking place on Monday 09th July 2018.

While on site, we accessed the roof via scaffolding and we noted that same had been stripped and no storm damaged areas were viewed by us. We also note that no photographic evidence of the alleged storm damaged roof were taken before the stripping commenced. We acknowledge receipt of photos of the internal damage but this does not confirm how the rainwater ingressed from the external roof area”.

/Cont’d...

Based on the evidence made available to this Office, I am of the view that the Provider was entitled to decline the Complainant's claim under "*Storm or Flood*". I note in that regard that when the Loss Adjuster arrived, works had already commenced and indeed were well under way, such that "*no storm damaged areas were viewed by [the Provider]*".

The Complainant's insurance policy had a Notification Clause at page 29 of the Policy Booklet which states:

"1. You shall on the happening of any event which could give rise to a claim under this Policy

(a) give immediate notice in writing to the company and in respect of any occurrence giving rise to or which might give rise to injury, inform the company immediately within 14 days of the happening of such occurrence"

[Underlining added for emphasis]

The Complainant has stated the Date of Loss as around the **1 January 2018**. The Complainant did not inform his Insurance Broker however until the **3 July 2018**. The Complainant accepts that the damage occurred to his roof in **early 2018**. He states that:

"I had damage done to my roof during a storm early 2018. It was only when water came through roof that I realised the damage done".

I am of the view that the notification requirement, specified in the policy, was not adhered to by the Complainant, in circumstances where he was aware of damage done in **early 2018** but only informed his Broker on **3 July 2018**, who in turn informed the Provider on **4 July 2018**, some six months after the Complainant became aware of the damage. I accept in those circumstances that the Provider was significantly prejudiced in its ability to investigate the claim and any potential cover.

On the basis of the evidence made available by the parties, I am satisfied that the Provider's conduct in refusing to admit the claim was a reasonable one. I am satisfied in that regard, that the Provider acted in accordance with the terms and conditions of the policy and I take the view that there is no reasonable basis upon which it would be appropriate to 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.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

16 October 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

ensures compliance with the Data Protection Regulation and the Data Protection