



<u>Decision Ref:</u>	2020-0405
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Contents
<u>Conduct(s) complained of:</u>	Rejection of claim - accidental damage
<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 states that he made a claim to the Provider on **1 October 2018** for a gas boiler that was damaged by water ingress caused by a storm. The Complainant states that following an inspection of the boiler, the Provider declined his claim on **23 October 2018**. The Complainant contends that the Provider made an incorrect decision and states *"I have been denied my contractual right to an indemnity under the policy"*.

The Complainant submits his understanding of why the Provider declined his claim and has sought to respond in turn. The Complainant submits that firstly, the Provider, following an inspection on site, stated that it could find no obvious signs of damage to the extract flue that would be consistent with storm damage. The Complainant contends that there was never any suggestion that the extract flue was damaged by a storm or otherwise. The Complainant states rather, that his own plumbing contractor

'has determined that water ingressed the system during an unusually heavy bout of rain – which came through the flue.'

The Complainant further submits that the Provider contends that if the rainwater were to ingress through the flue during storm conditions *'this would refer to a gradually operating cause'*, which are conditions that are excluded from his policy. The Complainant states that there is no evidence to support that the ingress of water was gradual.

The Complainant states that he has also provided proof from his own plumber, who states that the damage was a result of a single incident and not as result of an ongoing deterioration. The Complainant also submits, in contention of any deterioration, that the boiler was serviced on **18 January 2018** and no details of any damage or failure were noted at this time. He says that the Provider also contends that under the terms and conditions of the policy, he was required to

'tell us immediately about any loss, damage, accident or incident that might give rise to a claim.'

The Complainant further submits that the Provider also states that the damage occurred in **May 2018** but that it was only notified in **October 2018** and as a result, it believed that *"insurers' position has been prejudiced due to late notification"*. The Complainant disputes this and contends in a later submission:

'The Insurer was put on notice of the loss as soon as we became aware of the seriousness of the issue. Before that, and in the absence of suitable information, we did not turn our thoughts to the prospect of an insurance claim. The notification condition referred to by [the Provider] applies in the event of an "incident that might give rise to a claim". [The Provider] were informed immediately when we had a reason to believe that the damage may fall to be dealt with under the policy'

The Complainant contends that the Provider has failed to interpret both the policy and the circumstances correctly. The Complainant submits that the terms and conditions extend to accidental damage, and he states that, *'clearly, the loss is fortuitous from the perspective of the [Complainant]'*. The Complainant originally contended that the water damage

'has arisen either as a result of 'storm/rainstorm' or 'accidental damage', both of which are insured events under the policy wording.'

Following the issue of a Preliminary Decision to the parties however, the Complainant has stated that:

"I made it clear in my submission that I was not and am not pursuing this cover/peril as a cause of the damage and that the peril of "storm" was the only cause I am asserting, so I do not believe you should have included this in your analysis"

The Complainant also contends that his gas engineer believes that if the Provider had engaged the services of its own Gas Engineer at the time of the inspection, they both would have been in agreement that:

' the only explanation for the large amount of water found in the boiler would have to be that extremely strong storm force winds would have been necessary to force rainwater through the extract flue... I am happy that [The Provider] failed to address this issue and I am not happy that they or [the Loss Adjuster] did not seek the opinion of their own appointed Gas Engineer'

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The Complainant takes the view in that regard that the Provider appointed agent was not competent or qualified to comment on the possible cause of any damage relating to a gas appliance, as that agent was not RGII registered.

The Complainant contends that there is no proof that the water damage incurred, happened over a period of time and that the onus is on the Provider to prove that any such 'exclusion' applies. The Complainant further contends that he relied upon the expert advice of a Gas Engineer for diagnostics of the damage, which is something neither the Provider nor Loss Adjuster relied upon.

The Provider's Case

The Provider issued a Final Response Letter on **22 May 2019**. The Provider states that the Complainant registered his claim on **1 October 2018** and it appointed a Loss Adjuster on **1 October 2018**, who undertook an inspection of the property on **9 October 2018**. The Provider submits that during the inspection, the Complainant stated to the Loss Adjuster that he had become aware of the boiler becoming faulty in **May 2018** and that he had a plumber attend to the boiler. The Provider states that no paperwork was furnished in relation to said plumbing work. The Provider submits that the Loss Adjuster noted:

'...no action was taken in regards to the defective boiler until October 2018, when a mechanical engineer attended and the claim for storm damage to the boiler was submitted to us''.

The Provider submits that its Loss Adjuster says that there was no obvious signs of damage to the extract flue caused by a storm or otherwise and, as a result, it issued a declination letter on **23 October 2018**. The Provider states when assessing the claim

'the key question is whether or not it has been determined that the cause of damage is one that is outlined in your policy booklet and not excluded under the terms and conditions.'

The Provider states that consideration for this came under event 3 relating to 'Storm or flood'. The Provider contends that at the time of the inspection there was no evidence of either a storm or flood, nor were there any signs of storm or flood damage to the extract flue, either of which, if evident, could have determined cover for the claim. The Provider submits that it also considered the weather conditions in the region, for the month preceding the claim and concluded that *'the decision to decline the claim for damage to the boiler based on the storm event was correct'*. (The Complainant points out however that in his opinion such a consideration was irrelevant as the storm he is referring to was Storm Emma in February/March 2018).

The Provider further submits details of a telephone conversation on **16 October 2018** between the Complainant's plumber and the Loss Adjuster during which the plumber

'believed that the boiler could have been damaged as a result of rainwater ingressing after the Storm Emma.'

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The Provider says that Storm Emma was a weather event that took place between **February/March 2018**. The Provider submits that the Plumber also referenced the blocked gutters at the Complainant's property, which could have been a factor for the water to ingress.

The Provider states that the photographic evidence shows that the extract flue is located in a sheltered area and is protected by adjoining buildings and high line trees. The Provider also contends that there was no internal damage visible at the point where the flue enters the building. The Provider contends, based on the evidence, that it is highly unlikely that rainwater entered the extract flue in a one off event. The Provider further contends therefore that if the damage occurred over a period of time, then this would refer to '*Gradual deterioration or any gradually operating cause*', which was a condition noted in the policy's '*General Exclusions*'.

The Provider also submits that under the terms and conditions of the policy, the Complainant

'...must tell us immediately about any loss, damage, accident or incident that may give rise to a claim under this policy.'

The Provider contends that the Complainant advised the Loss Adjuster that issues with the boiler commenced in **May 2018** and yet the Provider was only notified in **October 2018**. The Provider states as a result:

'...our position has been prejudiced due to the late notification of the damage, as we were not given the opportunity to inspect the unit in the immediate aftermath of the incident.'

The Provider submits that the insurance policy document refers to accidental damage with one of the clauses excluding loss or damage, including damage '*resulting from any weather related event*', meaning that the claim cannot be paid out on the grounds of accidental damage relating to weather events. The Provider further submits that it is aware of the boiler inspection which the Complainant says took place on **18 January 2018**. It contends that no evidence of this inspection has been presented and also that the discovery of the fault as noted in **May 2018**, was after the boiler had been serviced and therefore cannot be used for consideration in this case.

The Complaint for Adjudication

The Complaint is that the Provider wrongfully refused to admit and pay the Complainant's claim on the basis that no insured peril operated in causing the damage to the boiler, and that the terms and conditions of the policy were not adhered with, i.e. late notification of the claim.

The Complainant wants '*an admission of liability from [the Provider] alongside an indemnity in respect of the cost of repairs/replacement*'.

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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.

I am conscious that the Complainant has called on the FSPO to schedule an Oral Hearing, so that the conflicts in the parties' respective positions, can benefit from oral evidence. I am satisfied however that the role of the FSPO in investigating this complaint which concerns the decision of the Provider to decline the Complainant's claim, requires this Office to examine the information which was before the Provider when it made that decision, in order to determine whether the decision in question was a reasonable one. I am also conscious that both parties have had every opportunity to offer their respective observations regarding that information, so that such comments can be taken into account by this Office in assessing the information available. In that context, I do not consider it necessary for the FSPO to call for oral evidence from the parties or their witnesses.

A Preliminary Decision was issued to the parties on **24 July 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.

Chronology of Events

- On **7 July 2010** the Complainant first incepted a home insurance policy with the Provider. At the time of responding to this complaint, the Complainant's current policy was scheduled to fall for renewal, in **July 2020**.

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- **1 October 2018:** The Complainant emailed his Broker with an attachment containing a quote from a Mechanical Engineer for the replacement costs of the Complainant's boiler, amounting to €4,327.19 (incl. VAT), and a report from the same Mechanical Engineer advising that

“after surveying the boiler and testing same up to 2 bar, we cannot find a leak in the boiler system. Looking at the water ingress which has come through the system and damaged all electrics I would think this must have been damaged by an unusual heavy bout of rain which must have come through your boiler flue.”

- **3 October 2018:** The Provider's Loss Adjuster was appointed.
- **4 October 2018:** The Loss Adjuster and the Complainant arranged an on-site inspection for 9 October 2018.
- **5 October 2018:** The Complainant informed the Loss Adjuster that the Mechanical Engineer and the Complainant's wife would be attending the inspection.
- **8 October 2018:** Loss Adjuster confirmed on-site inspection with the Complainant and his Mechanical Engineer.
- **9 October 2018:** Site inspection by the Loss Adjuster. The notes taken by the Loss Adjuster at the time of the site visit state the date of loss as **May 2018**. The Loss Adjuster also noted that the boiler in question was a [brand redacted] Condensing boiler, installed in 2006.
- **12 October 2018:** The Complainant sent a text to the Loss Adjuster asking when the claim would be resolved.
- **15 October 2018:** The Complainant informed the Loss Adjuster that he would find out the service details for the boiler. The Loss Adjuster informed the Complainant that there was no evidence of storm damage to the boiler and that it might be a gradually operating cause. The Complainant advised that he based the assumption of storm damage on the report provided by the Mechanical Engineer.
- **16 October 2018:** The Loss Adjuster returned a call to the Broker who advised that the Complainant paid “someone” in cash in January 2018 to service the boiler. The Loss Adjuster advised the Broker of issues with the cover, as no peril in operation i.e. no escape of water, or storm damage. The Broker emailed the Loss Adjuster confirming that the Complainant had the boiler serviced in January 2018 and paid cash for same. The Broker expressed his disapproval with the Loss Adjuster's comments regarding the issues with the cover.

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- **23 October 2018:** The Provider received the Loss Adjuster's report which included reports that the boiler was giving trouble in **May 2018** "*whereby it was not working and was 'tripping' out*". Furthermore the report went on to say that "*At the time of our on-site inspection we did not observe any insured event for which this policy would provide cover*". The Loss Adjuster went on to say that "*we noted no obvious sign of damage to the extract flue consistent with storm or any other insured peril*".
- **23 October 2018:** Claim declinature letter sent to the Complainant and to the Complainant's Broker advising that the policy would not provide indemnity, on the basis that no insured peril operated in causing the damage to the boiler, and that the terms and conditions of the policy were not adhered with, i.e. late notification of the claim.
- **24 October 2018:** The Loss Adjuster informed the Complainant's Broker and Complainant of the outcome of the claim.
- **26 October 2018:** The Broker informed the Provider of an appeal regarding the declinature of the claim.
- **1 November 2018:** The Provider informed the Broker that the Provider's position remained the same.
- **2 November 2018:** The Broker emailed the Provider "*stating that he will advise what is required for the Ombudsman*".
- **6 November 2018:** The Loss Adjuster confirmed to the Provider that the file was now closed.

Policy Terms and Conditions

The Household Policy Document contains a **Definitions** Section.

Premises is defined on page 4 of the household policy document as:

"(a) the private house, including fixtures and fittings thereon. The private house must be constructed of brick, stone, or concrete and roofed (at least 70%) with slates, tiles, concrete, asphalt or metal,

and

(b) domestic outbuildings, garages, swimming pools, tennis courts, fuel storage tanks and their contents, septic tanks, terraces, patios, decking, driveways, footpaths, walls, gates and fences, lawns, including fixtures and fittings therein and thereon,
and

(c) any hedges, trees, shrubs and plants within the boundary of the premises.

Excluding:

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- wind turbines,
- the percolation area of septic tanks,
- polytunnels,
- hot tubs.

The premises, as defined above, must be:

- occupied and used for domestic and residential purposes only,
- located at the address noted on the schedule”.

Section 1: Premises (page 6 of the of the Household Insurance Policy)

Your policy covers loss or damage to the premises caused by any of the events numbered (1) to (12) subject to the terms, conditions, limits and exclusions set out in this policy:

...

“What Your Policy Covers	Excluding Loss or Damage
(3) Storm or flood	<ul style="list-style-type: none"> • to fences and gates, lawns, hedges, trees, shrubs and plants, • by frost, • to roofs constructed with torch-on felt 10 or more years of age, or other felt 5 or more years of age.

“**Storm**” is defined on page 5 of the Household Insurance Policy as:

“A violent atmospheric event with strong winds in excess of 47 knots that may be accompanied by heavy rain, snow or sleet.”

Section 1: Premises (page 9 of the Household Insurance Policy):

“What Your Policy Covers	Excluding Loss or Damage
(12) Accidental Damage This cover is only applicable if indicated in the schedule.	<ul style="list-style-type: none"> • to the premises other than to the private house, • To any part of the private house which is lent, let, sub-let, or accommodating paying guests, • by settlement and shrinkage, • caused by animals owned by or in the care, custody or control of you or members of your household, • caused by scratching, abrading or denting, • as a result of tree root action, • resulting from any weather related event, • which is already excluded in paragraphs (1) to (11)”.

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“Accidental Damage” is defined on page 3 of the Household Insurance Policy as:

“Sudden or unforeseen damage caused as a result of an unexpected action or event”.

I note that since the preliminary decision of the FSPO was issued to the parties in July 2020, the Complainant has advised in his submissions, with reference to the peril of “Accidental Damage” that:

“I made it clear in my submission that I was not and am not pursuing this cover/peril as a cause of the damage and that the peril of “storm” was the only cause I am asserting, so I do not believe you should have included this in your analysis”

[my underlining for emphasis]

The **General Exclusions** are noted from page 48 of the Household Insurance policy, and includes:

Wear and tear as undernoted

- *Wear, tear, rust or corrosion.*
- *Gradual deterioration or any gradually operating cause.*
- *The cost of maintenance.*
- *Mildew, rising damp, dry/wet rot, moth, vermin, atmospheric or climatic conditions.*
- *Damage caused by any process of cleaning, dyeing, repairing or restoring any article.*
- *Mechanical, electrical or electronic defects, breakdown or malfunction.*

I see that on page 42 of the Household Insurance Policy, **“Claims – Terms and Conditions”** are specified, including:

Your Duties:

Notification

You must tell us immediately about any loss, damage, accident or incident that might give rise to a claim under the policy and give details of how the loss, damage, accident or incident occurred.

You will be required to produce at your own expense, all necessary documents and information to support any loss and send these to us, together with a completed claim form (if required), within 30 days of first telling us about that incident. If you do not send us the required documentation within 30 days we may decline your claim”.

Analysis

The Premises is defined in the household insurance policy to include fixtures and fittings. As a result, the boiler is considered to be part of the premises, within the terms and conditions of the policy. The Complainant's claim was initially assessed by the Provider under event "(3) Storm and flood". The policy defines 'Storm' as

A violent atmospheric event with strong winds in excess of 47 knots that may be accompanied by heavy rain, snow or sleet.

The Loss Adjuster noted in his report that

"at the time of our site inspection we did not observe any insured event for which this policy would provide cover, in terms of storm damage."

The Loss Adjuster also stated in his report that

"... in the first instance we have come to this decision on the basis of our on-site investigation, when we noted no obvious sign of damage to the extract flue consistent with storm or any other insured peril."

Furthermore, I note that the Provider considered the weather conditions in the area, around the time of the claim and concluded that:

"Based on the Met Éireann information available, the only day where storm conditions were present as defined in the Policy Document, with gusts of winds exceeding 47 knots, were recorded only on 19 September 2018. On further review of the meteorological data for this day, the gusts were unlikely to have been over a prolonged period of time. Furthermore, the precipitations were minimal on this day. These both weather events, wind and rain, as present in the only "stormy" day during the month of September 2018, would have very unlikely caused rainwater being forced through the extract in order to cause "storm damage/loss" to the boiler".

I am of the view that the Provider was reasonable in taking the view that it was entitled to decline the claim on the basis of damage sustained from a "storm" in the weeks before the claim was made, as the meteorological evidence disclosed no such weather event.

The Complainant has however pointed out that this was an irrelevant consideration, as the storm he is referring to which gave rise to his claim, was Storm Emma in **February/March 2018**.

Even though the Complainant did not seek to claim under event 12 for Accidental Damage (which is defined as "sudden or unforeseen damage caused as a result of an unexplained action or event") the Provider nevertheless considered the claim under that alternative peril. I note however from page 9 of the policy, that loss or damage "resulting from any weather related event" is excluded. I further note that the Loss Adjuster noted "no obvious sign of damage to the extract flue consistent with storm".

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Therefore noting that the Complainant's policy excludes any damage "*resulting from any weather related event*", I take the view that even if the Complainant had sought to pursue this possible basis for recovery of benefits, the Provider was entitled to refuse the Complainant's claim under "*Accidental Damage*".

I also note that the Provider considered the Complainant's claim taking account of the "*General Exclusions*" of the household insurance policy, which includes "*Gradual deterioration or any gradually operating cause*".

On **17 April 2020** the Complainant submitted an email to this office which stated

"The issue with the boiler was first identified in May 2018. My Engineer believes that the ingress of water was likely to have occurred in March 2018."

[my underlining for emphasis]

I am satisfied that if indeed the damage to the boiler occurred in **March 2018**, and was discovered in **May 2018**, and the Complainant did not inform the Provider until **October 2018**, this prevented the Provider from investigating the source of the problem, until 5/7 months later. The household insurance policy has a Notification Clause which states:

"You must tell us immediately about any loss, damage, accident or incident that might give rise to a claim under the policy and give details of how the loss, damage, accident or incident occurred. [My emphasis]

You will be required to produce, at your own expense, all necessary documents and information to support any loss and send these to us, together with a completed claim form (if required), within 30 days of first telling us about the incident. If you do not send us the required documentation within 30 days we may decline your claim".

The Complainant is unhappy because the Provider declined his claim in **October 2018**, on the basis that no insured peril operated in causing the damage to the boiler, and the terms and conditions of the policy were not adhered with, insofar as there was late notification of the claim.

The Provider's Loss Adjuster reported that

"the insured confirmed that on/around the end of May 2018 he became aware of an issue with the condensing boiler located in the utility room of the property whereby it was not working and was 'tripping out'."

He also stated that:

"The insured advised that as the Summer was exceptionally fine, he put the issues with the boiler to one side and only considered the matter again when the weather began to get colder. At this point the insured placed the insurers on notice."

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Furthermore, I note that on the **16 October 2018**, the Broker informed the Loss Adjuster that the boiler had been broken since **May 2018**. The Loss Adjuster also had a conversation with the Complainant's Mechanical Engineer in October, who advised that the boiler was damaged during Storm Emma in **February/March 2018**.

In those circumstances, I am of the view that the evidence confirms that the notification period stated in the household insurance policy, was not adhered to by the Complainant. I am satisfied that this prevented the Provider from inspecting the boiler at the time of the suggested damage, thereby prejudicing the Provider in its assessment of the claim.

I note that although the Complainant has stated that the boiler was serviced on **18 January 2018**, there is no Service Report available or indeed any evidence of this having taken place. Quite apart from any service earlier in 2020 however, the Complainant maintains that the only suitably qualified opinion offered on the cause of water ingress was that of his Gas Engineer, who the Complainant says "*stated his belief that the water ingress was caused by a single incident and not the result of an ongoing deterioration*".

The Complainant says that

"In summary, I wish to point out again that the very fact that the extract flue was not damaged must support my gas engineer's assertion that a single event, Storm Emma, was the cause of a substantial amount of water entering the flue and making its way into the boiler."

I note that the Complainant's Mechanical Engineer's report, dated 1 **October 2020**, does not however refer to a "single event", nor do the contents reference "Storm Emma", or any other storm. The report contains only the following details:

"[Name] after surveying your existing boiler and testing same up to 2 bar, we cannot find a leak in the boiler system. Looking at the water ingress which has come through system and damaged all electrics I would think that this must have been damaged by an unusually heavy bout of rain which must have come through your boiler flue, we sealed off your boiler from gas and electrics for safety if you need any other clarification please call me regards [name]."

Although the report refers to "*an unusually heavy bout of rain*" I am not satisfied that the report in question bears out the Complainant's theory that water ingress to the boiler was caused 7 months earlier by Storm Emma. However, even if the Complainant's theory were to be correct (although it is not borne out by the evidence available) and if Storm Emma caused water ingress and ensuing damage to the boiler, at the end of February/early March, I am satisfied in that event there was an obligation on the Complainant to notify the Provider immediately he became aware of the issue, even if that was as late as in May 2020, when the difficulties with the boiler "tripping out" are said to have occurred.

No claim was however made to the Provider until October 2020 and accordingly, on the basis of the evidence made available by the parties, I am satisfied that the Provider's conduct in declining to admit the claim was a reasonable one, for the reasons outlined above.

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I am satisfied that the Provider acted in accordance with the terms and conditions of the policy, and that on the basis of the evidence available, this complaint cannot be upheld.

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**

9 November 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.