Decision Ref:	2020-0431
Sector:	Insurance
Product / Service:	Professional Indemnity
Conduct(s) complained of:	Mis-selling (insurance) Dissatisfaction with customer service
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a sole trader carrying on the business of a building contractor, incepted a tradesman insurance policy with a named Insurer in **2014**, via the Provider, a broker. The policy period in which this complaint falls, is from **20 March 2016** to **19 March 2017**.

The Complainant's Case

The Complainant's services were engaged by the owners of a private dwelling house in **June 2016** to carry out building works that included an attic conversion, a rear single-storey extension, the installation of a new front door, internal works in the sitting room and kitchen, and electrical works throughout the premises. The owners were dissatisfied with the works carried out by the Complainant and in **January 2018** took the matter to the Circuit Court.

The Complainant notes that the Insurer declined indemnity for the Complainant's ensuing claim, on the basis that claims arising from defective workmanship are excluded by the terms and conditions of the tradesman insurance policy.

In his correspondence to this Office dated September 2018, the Complainant set out his complaint, as follows:

> *"I have had various dealings with both* [the Provider] *and* [the Insurer] *in relation to this claim.* [The Insurer] *have refused to indemnify me because of a "defective workmanship clause" which was never brought to my attention in any of my dealings with* [the Insurer] *or my broker,* [the Provider] …

> *I originally sent an email of complaint to* [the Provider] *on the **23rd June 2017**. I subsequently met with* [Mr A.] *of* [the Provider] *on the 3rd July 2017 at the* [named] *Hotel …* [Mr A.] *asked me to hold off doing anything and he would "turn this around" and try to get* [the Insurer] *to change their mind. He also stated he would engage an insurance professional to go through the policy to see if* [the Insurer] *had a right not to indemnify me. He stated that this insurance professional agreed that* [the Insurer] *should indemnify me. He also advised he would keep me updated on a weekly basis. This has not been done.*
>
> [Mr A.] *advised me that "defective workmanship" clauses are always in these types of policies concerning tradesmen. This alarmed me because any of my work could be termed "defective". It is a very vague term and a very vague clause.*
>
> *I am making a complaint against* [the Provider] *because they sold me the policy to begin with and never notified me re the "defective workmanship" clause at the outset. They are my broker who I pay to get me the best policy on the market for my business which they failed to do. They have also failed to help me with regards to this claim to date"*.

In addition, the Complainant states that the Provider never furnished him with the terms and conditions policy document of his tradesman insurance policy.

The Complainant seeks for the Provider to get *"*[the Insurer] *to look after the claim being made against me and to indemnify me"*.

<u>The Provider's Case</u>

Provider records indicate that the Complainant, a sole trader carrying on the business of a building contractor, contacted the Provider in early 2014 to obtain a public liability insurance policy. It was explained to the Complainant, by way of examples, what a public liability, products liability and employer's liability combined policy would cover. The Complainant incepted a tradesman insurance policy with a named Insurer via the Provider and this policy noted his trade as Construction and his primary business activity as Building Contractor. The Provider is satisfied that this insurance policy met the needs of the Complainant.

The Provider furnished the Complainant with a document administered by the Provider which outlined the summary of his cover and the Provider's Terms of Business. In addition, the Provider typically provides its clients with the Insurer's policy schedule and terms and conditions booklet in every instance, either by email or in printed format, and to the best of its knowledge this was provided to the Complainant, however, the Provider is not in a position to confirm this in this instance.

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The Provider notes that the Complainant did not ask for the insurance he was seeking, to provide cover for defective workmanship but should he have done so, the Provider would have advised that this was something that it could not arrange as defective workmanship itself is uninsurable. In this regard, the Provider submits that if insurance were to provide cover in respect of defective workmanship, it would present a significant potential of poor moral hazards for insurers as policyholders might take less care in their business activities, because they have such cover in place.

Insurers exclude indemnity for defective workmanship as it is assumed that the policyholder is capable of completing the activities associated with its business description. Similarly, it is an assumption that a reasonable person wanting to effect a liability policy as a tradesman should reasonably deduce that the insurance cover is provided on the basis that they are capable of performing the activities associated with its business description. For this reason, it is not common for defective workmanship to be stated as an explicit exclusion in the policy documentation; rather it is an assumed exclusion.

In this regard, it is reasonable for a member of the public to hire a certain type of tradesman to complete a specific task, for example, a plumber to install a new hot water tank in an attic. It is also reasonable that the member of the public will assume that the plumber they hire has the required skills and experience to complete this task. Insurance operates on the same basis, that if a tradesman seeks to take out insurance according to the business description noted, then he or she has the required skills and experience (and, in certain circumstances, qualifications) to complete the tasks associated with the business description.

If, in this example, the hot water tank is installed incorrectly and becomes damaged, this is classified as defective workmanship and this failed task in itself, is not covered under any insurance policy that the Provider is aware of. The task of installing the hot water tank was done incorrectly and therefore the actual work done by the tradesman was faulty. If this damaged hot water tank then leaks water from the attic through the ceiling and floods the bedrooms below, this damage to the bedrooms is what is regarded as the consequences of the defective workmanship and such damage may be covered under certain policies, depending on the circumstances.

The Provider confirms that there are no current or previous insurers available to it that offer indemnity for defective workmanship because insurance is typically offered on the basis that the policyholder is capable of performing the functions associated with its business activities and insurance is not a warranty for a policyholder who fails to execute such functions.

The Complainant renewed his tradesman insurance policy with the Insurer on 20 March 2016, via the Provider. The Provider also offered the Complainant a quote from an alternative insurer and this alternative insurer also did not (and does not) provide cover for defective workmanship. The Complainant opted to remain with the existing Insurer at that time.

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The Provider notes that when the Complainant initially contacted the Provider regarding the potential claim, one of its Agents asked him if it was faulty or defective workmanship that was being alleged, as this would not be covered by the Insurer. In addition, a different Agent explained to the Complainant at a later stage, that faulty or defective workmanship was not coverable in the Irish insurance market.

The Provider received notice of an official complaint from the Complainant on **23 June 2017** by way of an email sent to a member of staff. This was forwarded for the attention of management on the same morning. Following receipt of this email, the General Manager telephoned the Complainant to arrange a meeting between Mr A. and the Complainant, in accordance with the 'Customer Complaints Handling Procedure' set out in the Provider's Terms of Business.

The Provider says that Mr A. met with the Complainant and his sister on **3 July 2017** and he observed that both were very stressed and emotional about the situation and that a lot of the meeting involved him attempting to calm the Complainant and his sister best as he could, through reassurances that the Provider would continue to work in his best interests.

Mr A. asked the Complainant his version of events that led up to the incident alleging a claim of defective workmanship. In this regard, the Complainant advised that his client had requested him not to put steel into the attic conversion works in order to save on costs. The Complainant said that he advised the client that without the steel included, the client would be unable to sell the house with the attic listed as an extra bedroom, and that the client agreed that this was fine, however towards the end of the contract the client then sought to have the attic conversion signed off as fully compliant as a bedroom.

The Provider says that Mr A. asked the Complainant what would be his favourable outcome, to which he said he wanted the Insurer to accept the claim but not pay out as he wanted the Insurer to fight the claim, as he believed that his client was not willing to pay him for the work done and he considered the client to be a fraudster who had manufactured the claim. The Complainant also said that he would like reassurances that the claim would be paid if push came to shove. Mr A. advised that the Provider wanted to resolve the matter to the Complainant's satisfaction and also wanted the Insurer to accept the claim, however he did state that if the Insurer were to accept the claim, that this would involve a settlement payment.

Mr A. explained to the Complainant that the Provider had claims of this nature declined in the past and that it was able to turn some of these around and ensure indemnity by the insurer. He advised that the Provider wanted a successful outcome for the Complainant and in this regard, Mr A. is adamant that no guarantees were made but that there were promises that the Provider would do everything in its power to have the claim file reviewed by the Insurer and the decision to decline indemnity overturned. Mr A. advised that he would call the Provider's designated representative with the Insurer and other Insurer personnel, where appropriate to do so, to progress this matter further.

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The Provider says that Mr A. also explained at length during this meeting that defective workmanship was not covered under any liability policy, rather it was the consequences of defective workmanship that were insurable. Mr A. noted that this often comes down to a matter of interpretation and reiterated that he and the Provider had been successful in the past in having decisions taken by an insurer to decline indemnity following a claim, overturned and would do what he could to help the Complainant in that regard.

The Provider says that following this meeting, Mr A. contacted the Provider's Broker Development Manager with the Insurer on the same day, who advised that he would review the claim file and revert back. Mr A. followed up with the Complainant to advise that the Provider had been successful in requesting the Insurer to review the file. A week later, Mr A. contacted the Complainant to advise that he had not yet heard back from the Insurer, and did so again another week later. At this stage, the Complainant said to Mr A. that *"no news was good news"* and there was no need for Mr A. and/or the Provider to continue contacting him weekly unless it had received an update from the Insurer. Mr A. agreed that the Provider would only contact him if there was something to update him on, rather than weekly.

The Provider says that in addition, at the Complainant's request, Mr A. also reached out to the Complainant's Solicitor and left several messages. When the Solicitor got in touch, he advised that he would ring Mr A. or the Provider if anything further was needed. The Provider received no further calls from the Complainant's Solicitor.

The Provider is satisfied that it put as much pressure as possible on the Insurer in order to obtain a favourable outcome for the Complainant, however, upon reviewing the file, the Insurer notified the Provider that it would not be overturning its original decision to decline indemnity to the Complainant. Mr A. and the Provider were and remain disappointed that the Insurer declined to provide indemnity to the Complainant in this instance. Mr A. advised the Complainant that he may have recourse against the Insurer and might pursue the matter further with the Insurer regarding its decision to decline indemnity.

The Provider notes that it does not have a recording of the telephone calls that took place between the Complainant and Mr A. and submits that a possible reason that such calls are not available is if they were made to or from Mr A.'s mobile number. Another possibility is that the calls were made to or from a different contact number for the Complainant, than those held on file.

Since this particular incident in 2016, the Complainant moved his insurance cover to a different insurer. The Provider notes that this insurer also does not offer indemnity for defective workmanship. Furthermore, the Provider notes that the Complainant has had an additional claim declined in 2018 as the insurer at that time decided that this claim was resulting from defective workmanship itself, which the Provider submits is further indication that this type of claim is not covered under a typical tradesman insurance policy in the Irish market.

The Provider confirms that there is no advantage, financial or otherwise, to the Provider should indemnity be offered or not, by the Insurer. It was the Insurer that deemed the incident(s) uninsurable, not the Provider, and the Provider believes that it went above and beyond standard procedures to have the Insurer review the claim for the Complainant. In this instance, the Insurer determined that all items listed on the claim being made against the Complainant were as a result of suggested defective workmanship. This is a decision made entirely by the Insurer; the Provider, as a broker, does not have any decision-making authority regarding how the Insurer assesses a claim or determines what is/is not covered under a policy and thus it cannot comment further on the Insurer's decision to not indemnify the Complainant.

The Complaint for Adjudication

The Complainant's complaint is that from 2014, the Provider mis-sold him a tradesman insurance policy with a named Insurer. The Complainant says in that respect that this policy did not suit his needs as it failed to provide cover in respect of "defective workmanship". The Complainant is also unhappy that the Provider has not acted to help him resolve this matter with the Insurer.

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 **3 November 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.

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The complaint at hand is that in 2014 the Provider mis-sold the Complainant tradesman insurance policy with a named Insurer, insofar as this policy did not suit his needs as it failed to provide cover in respect of defective workmanship. In addition, the Complainant is also unhappy that the Provider has not acted to help him resolve this matter with the Insurer. In this regard, the Complainant, a sole trader carrying on the business of a building contractor, incepted a tradesman insurance policy with a named Insurer in 2014, via the Provider, a broker.

That policy thereafter was renewed annually in 2015 and 2016. This policy noted the Complainant's trade as Construction and his primary business activity as Building Contractor.

I note that the Complainant's services were engaged by the owners of a private dwelling house in **June 2016** to carry out building works that included an attic conversion, a rear single-storey extension, the installation of a new front door, internal works in the sitting room and kitchen, and electrical works throughout the premises. The owners were dissatisfied with the works carried out by the Complainant and in **January 2018** took the matter to the Circuit Court. The Complainant notes that the Insurer declined indemnity in this matter on the basis that claims arising from defective workmanship are not covered by the terms and conditions of his tradesman insurance policy.

In his correspondence to this Office dated **September 2018**, the Complainant set out his complaint, as follows:

> *"I am making a complaint against* [the Provider] *because they sold me the policy to begin with and never notified me re the "defective workmanship" clause at the outset. They are my broker who I pay to get me the best policy on the market for my business which they failed to do".*

Similarly, in his correspondence to this Office dated **16 January 2020**, I note that the Complainant advised as follows:

> *"I never knew anything about defective workmanship until I was told I was not being covered by* [the Insurer]. *It was never pointed out to me at any point or explained to me when taking out this policy of insurance. It is irrelevant for* [the Provider] *to now say that I did not request to be covered for defective workmanship because I knew nothing about it".*

In this regard, I note that the Complainant did not instruct the Provider to ensure that the insurance cover it was to arrange for him, would include indemnity for defective workmanship. Nevertheless, had he asked the Provider to arrange cover that included indemnity for defective workmanship, I accept the Provider position that it would have informed the Complainant that this was something that it could not arrange, as there were no insurers available to the Provider that offered indemnity for defective workmanship.

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I note that the tradesman insurance policy that the Provider arranged for the Complainant, provided him with valuable and necessary cover as a sole trader, carrying on the business of a building contractor. That cover included cover for public liability and personal accident, details of which I note were laid out in the policy schedule (in addition to being in the more detailed provisions of the full policy document).

Accordingly, I am of the opinion that, given the evidence made available by the parties, that there is no reasonable basis upon which it would be appropriate to conclude that the Provider mis-sold the Complainant his tradesman insurance policy in 2014, or thereafter in 2015 and 2016, simply because the policy failed to provide him with cover in respect of defective workmanship, a cover which he never requested and which is not readily available. In this regard, I note that there is no evidence before me to suggest that the Complainant has since succeeded in obtaining indemnity for defective workmanship elsewhere, despite having changed insurers.

In addition, the Complainant states that the Provider never supplied him with the tradesman insurance terms and conditions policy document. In this regard, I note that the Provider wrote to the Complainant on **21 March 2016**, as follows:

> *"The above policy falls due for renewal on 20/03/2016. Please find enclosed the following documentation for your attention.*
> 1. *Renewal Notice from* [the Provider].
> 2. [Insurer] *Broker's Renewal Documentation and Policy Document.*
> 3. *Statement of Suitability* ***(please read, sign and return the acknowledgement****).*
> 4. *Terms of Business (****please read, sign and return the acknowledgement****).*
> 5. *Receipt*
>
> *Please read enclosed information carefully making sure it meets with your requirements. We would strongly recommend that you examine your renewal and advise us of any changes you wish to make to our policy. Should you have any further queries relating to your policy, please do not hesitate to contact us"*.

I note from the documentary evidence made available to this office, that the *"Policy Document'* referred to in this letter was the Policy Schedule and was not the tradesman insurance terms and conditions policy document. The Provider has advised that it typically provides its clients with the Insurer's policy terms and conditions booklet in every instance, either by email or in printed format, and to the best of its knowledge this was provided to the Complainant, however, the Provider is not in a position to offer confirmatory evidence in this instance.

In this regard, I am of the opinion that if the Complainant did not receive the policy terms and conditions, it would have been prudent of him to have requested them again from the Provider and/or the Insurer. There is no evidence however, that he did so.

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Be that as it may, it is disappointing that the Provider has inadequate records to illustrate the manner in which such terms and conditions were made available to the Complainant in 2016, if at all. I am satisfied that the Provider has obligations pursuant to the Central Bank of Ireland's Consumer Protection Code in this regard to maintain the relevant record and, in my opinion, it has a case to answer in respect of its failure to meet those obligations.

In reviewing the documentation made available to this office, I noted that the evidence included a letter sent by the Provider to the Complainant dated **21 March 2016** advising that the policy *"falls due for renewal"* on 20 March 2016, i.e. on the previous day.

Quite apart from this anomaly, I considered it appropriate to raise further queries with the Provider because I noted that the letter in question advised the Complainant to note certain enclosures as follows:-

(i) Renewal Notice from [Insurer] Limited.
(ii) [Insurer] Broker's Renewal Documentation and Policy Document.
(iii) Statement of Suitability **(please read, sign and return the acknowledgement).**
(iv) Terms of Business **(please read, sign and return the acknowledgement).**
(v) Receipt.

Having noted the terms of this letter, I wrote to the Provider again on **21 May 2020** pointing out that the evidence submitted to the FSPO did not appear to include the Statement of Suitability signed by the Complainant, or the Provider's Terms of Business signed by the Complainant, as referred to above. Accordingly, I asked the Provider to confirm whether the Statement of Suitability and Terms of Business had been signed by the Complainant, in which event, I sought a copy of those signed documents. If those documents were not however signed by the Complainant and returned to the Provider, I sought clarification as to whether:-

1. this was not in fact a requirement at the time and it had been unnecessary for the Provider to ask the Complainant to do so (in which event I asked for clarification as to why the Provider had made that request).
   OR
2. this had in fact been a requirement and in that event I sought clarification as to what action the Provider had taken to follow up with the Complainant when the signed documents had not been received by return.

When the Provider ultimately responded on **27 July 2020**, it confirmed that it had not been a requirement for the Complainant to sign the documentation in question in 2016 and the Provider advised that

> *"it is most likely that the administration changes regarding same in the Terms of Business had not been updated, however, by not signing the requested items there was no effect on the cover provided to the client."*

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I also took the opportunity at that time in **May 2020** to draw the Provider's attention to the fact that the Provider's representative had written to the Complainant on 5 February 2016 to notify him that he would call in about a week, to go through a couple of details required in order to process the renewal quote for the Complainant's insurance. In that context, I sought a copy of the records taken in the course of this telephone conversation documenting the details noted to have been needed, and the conversation between the parties. The Provider's response to this query omitted any documentary records of the content of the call in question and this office was advised that "*all calls associated with this client on 9 February 2016 are provided*".

I also raised a query regarding a subsequent call with another representative of the Provider, which this office noted was referred to in an email dated **10 March 2016** attaching renewal quotations for the Complainant's consideration. I sought a copy of any records held by the Provider regarding the content of this telephone conversation but ultimately, on 29 July 2020 the Provider advised that

> "*unfortunately between the period of March 7, 2016 and April 1, 2016 there was no data collection from the telephone system and neither were any calls being recorded so there is no information at all for any calls made to and from the business within this period*."

Given the nature of the complaint made against the Provider, it is disappointing that the Provider holds no audio evidence of the telephone discussions, nor indeed has it made available any records or notes of the content of the calls taken at the relevant times. Administration oversights of this nature can cause considerable frustration when, as in this instance, the Complainant believes that the content of the telephone discussions in question are relevant to his position. Whatever the content of those calls however, I am satisfied that the Complainant's own evidence indicates that it was not until 2017 that any discussion ensued regarding cover for "*defective workmanship*" and accordingly it seems that the calls in question are unlikely to touch upon that particular aspect.

I note that the policy schedule sent to the Complainant makes reference to the operative sections of the cover from which it can be noted that the Complainant's cover was for public liability, a certain level of personal accident with additional cover for tools, business equipment and own plant. He was not however, insured for employer's liability, hired in plant or contract works. I also note that each of the policy schedules ended with a notice as follows:-

> "***<u>What do you need to do</u>***
>
> *We recommend that you read this document along with your policy summary to ensure that it meets your requirements. If you have queries, please contact your insurance broker…."*

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The policy document made it clear under the heading of "*Public Liability*" that certain risks were not covered which included the following:-

> "***What is not covered (continued)***
> ***8. Damage to works / rectification of defects.***
> *…*
> *c) expenditure incurred by anyone in*
> *(i) investigating or providing a remedy for*
> *(ii) removing reinstating replacing reapplying or rectifying*
> *any defective harmful or unsuitable goods materials or works supplied used or undertaken…"*

Accordingly, having considered the matter in detail, I take the view that although the Provider has a case to answer, in respect of a number of administrative errors and a failure to meet its regulatory obligations to maintain all required records, nevertheless I do not accept that the policy sold by the Provider to the Complainant in 2014 and again in 2015 and 2016 was unsuitable to him, because no cover was made available in respect of "*defective workmanship*". I accept the Provider's explanation in that regard that insurance is typically offered on the basis that a policyholder is capable of performing the functions associated with that policyholder's business activities and that cover for "*defective workmanship*", is not readily available within the insurance market.

The Complainant is also unhappy that the Provider did not act to help him resolve this matter with the Insurer. In this regard, in his correspondence to this Office dated September 2018, the Complainant submits, as follows:

> *"*[The Provider] *have also failed to help me with regards to this claim to date".*

I note that Provider Representative Mr A. met with the Complainant at the [named] Hotel on **3 July 2017** at 11am for 2½ hours. In this regard, in his letter to the Provider dated 17 August 2018, the Complainant submits, *inter alia*, as follows:

> *"*[Mr A.] *met with me once and stated he would "turn this around" for me … This has not been done.* [The Provider] *liaised only a handful of times with myself and my solicitor and have not turned anything around with regards to getting* [the Insurer] *to look after this claim for me"*.

Similarly, in his letter to this Office dated **16 January 2020**, the Complainant submits, *inter alia*, as follows:

> *"*[Mr A.] *stated that he would get this overturned, that he would get an insurance expert in and get* [the Insurer] *to change their minds"*.

Whilst the parties offer differing accounts as to what exactly was discussed at the meeting between Mr A. and the Complainant on 3 July 2017, I am satisfied that both parties agree

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that Mr A. advised the Complainant that he would contact the Insurer to try and have it review the claim file in an attempt to have its decision to decline indemnity overturned.

In this regard, I note that Mr A. acknowledges that he advised the Complainant at this meeting that the Provider had been successful in the past, in having decisions taken by an insurer to decline indemnity following a claim, overturned and that he would do what he could to help the Complainant in that regard.

I also note from the documentary evidence before me that after this meeting the Provider contacted the Insurer and as a result of this contact the Insurer agreed to review its decision to decline indemnity, though following this review the Insurer then upheld its declinature.

I accept that it was a matter for the Insurer to assess any claims before it and that the Provider, as a broker, has no influence in that regard. As a result, whilst the Complainant is unhappy that the Provider did not act to help him resolve this matter with the Insurer, I am satisfied that the Provider was limited in what it could do, other than to communicate the Complainant's position to the Insurer, iterate its support for his claim and ask the Insurer to review its decision, all of which I note, the Provider did, in this instance.

Finally, in his letter to this Office dated **16 January 2020**, the Complainant submits, *inter alia*, as follows:

> *"I deny that this claim falls under the defective workmanship clause".*

In this regard, I am satisfied that it is a matter for the Insurer to assess any claims made by the Complainant and I am satisfied that the Provider cannot be responsible for the decisions made by the Insurer. In any event, I note that the suggested defective workmanship was a matter which was raised before the Circuit Court when the Circuit Court proceedings were commenced against the Complainant in January 2018. As a result, it was a matter therefore for the Circuit Court alone to determine whether indeed, on the evidence before it, the allegation of defective workmanship was well-founded, or without foundation.

It is clear to me from the evidence made available to this office that the Provider sought to assist the Complainant in the context of the position he found himself in. Indeed I note the reference in the Provider's internal communications, to the Complainant being "*a decent guy*" and the Provider's own opinion is clear from that communication, that the Complainant had been treated poorly by the insurer.

The Provider however, notwithstanding its efforts, did not succeed in convincing the insurer to provide an indemnity to the Complainant. This was outside of its own hands. On the basis of the evidence before me, I do not accept the Complainant's suggestion that the Provider did not act to help him resolve his issues with the insurer. On the contrary, I am satisfied that the Provider made all reasonable efforts to help the Complainant but was unable to convince the insurer to adopt a different position.

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Accordingly, insofar as this complaint is concerned, I take the view that there is no reasonable basis upon which it would be appropriate to uphold the substantive complaint of mis-selling. Nevertheless, in circumstances where it is clear that the Provider has failed in its regulatory obligations, to maintain all relevant records and the evidence also discloses a number of administrative errors throughout the relevant period, which have created certain limited gaps in the evidence available to this office, I consider it appropriate to partially uphold this complaint and to mark that decision I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant in the sum of €500, in order to conclude.

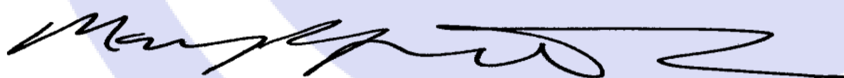
Conclusion

- 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 make a compensatory payment to the Complainant in the sum of €500, 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 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.