



<b><u>Decision Ref:</u></b>	2021-0001
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues Rejection of claim - fire
<b><u>Outcome:</u></b>	Rejected

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

The Complainants incepted a household insurance policy with the Provider on **18 May 2016**. The policy was subsequently renewed and the policy period in which this complaint falls, is from **May 2018** to **May 2019**.

**The Complainants' Case**

The Complainants contacted the Provider in **June 2018** to advise that following a chimney fire in their neighbours' flue on 14 June 2018, the Complainants first noticed cracking on the shared chimney stack (the Complainants' property is semi-detached). The Complainants also advised that their chimney flue may have been damaged by the fire in the neighbouring flue.

The Provider-appointed Loss Adjuster requested a CCTV camera survey of both the Complainants' and the neighbours' flue. This was submitted to the Loss Adjuster, which in turn retained Consulting Engineers, Z. Forensic Investigators to review same.

Based upon its findings, the Provider declined indemnity in this matter as it concluded that it had not been proven that a significant chimney fire had occurred in the neighbours' flue on 14 June 2018 or if it had, that this fire caused direct fire damage to the Complainants' section of the chimney flue.

In this regard, the Complainants set out their complaint, as follows:

*“We genuinely felt we had demonstrated that the Insured’s flue was damaged by a chimney fire. The cctv of the [Complainants’] flue shows clear signs of chimney fire damage. In fact, the report from [Z. Forensic Investigators dated 3 October 2018] states*

*“The liner appears discoloured due to the effects of heat. This would be anticipated in the event of a soot fire” (para. 3, page 4)*

*“The flue is relatively clean and may have suffered a soot fire causing soot deposits to burn away” (para. 4, page 4)*

*“The flue shown in the file named ‘\*\*\*\*\* \*\*\*\*\*.asf’ appears clean and may have suffered a chimney fire” (para. 4, page 5)*

*However, these findings were rejected by [the Provider] ...*

*We don’t feel that the conclusions reached by [the Provider] are fair in this case...This is, in our opinion, a classic case where while there may be reasons not to pay the claim there are equally reasons why the claim could be paid. The cracking on [the Complainants’] flue is clearly consistent with that caused by a chimney fire. What we are looking for here is that the benefit of the doubt be granted to [the Complainants].*

*We are concerned that the decision not to pay this claim is partly based upon the erroneous assumption that this policy was taken out in May 2018 less than one month before the initial reported date of loss”.*

The Complainants seek for the Provider to admit their household insurance claim for repairs in the amount of €7,937.96.

### **The Provider’s Case**

Provider records indicate that the Complainants renewed a household insurance policy with the Provider on 18 May 2018.

The Provider says that the Complainants made contact in June 2018 to advise that following a chimney fire in the neighbours flue on **14 June 2018**, the Complainants first noticed cracking on the shared chimney stack (the Complainants’ property is semi-detached). They also expressed concern that their chimney flue may have been damaged by the fire in the neighbouring flue. The Provider was advised that the fire brigade did not attend and that the Complainants themselves had been unaware of any incident, until they were approached afterwards by the neighbours’ representatives.

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The Provider says that as part of its claim assessment, its Loss Adjuster requested a CCTV camera survey of both the Complainants' and the neighbours' flue. This was submitted to the Loss Adjuster, which in turn retained Consulting Engineers, Z. Forensic Investigators to review same. Based on the ensuing report, the Loss Adjuster concluded that the forensic review of the CCTV camera survey, did not provide conclusive evidence of a chimney fire in either flue and that the cracking, noted in the Complainants' flue was minor in nature and the cause of this minor cracking, had not been conclusively established.

As a result, the Provider declined indemnity in this matter as it concluded that it had not been proven that a significant chimney fire had occurred in the neighbours' flue on 14 June 2018 or if it had, that this fire caused direct fire damage to the Complainants' section of the chimney flue.

In this regard, the Provider wrote the Complainants on **7 February 2019**, as follows:

*"Policy Wording [pg. 12 of the Household Insurance Policy Booklet (September 2017)]*

*What is Covered?*

*Loss or damage directly caused by*

- a) Fire, lightning, explosion or earthquake*
- b) Smoke*

*What is Excluded? ...*

- We will not cover anything which happens gradually*
- Damage to chimney flue and any resultant smoke damage unless the flue has been:-
  - (i) professionally lined and insulated*
  - (ii) kept in a good state of repair and professionally cleaned along the entire length at least once a year ...**

*You policy provides cover for the specific events as detailed in your policy document, and the cover provided is subject to the exclusions and terms and conditions contained within the wording.*

*Not all events which may occur will therefore be covered, and any claim submitted must be considered in accordance with the cover provided and will be subject to the terms and conditions of that cover.*

*As with all insurance claims, it is for the policyholder to provide evidence that they have a valid claim covered by their policy. On this occasion, you have asked us to accept that there was a chimney fire on or around the 14<sup>th</sup> June 2018 that originated in your neighbours' property and this has caused damage to your section of chimney. I have carefully considered the arguments put forward by your [Loss Assessor] and the full comments of the [Z. Forensic Investigators] report. Having reviewed all this evidence I am not persuaded that there has been any fire damage to your chimney that would necessitate any repairs that could be covered by your policy.*

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*I understand that your [Loss Assessor] has raised the possibility that the chimney may have been constructed without a mid-feathers wall between your chimney flue and your neighbours. If this was the case, then this would mean the chimney did not comply with the Building Regulations Technical Guidance Document J which requires that there is a brick or block wall of at least 100 mm thickness between each flue. Any work required to correct this defect should it exist, could not be covered by your policy.*

*Should you be able to provide us with new and compelling evidence to prove that on the balance of probabilities that your buildings have indeed been damaged by a fire incident and this fire damage requires repairs directly as a result of this fire, then we will consider the merit of this new evidence if it can be provided.*

*Otherwise I do feel the conclusions reached by [the Provider-appointed Loss Adjusters] are fair and it is for these reasons I feel that we are unable to accept your claim”.*

The Provider notes that it is for the insured to reasonably prove to the insurer, as it is with any insurance claim, that the risk address suffered damage caused by the operation of one of the specified insured events listed in the relevant policy. The Provider says that following its assessment, it declined indemnity in this matter because there was no conclusive evidence that there had been any fire damage to the Complainants’ chimney that would necessitate any repairs that could be covered by their household insurance policy.

### **The Complaint for Adjudication**

The Complainants’ complaint is that the Provider wrongly or unfairly declined their household insurance claim arising from the events of June 2018.

### **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 Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on **26 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.

I note that the Complainants contacted the Provider in June 2018 to advise that following a chimney fire in their neighbours' flue on **14 June 2018**, they first noticed cracking on the shared chimney stack (the Complainants' property is semi-detached). In addition, I note that the Complainants also advised that their chimney flue may have been damaged by the fire in the neighbours flue. The Complainants submitted a claim for repairs to the Provider in the amount of €7,937.96.

I note that as part of the claim assessment, the Provider-appointed Loss Adjuster requested a CCTV camera survey of both the Complainants' and the neighbours flue. This was submitted to the Loss Adjuster, which in turn retained Consulting Engineers, Z. Forensic Investigators to review the details.

I note that based on the ensuing report, the Loss Adjuster concluded that the forensic review of the CCTV camera survey did not provide conclusive evidence of a chimney fire in either flue, and that the cracking noted in the Complainants' flue was minor in nature and the cause of this minor cracking had not been conclusively established.

As a result, I note that the Provider declined indemnity in this matter as it concluded that it had not been proven that a significant chimney fire had occurred in the neighbours' flue on 14 June 2018 or if it had, that this fire caused direct fire damage to the Complainants' section of the chimney flue.

I note that the '**Review of Alleged Chimney Fire Damage at [the Risk Address]**' furnished by Z. Forensic Investigators to the Loss Adjuster dated **3 October 2018**, which set out the results of its review of the CCTV camera survey of both the Complainants' and the neighbours' flue, provides, *inter alia*, at pgs. 5-6, as follows

*"Neither CCTV survey shows damage to the flue likely to be the result of a soot fire or to cause the flue to be unsafe in use. The only components where cracking might be evident is immediately above the appliance connection ...*

*The safety or otherwise of the chimney and both flues might be determined by undertaking a pressurised smoke test in accordance with the method described in I. S. EN 15287-1. Such a test undertaken on one of the flues would demonstrate whether or not there is a path for the passage of flue gases from one flue to the other.*

*It is not possible to determine from the evidence provided whether or not the chimney stack is constructed without mid-feathers, it is also unclear to me how this might have*

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*been determined from external examination only. The cross-sectional size of the chimney stack appears adequate to incorporate mid-feathers, supported by the use of a prefabricated cap component – cast to fit a standard size and arrangement of construction.*

*If the chimney has been constructed without installing mid-feathers replacing the flue liners will not be sufficient to bring the chimney stack up to a standard that would comply with the requirements of Technical Guidance Document J.*

*I consider it unlikely that the light cracking observed of the render to the chimney stack is due to effects of a chimney fire. I consider it more likely that this is a pre-existing condition.*

*On the basis of the information provided I consider it unlikely that there has been a significant soot fire in either flue and observe no damage likely to have occurred as the result of such a soot fire. Since soot deposits and poor quality video images can prevent faults being observed I recommend that a smoke test to I. S. EN 15287-1 is carried out to determine whether there is any significant breach of the integrity of either flue”.*

I note from the documentary evidence before me that in its email to the Provider at 19:00 on 3 October 2018, the Provider-appointed Loss Adjusters advised, *inter alia*, as follows:

*“When we received the CCTV report from the neighbouring property it did not show any obvious fire damage in the flue. The hairline cracking pointing out on the exterior of the chimney did not correspond with any cracking inside the chimney said to have been caused by a fire, so could not be connected ...*

*You will see from the Report that the Engineer concurs there is no evidence of a chimney fire in the neighbouring property which warrants re-lining of the flue. If there is an issue with mid-feathers missing which could be established by a smoke test, this is a construction defect.*

*Some localised crackling was noted just above the fireplace in the Insured property (no chimney fire was reported here) but that appears to be localised, and likely through normal usage”.*

In addition, I note that in its later email to the Provider at 08:11 on **30 November 2018**, the Provider-appointed Loss Adjusters advised, *inter alia*, as follows:

*“The first point is that it is possible [the Complainants’ flue] had a fire at some unknown time to us or [the Complainants], only discovered during this exercise of surveying both flues follow[ing] reports of a fire next door in June 2018. No fire damage has been discovered to the neighbouring flue which would warrant extensive repairs.*

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*The damage in [the Complainants' flue] is minor, and of course there is no information at all on when this damage is likely to have occurred. The damage at the bottom of the flue could happen every time the fire is lit, upper flue damage may have resulted from an unintended chimney fire.*

*We and [Z. Forensic Investigators] do not agree that the minor cracking in the upper flue is indicative that extensive relining is required. A smoke test would be required to confirm this.*

*We will inform [the Complainants' Loss Assessors] this should be done and that at this stage we do not accept the damage discovered warrants a full relining repair. More fundamentally, it has not been established when this damage may have occurred, ([the Complainants] has been in occupation since...around 11 years ago) and the Policy has been in force since May 2016".*

The Complainant as the policyholder, is required to show that the loss suffered, resulted from a peril, which is insured under the policy, in this case fire damage. In this regard, I note that the Complainants submit, as follows:

*"We genuinely felt we had demonstrated that the Insured's flue was damaged by a chimney fire. The cctv of the [Complainants'] flue shows clear signs of chimney fire damage. In fact, the report from [Z. Forensic Investigators dated 3 October 2018] states,*

*"The liner appears discoloured due to the effects of heat. This would be anticipated in the event of a soot fire" (para. 3, page 4)*

*"The flue is relatively clean and may have suffered a soot fire causing soot deposits to burn away" (para. 4, page 4)*

*"The flue shown in the file named '\*\*\*\*\*.asf' appears clean and may have suffered a chimney fire" (para. 4, page 5)*

However, having read the 'Review of Alleged Chimney Fire Damage at [the Risk Address]' prepared by Z. Forensic Investigators dated 3 October 2018, I note the full context of the sentences that the Complainants refer to, as follows:

*"The liner appears discoloured due to the effects of heat. This would be anticipated in the event of a soot fire, **however on a closed appliance it is possible that flame extension may occur into this connecting flue pipe and would be likely to produce the same effect**" [para. 3, page 4]*

*"The flue is relatively clean and may have suffered a soot fire causing soot deposits to burn away. **However, I observed no damage to any of the flue liners. The inspection is very brief, with no more than four or five seconds of***

**video as the camera is passed through each flue liner through the majority of the height of the chimney**" [para. 4, page 4]

**"The flue shown in the file named '\*\*\*\*\*.asf' appears clean and may have suffered a chimney fire, *although no significant damage appears to have been caused if that were the case*"** [para. 4, page 5]

**[Emphasis added]**

It is an insurance industry standard, that the onus rests on the policyholder, as the insured, to show that the loss suffered was the result of an insured peril, in this case fire damage. On the basis of the evidence available, which included the forensic review of the CCTV camera survey of both the Complainants' and the neighbours' respective flues, I am of the opinion that it was reasonable for the Provider to conclude that the Complainants did not, in this instance, satisfy this requirement.


I note in this regard that the policy offers cover for loss of damage directly caused by "fire, lightning, explosion or earthquake". I am satisfied however that the Provider was entitled to conclude that there was insufficient evidence available to establish that damage caused to the Complainants' chimney resulted from a fire (whether "significant" or otherwise) that had occurred in the neighbours' flue on 14 June 2018, and which had given rise to direct fire damage to the Complainants' section of the chimney flue.

I note that the Provider has made it clear to the Complainants that if they are in a position to provide any new and compelling evidence to establish that on the balance of probabilities, the insured premises have indeed been damaged by a fire incident requiring repairs directly as a result, then the Provider is willing to consider the merits of any such new evidence which may become available. It will be a matter for the Complainants to make such evidence available in order to establish the entitlement to benefit under the policy. Accordingly, on the basis of the evidence before me, I do not consider it 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**

4 January 2021

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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.

