



<b><u>Decision Ref:</u></b>	2021-0006
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - storm Delayed or inadequate communication Complaint handling (Consumer Protection Code) Failure to process instructions
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to a home insurance policy.

**The Complainant's Case**

The Complainant holds a home insurance policy with the Provider which he states he took out through a broker in good faith. The Complainant states that as a result of storm damage in January 2019, part of the ceiling to his home collapsed. The Complainant then contacted the Provider to report the storm damage and submit a claim.

Indemnity was refused when the Provider's loss adjustors advised the Provider that the damage was not a result of the operation of an insured peril and the damage could be attributed to ongoing ingress of water which culminated in the ceiling collapse. The claim has therefore been refused on the basis that an insured peril has not operated in these particular circumstances.

The Complainant is unhappy with the Provider's decision and has submitted that the policy in question should cover the damage. The complaint is that the Provider has wrongfully, unreasonably and through a mistake of law or fact refused to indemnify the Complainant for the loss/damage in question and the Complainant is seeking to be indemnified by the Provider for the cost of undertaking permanent repairs to the damage.

### **The Provider's Case**

The Provider asserts that the Loss Adjustors appointed by the Provider carried out an assessment of the property and confirmed that water had been ingressing over a prolonged period of time and that this could not be considered storm damage and therefore is not admissible under the policy.

### **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 15 October 2020, outlining my preliminary determination 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 issue of my Preliminary Decision, the Complainant submitted further documents under cover of his correspondence to this Office dated 3 November 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has advised this Office under cover of its e-mail dated 5 November 2020 that it has no further submission to make.

Having considered the Complainant's additional documentation and the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

The Complainant held a Home Insurance policy with the Provider. The policy covered the period 19 February 2018 to 18 February 2019. The Complainant states that as a result of storm damage in January 2019, part of the ceiling to his home collapsed.

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The Provider states that the reason for declinature is that the claim is excluded, pursuant to the policy terms on the basis that an insured peril has not operated in the circumstances of the policy and the claim.

The policy terms and conditions, provide, amongst other things, as follows:

*Section A – Buildings*

*The Cover*

*The buildings are insured against loss or damage caused by events in paragraphs 1 to 11.*

*What is insured*

*2. Storm or flood*

*What is not insured*

*Loss or damage:*

- *Caused by frost, subsidence, ground heave or landslip.*
- *To gates, fences or hedges*
- *Due to wear and tear or gradual deterioration*
- *The costs of removing any fallen trees or branches unless the tree or branch has caused damage to the buildings*

*Policy Exceptions*

*These apply to all sections and clauses*

*The Policy does not cover:*

*6. Loss or damage caused by wear and tear and gradual deterioration.*

The Provider submits that in order for a claim to be covered under an insured peril outlined in the policy, the onus is on the policyholder to demonstrate that the loss was caused by an insured peril. The Provider explains that its loss adjuster called to the Complainant's address on 30 January 2019 and carried out an inspection in the presence of the Complainant. The Provider submits that its loss adjuster advised that having examined and inspected the affected area of roof above the damaged ceiling, there was clear evidence that the cladding had come away from the vertical up stand and that it was clear that water had been ingressing over a prolonged period of time and that such a gradual ingress could not be considered as storm damage and therefore admissible under the policy. The Provider submits that the damage being claimed for is not covered under any section of the policy.

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A copy of the loss adjuster's inspection document and report has been provided to this office. The report sets out that an inspection and visits was carried out at the Complainant's house on 30 January 2019 at 10:05 AM. The report includes a number of photographs taken by the loss adjuster. Amongst other things, the report states as follows:

*"Cause:*

*Alleged storm.*

*Examination of the roof reveals same to be sagging creating a gap through which rainwater is entering on a gradual prolonged basis. There is no evidence of a peril operating.*

*Policy liability:*

*Examination of the roof reveals the decking to be sagging allowing a gap to develop between the vertical concrete up stand and the roof decking through which water is ingressing. This, over a period of time, has saturated the chipboard beneath dripping onto the ceiling which eventually led to the collapse of same. We noted the presence of the mastic which suggests that a previous repair has been attempted although the insured denies all knowledge of this.*

*In the absence of evidence of a peril operating and with clear evidence that damage has been ongoing over a period of time we are repudiating liability and attach herewith a copy of my repudiation letter. Same has been copied to the brokers."*

While the Complainant has, in his post Preliminary Decision submission, maintained that *"there was no leak before Christmas"* and that *"the roof was in good condition"*, having considered all of the submissions and evidence, I accept, on balance, that the Provider is entitled to engage a loss adjuster to inspect and investigate the damage and provide an opinion as to the cause of the damage and whether same is covered under the policy. The loss adjuster's report sets out the nature of the inspection and concludes that the damage was not caused by storm damage but rather *that damage had been ongoing over a period of time*. The Policy expressly excludes *loss or damage caused by wear and tear and gradual deterioration*. Consequently, I accept that the Provider was entitled to refuse the claim in question.

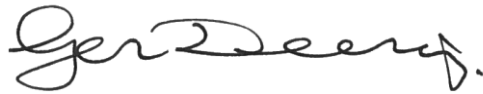
For the reasons outlined in this Decision, I do not uphold this complaint.

### **Conclusion**

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

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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.



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

14 January 2021

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.