



<b><u>Decision Ref:</u></b>	2021-0054
<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 - non-disclosure & voiding
<b><u>Outcome:</u></b>	Rejected

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

The Complainant incepted a holiday home insurance policy with the Provider on **19 February 2018**, which provided contents only cover in the amount of €20,000.

#### **The Complainant's Case**

The Complainant's property suffered extensive fire damage on 23 December 2018. All contents within the main bedroom and en-suite were destroyed and the first floor of the duplex was badly damaged, with the first floor contents badly smoke-damaged and the ground floor contents and appliances to a lesser extent.

The Provider declined the Complainant's resultant claim in relation to contents damage and loss of rental income and it voided her holiday home insurance policy, as it discovered as part of its claim assessment, that the property had been leased to a real estate company, which in turn sub-leased the three-bedroomed property to three different tenants on three separate leases of various lengths.

In this regard, the Complainant's representative sets out her complaint, as follows:

*"[The Complainant] purchased a product from [the Provider] to cover her property while it was being rented as Airbnb. The Agent (the real estate company) [the Complainant] was using decided to let the property as a short term let, without informing [the Complainant]. [The Provider]...declined [the Complainant's] claim...due to "misrepresentation"."*

In addition, in its letter to this Office dated **12 March 2019**, the Complainant's Loss Assessor advises as follows:

*"A fire occurred on 22<sup>nd</sup> December 2018 causing extensive damage. The claim under the building policy is covered by [the Provider]."*

*However [the Provider] have declined the insured claim in relation to the damage to her contents and loss of rental income ...*

*We consider [the Provider] actions to be unreasonable based on the facts presented".*

The Complainant seeks for the Provider to admit and pay her insurance claim.

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

Provider records indicate that the initial policy application was completed by the broker using the applied software. The Provider asks brokers to confirm a set of assumptions which it deems material and acceptable. One of those requirements states that the risk address is *"let in one unit and not subdivided"*. The broker recorded the response from the Complainant as *"Yes"*.

The Provider says that it was on this basis that it was in a position to quote for the risk. The Complainant then signed a Holiday Home Insurance Proposal Form on 8 March 2018 as part of the application for cover, which clearly confirmed that the risk address was *"let in one unit on a seasonal basis as a holiday home"*.

The Provider says, in addition, that it notes that the Endorsement Notice dated **13 March 2018** states: *"THIS PROPERTY IS OCCUPIED AS A HOLIDAY HOME AND IS LET TO TENANTS"*.

The Provider also draws attention to the 'Definitions' section of the policy document which defines *"Tenant(s)"* at pg. 5 as:

*"Any person(s) living at the premises and under a private rental or lease agreement with you"*

The Provider says that it is satisfied accordingly that the Complainant's home insurance policy documentation gave clear and appropriate notice that the policy provided cover only where the risk address was let as one unit on a seasonal basis as a holiday home.

The Provider received notification on **27 December 2018** that the Complainant's risk address suffered extensive fire damage on **23 December 2018**. It then came to light as part of its claim investigation that the Complainant had leased the property to a real estate agent on 28 February 2018 for a two year term, which in turn sub-leased the three-bedroomed property to three different tenants on three separate leases of various lengths, for different weekly amounts of rent. This changed the occupancy of the risk address.

/Cont'd...

The Provider says that if it had been made aware of this change at the time when it happened, it would have come off cover, as it does not provide cover for this type of occupancy.

The Provider also says that although the Complainant has advised that the real estate company did not make her aware that the property was subdivided, the Head Tenancy Agreement that she and the real estate company both signed on **28 February 2018** contained an agreement that the property could be subdivided.

The Provider notes that the Holiday Home Insurance Proposal Form signed by the Complainant on **8 March 2018** confirmed that the property was let as one unit. It says that the leasing of the property to a real estate agent, which then sub-leased the property to three different tenants on three separate leases of various lengths, was a material change in the circumstances of the cover and that the failure of the Complainant to disclose this to the Provider resulted in it declining the claim and voiding her insurance policy, in accordance with its terms and conditions.

The Provider says in summary, that the Complainant signed the proposal form, which forms the basis of the insurance contract. This contract specifically outlined the occupancy of the risk address and contained a material facts declaration whereby the Complainant agreed that she had a continuing obligation to immediately disclose to the Provider any information that may affect the insurance or increase the risk of loss, damage or injury to others. The Provider says that if it had been made aware of the subdivided occupancy of the risk address, either in advance or throughout the duration of the policy, it would have declined to quote or would have come off cover. It says that due to the misrepresentation of a material fact, the Provider had no option but to decline the claim and to invalidate the cover, in accordance with the policy terms and conditions.

Accordingly, the Provider is satisfied that it declined the Complainant's insurance claim and voided her policy in accordance with the terms and conditions of her holiday home insurance policy.

### **The Complaint for Adjudication**

The Complainant's complaint is that the Provider wrongfully or unfairly declined her claim and voided her holiday home insurance 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.

/Cont'd...

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 **9 February 2021**, 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 on **19 February 2018**, the Complainant incepted a holiday home insurance policy with the Provider, which provided contents only cover in the amount of €20,000. The Complainant's property suffered extensive fire damage on **23 December 2018**. All contents within the main bedroom and en-suite were destroyed and the first floor of the duplex was badly damaged, with the first floor contents badly smoke-damaged and the ground floor contents and appliances to a lesser extent.

The Provider declined the Complainant's ensuing claim in relation to contents damage and loss of rental income and voided her holiday home insurance policy, as it learnt (as part of its claim assessment) that the property had been leased to a real estate company, which in turn sub-leased the three-bedroomed property to three different tenants on three separate leases of various lengths, which changed the occupancy of the risk address. In this regard, the Provider says that if it had been made aware of this change at the time that it happened, it would have come off cover as it does not provide cover for this type of occupancy.

I note from the documentary evidence before me that the initial policy application was completed by the broker using the applied software, wherein the Provider asks brokers to confirm a set of assumptions which it deems material and acceptable. One of those requirements states that the risk address is, as follows:

***"The Property***

- *Is let in one unit and not subdivided* *Yes"*

The Complainant signed a Holiday Home Insurance Proposal Form on **8 March 2018** as part of the application for her insurance cover, which clearly stated that the risk address was as follows:

/Cont'd...

***“The premises described:***

1. *Is let in one unit on a seasonal basis as a holiday home”.*

I see that the Complainant had leased the property to a real estate agent on **28 February 2018** for a two year term. The agent then sub-leased the three-bedroomed property to three different tenants on three separate leases of various lengths, for different weekly amounts of rent. I am satisfied that this represented a change to the nature of the occupancy of the risk address.

In this regard, I note that the Holiday Home Insurance Proposal Form that the Complainant signed on 8 March 2018 clearly provided as follows:

***“Material Facts Declaration – Continuing Obligation***

*You agree that the information supplied by you, or by a relevant party on your behalf is, to the best of your knowledge, true and complete and that no material fact has been misrepresented or withheld by you.*

*You acknowledge that failure to disclose all material information may result in the voidance or cancellation of your policy, a claim not being paid or partly paid, you encountering difficulty obtaining insurance elsewhere or, in the case of property insurance, you breaching the terms and conditions of any loan on the property.*

*Material information is that which [the Provider] would regard as likely to influence its assessment or acceptance of this insurance. You have a continuing obligation to immediately disclose to [the Provider] any information that may affect this insurance or increase the risk of loss or damage or injury to others. You agree that if you are in any doubt you will disclose it to us.*

*Please note that this document, in conjunction with any other information supplied buy you or on your behalf will form the basis of your contract with [the Provider].*

*If any answer has been provided by a person other than you, you agree that such person shall be your agent and not an agent of [the Provider]. Please read this document carefully and check that all the details in it are accurate. If any information is inaccurate or incomplete you must notify [the Provider] or your insurance intermediary immediately”.*

In addition, I note that the ‘Terms and Conditions’ section of the applicable Household Insurance Policy Document provides at pg. 45:

***“Change in risk or circumstance***

*You must tell us immediately of any change which may affect this insurance or increase the risk of loss, damage or injury. If you do not tell us about these changes, then your cover could be invalid or we may decline or reduce your claim.*

*If you are in any doubt as to whether a change is material or not please tell us”.*

I am satisfied that there was an ongoing onus on the Complainant to advise the Provider of any new or changed material fact that could affect her insurance policy.

In this regard, I am of the opinion that the change of occupancy from “one unit and not subdivided” to the Complainant leasing the property to a real estate agent, which then sub-leased the three-bedroomed property to three different tenants on three separate leases, was a significant material fact that the Complainant was contractually obliged to tell the Provider.

Whilst the Complainant has advised that the real estate company did not make her aware that the property was subdivided, I also note from the documentary evidence before me that the **Head Tenancy Agreement** that she and the real estate company both signed on 28 February 2018 contained an agreement that the property could be subdivided, as follows:

**“Let Property ...**

2. *Subject to the provisions of this Agreement, the Head Tenant is given express permission to sublet the property with permission from the Landlord ...*

**Assignment and Subletting**

37. *The Landlord affords the right to the Head Tenant without prior, express, and written consent of the Landlord, to sublet or grant any concession or licence to use the Property or any part of the Property. Consent is granted by the landlord for Subletting, concession, or licence”.*

I am satisfied that it was a matter for the Complainant to ensure that the occupancy of the risk address was at all times as stated in her contract of insurance and that she was under an obligation to inform the Provider of any change to the nature of that occupancy.

In this regard, I accept the Provider’s position that if the Complainant had made it aware of the subdivided occupancy of the risk address, either in advance of or throughout the duration of the policy, that the Provider would then have declined to quote or would have come off cover.



Insurance contracts are contracts of utmost good faith, and, as a result, the failure to disclose material information allows the insurer to void the policy from the outset and to refuse or cancel cover. Once nondisclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an insurer to, amongst other things, refuse cover or later cancel cover, as the Provider has done in this instance.

As the Complainant failed to advise the Provider of the change to the nature of the occupancy of the risk address, I am satisfied that her holiday home insurance policy with the Provider was maintained on the basis of a false premise. Accordingly, I am satisfied that the Provider was entitled to decline the Complainant's claim and to void her holiday home insurance policy in strict accordance with the terms and conditions of the insurance contract in place. As the evidence before me does not disclose any wrongdoing by the Provider, it is my Preliminary Decision that 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**

2 March 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.**