



<u>Decision Ref:</u>	2021-0246
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The First Complainant and the Second Complainant, wife and husband, incepted a home insurance policy with the Provider on **6 November 2011**, and renewed cover annually thereafter.

The Complainants' Case

The Second Complainant submitted a claim to the Provider in February **2014** in respect of a damaged boundary wall at the insured property.

During the Provider's claim assessment, it came to light that, when he applied for the Complainants' home insurance policy with the Provider in **November 2011**, the Second Complainant had failed to disclose that the First Complainant had two previous claims on a previous insurance policy:-

- a theft claim reported on **8 November 2010** and settled in the amount of **€8,813.40**, and
- a storm damage claim reported on **27 December 2010** and settled in the amount of **€565**.

As a result, in April 2014, the Provider voided the Complainants' home insurance policy, from its inception date.

The Complainants made a complaint to this office in February 2020, and set out their complaint in a letter dated **17 February 2020**, as follows:

“We believe that [the Provider] has voided our household insurance policy in 2014 in an unreasonable fashion and the implication of this insurance policy being voided are very serious. This has been a headache for us and caused us serious stress since 2014 and we are at our wits end worrying about the fact that we have no household insurance on our home ...

In 2010, the family home...was insured by [a different insurer]. The policy was in the name of [the First Complainant] ...

Due to a burglary [at our home] on 8/11/2010, [the First Complainant] made a claim on the household insurance...At the time of the burglary, [the Complainants] were married but experiencing marriage difficulties due to the tragic death of [family member]...on ... At the time ... we were both working and living in [Dublin]. [The Second Complainant] transferred to [different location] in February 2008 because ... [difficult family circumstances redacted]

The burglary was reported to An Garda Síochána on 8/11/2010 ...

This burglary gave rise to [a claim with the then insurer] and a payment was made to [the First Complainant] for €8,813.40.

Due to snowstorm damage, a further claim was made by [the First Complainant] to [the then insurer] on 27/12/2010...and a payment was made to [the First Complainant] for €565.00.

[The First Complainant] cancelled the household insurance policy with [the then insurer] in early 2011 without realising the implication for doing so.

In late 2011, [the Complainants] resolved their marriage difficulties and [the Second Complainant] signed up for household insurance with [the Provider] and renewed the policy year on year as requested.

In 2014, 3 years later, [the Second Complainant] submitted a claim to [the Provider] regarding an issue with a boundary wall...the boundary wall between properties was damaged.

While investigating this insurance claim for [the Second Complainant], [the Provider] informed [the Second Complainant] that it had come to their attention that at the time of inception of the insurance policy, he failed to disclose claims that he had through his previous insurer. When completing the insurance application for [the Provider], [the Second Complainant] was asked if he had previously claimed for his insurance, he stated no because he personally had not claimed and believed this to be true.

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[The Provider] *advised [the Second Complainant] that this constitutes as non-disclosure of material facts and had they been aware of this information, insurance cover would not have been offered. [The Provider] cancelled [the Second Complainant's] household insurance policy as void and refunded all premiums paid since November 2011. The previous claims [with the previous insurer] were made by [the First Complainant], estranged from [the Second Complainant] at the time.*

[The Second Complainant] *was advised that [the First Complainant] must revert back to [the previous insurer] to secure an insurance quotation. [The First Complainant] contacted [the previous insurer] on numerous occasions by telephone with no outcome.*

In October 2017, [the First Complainant] officially requested a household insurance quotation but was advised that [the previous insurer] were not in a position to provide a quotation at that time, due to their acceptance criteria.

[The First Complainant] *contacted [the previous insurer] by telephone in November 2017...and was advised that once a policy was voided, it was outside the criteria to re-quote.*

[The Complainants] *tried to secure household insurance through a broker with...other insurance companies without a successful result. They are all singing off the same hymn sheet and advising us to revert back to the original insurer ...*

Due to the void insurance policy with [the Provider], we have been without household insurance since 2011. We are extremely stressed and anxious regarding the implications of our household insurance policy being voided by [the Provider] and [the previous insurer's] refusal to offer us a new household insurance quotation. Despite this, [the previous insurer] have informed us that failure to have our property insured could lead to a breach of the terms and conditions of any loan we have secured on the property. We feel we are in an impossible situation and our hands are tied. We want to secure household insurance but are unable to do so..."

In addition, in their email to this Office on 17 December 2020, the Complainants submit that:

"We find [the Provider's] response completely unreasonable. As a result of their void policy, we are unable to secure household insurance with any provider for the remainder of our lives. Once again, I would like to state that this was a genuine error with no malice on our behalf, which they have previously acknowledged. Their response is not proportionate to what actually happened.

We believe that this flies in the face of fundamental reason and common sense. For the past 9 years and going forward to the future, [the Provider] have our hands tied behind our back and there is nothing we can do about it. The restrictions that they have now placed on us have put a daily burden on our family. The restrictions are excessive and unreasonable. It looks like this burden has been placed on for us an inordinate length of time.

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If [the Provider] are not willing to insure us, we would like them to remove the void policy from our names so that we can have the freedom to secure household insurance coverage from another provider.

Having insurance is a necessity and the burden of not having a policy is placing undue stress on us”.

In the Complaint Form they signed in June 2020, the Complainants submitted:

“We would like to secure a household insurance for our family home. [The Provider] have voided our previous policy, therefore we are having difficulty securing a new household policy quotation”.

As a result, the Complainants seek for the Provider to remove from its records that it voided the Complainants’ home insurance policy, and for the Provider to now furnish them with a reasonable quotation and approve them for home insurance.

The complaint is that the Provider wrongfully or unfairly voided the Complainants’ home insurance policy.

The Provider’s Case

Provider records indicate that the Complainants incepted a home insurance policy with the Provider on 6 November 2011, on the basis that they were 6+ years claims free. This policy was taken out in the joint names of the Second Complainant and the First Complainant (in that order).

Following the Complainants having registered a claim with the Provider on 5 February 2014, it came to light that the First Complainant had two previous claims on a previous insurance policy, namely, a theft claim reported on 8 November 2010 and settled in the amount of €8,813.40, and a storm damage claim reported on 27 December 2010 and settled in the amount of €565, both of which were within the year before the Complainants incepted their home insurance policy with the Provider. These two previous claims had not been disclosed to the Provider by the Complainants, when applying for their home insurance policy. The Provider says that if it had been made aware of these claims at inception stage, the Provider would have declined the risk as it falls outside of its acceptance criteria. As a result, the decision was made on **28 April 2014** to void the Complainants’ home insurance policy from its inception date and the Provider refunded the Complainants the amount of €1,129.20, this being the sum of all premiums paid.

The First Complainant contacted the Provider on **29 April 2020**. A full review was completed on the case and the Provider was satisfied with the original decision to void the policy due to non-disclosure, because it would not have quoted for the risk had it been made aware of the previous claims. The Provider also advised in its Final Response letter of **26 June 2020** that it would not be in a position to offer the Complainants a new home insurance quotation, particularly as the proposed risk was even further outside of its risk acceptance criteria, given that the property has been uninsured for a significant period.

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The Complainants' home insurance policy was taken out on 6 November 2011 in the joint names of the Second and the First Complainant (in that order), by the Second Complainant himself. The Provider notes that the Second Complainant obtained a telesales quotation from the Broker and was asked the standard quotation questions. The responses to these questions were included in the Statement of Fact that issued to the Complainants on 2 November 2011. The question that relates to previous claims was as follows:

"17. Have you or any member of your household made any home insurance claims in the last 3 years? Yes No

(Do not include a single claim below €4,000 Or Two small claims where the combined amount was below €1,500?)".

The Statement of Fact also provided, as follows:

"Statement of Fact

Subject: this proposal form does not require your signature but provides you with a Statement of Facts. This Statement of Facts is a precise record of the information which you provided to [the Broker] and should be kept with the policy booklet. Please check these details carefully as they are the basis of your insurance contract with [the Provider]. Your acceptance of the policy confirms your agreement that the details contained in the Statement of Facts are accurate.

Important: Failure to disclose material facts could result in your contract being invalidated. Material facts are those facts which might influence the acceptance or assessment of your insurance. If you are in doubt as to whether a fact is material you should disclose it. If you do not understand any part of the Statement of Facts or are in any doubt whatsoever as to the accuracy of the information you have provided you should inform [the Broker] immediately".

The Second Complainant is the primary policyholder, with the First Complainant also named on the policy. The Second Complainant obtained the quotation and the Statement of Facts notes both parties.

The Provider acknowledges that there is no recording of the telephone call that took place between the Second Complainant and the Broker in November 2011. Nevertheless, the Second Complainant provided the information requested, for the review of the risk and to enable the Broker to proceed with the proposal for cover.

The Provider says that if the Broker had been advised of the correct claims history, the risk would have been declined by the Provider from the outset. Whilst a recording of this call is not available, the Statement of Fact document that issued to the Complainants on 2 November 2011 contained the responses given by the Second Complainant during the call, and this is the information which formed the basis of the insurance contract with the Provider.

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The Provider notes from the file that the Complainants included documents in relation to the undisclosed theft claim of 8 November 2010. In this regard, the Household Insurance Claim Notification Form to the previous insurer indicates that it was the Second Complainant himself who discovered the break-in at the insured property on **8 November 2010**.

The Provider says that the same documentation states that the Second Complainant spoke to the attending Gardaí and that he then met with the previous insurer's loss assessor. As a result, the Provider submits that it is reasonable to say that the Second Complainant was aware of the claim that had been made in November 2010, a year before the Complainants incepted their home insurance policy with the Provider, and that he had a duty to disclose this claim when applying for the Complainants' insurance with the Provider in November 2011.

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly voided the Complainants' home insurance policy in April 2014.

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.

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

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The First Complainant and the Second Complainant, wife and husband, incepted a home insurance policy with the Provider on 6 November 2011. More than 2 years later, they submitted a claim to the Provider on **5 February 2014** relating to a damaged boundary wall at the insured property.

During the Provider's claim assessment, I note that it came to light that when proposing for the policy in November 2011, the Second Complainant had failed to disclose that the First Complainant had two previous claims on a previous insurance policy - a theft claim reported on 8 November 2010 and settled in the amount of €8,813.40, and a storm damage claim reported on 27 December 2010 and settled in the amount of €565. As a result of this non-disclosure, the Provider voided the Complainants' home insurance policy from the inception date.

Whilst the two previous claims were related to the same risk address in Dublin as the Complainants' home insurance policy with the Provider, that is, the Complainants' family home, the Complainants say that the previous insurance policy that these claims were made under, had been held in the sole name of the First Complainant, as the Complainants were estranged at that time, and the Second Complainant had been residing elsewhere from January 2008 to October/November 2011.

I note that the Complainants' home insurance policy with the Provider was taken out on 6 November 2011 in the joint names of the Second and the First Complainant (in that order), by the Second Complainant himself. I note that the Second Complainant obtained a telesales quotation from the Broker and was asked to answer standard quotation questions. The responses to these questions were included in the Statement of Fact that issued to the Complainants on **2 November 2011**.

I note that the question that relates to previous claims was as follows:

"17. Have you or any member of your household made any home insurance claims in the last 3 years? Yes No

(Do not include a single claim below €4,000 Or Two small claims where the combined amount was below €1,500?)".

[underlining added for emphasis]

I note that the Statement of Fact, containing the previous claims question and the Second Complainant's recorded answer, was issued to the Complainants on 2 November 2011 and pg. 1 contained the following notice:

"Statement of Fact

Subject: this proposal form does not require your signature but provides you with a Statement of Facts. This Statement of Facts is a precise record of the information which you provided to [the Broker] and should be kept with the policy booklet. Please check these details carefully as they are the basis of your insurance contract with [the Provider]. Your acceptance of the policy confirms your agreement that the details contained in the Statement of Facts are accurate.

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Important: Failure to disclose material facts could result in your contract being invalidated. Material facts are those facts which might influence the acceptance or assessment of your insurance. If you are in doubt as to whether a fact is material you should disclose it. If you do not understand any part of the Statement of Facts or are in any doubt whatsoever as to the accuracy of the information you have provided you should inform [the Broker] immediately”.

It would have been prudent of the Complainants to have read this Statement of Fact and to have noted the responses that the Second Complainant had given as part of their home insurance application, to ensure that they were satisfied that all information given was correct, and that they had disclosed all material facts.

A material fact is any fact that would influence the judgment of a prudent underwriter in its assessment of the risk. It is important to note that all insurance contracts are subject to the duty of utmost good faith. This means that when the applicant enters into an insurance contract he or she is under a duty of utmost good faith to disclose to the insurer all material facts, known to the person applying for cover, which may affect the risk.

In their email to this Office on 14 December 2020, the Complainants submit that:

“[The Provider] do not have a copy of the original phonecall made in 2011. As a result, we are unable to listen and comment on the contents of the phone conversation. [The Provider] proceeded to void the insurance policy in 2014 with the knowledge that the phone conversation was not available. [The Second Complainant] has always maintained that this was an error on his behalf”.

Whilst the Provider acknowledges that there is no recording of the telephone call that took place between the Second Complainant and the Broker in November 2011, I accept the Provider’s position that the Statement of Fact document that issued to the Complainants on 2 November 2011 contained details of the responses given by the Second Complainant during the call, and that this Statement of Fact document, including the answers contained therein, formed the basis of the Complainants’ insurance contract with the Provider.

I note that ‘**The Contract of Insurance**’ section at pg. 7 of the applicable Home Insurance Policy Document states:

“The proposal form and declaration signed by the Insured or the Statement of Facts issued to the Insured are the factual basis of the contract”.

[underlining added for emphasis]

I also note from the documentation before me that the Second Complainant was aware of at least the theft claim that was reported to the previous insurer on 8 November 2010 and which was settled in the amount of €8,813.40.

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In his letter to the Provider dated 18 March 2014, I note that the Second Complainant advised as follows:

“When I took out policy with [the Provider] through mistake/human error I believed that the question I was being asked was whether or not I personally had made a claim against a household insurance policy. The answer I believe was “no”, that I had not made a previous claim”.

I am, however, of the opinion that the question regarding previous claims, that is, *“Have you or any member of your household made any home insurance claims in the last 3 years?”*, was clear as to the scope of what was being asked. I am satisfied on the basis of that question, that the Second Complainant had an obligation when answering this question to disclose the previous claims that had been made from the same risk address the year before, that is, the family home, albeit that they were made under a policy of insurance held in the sole name of his wife, the First Complainant.

Insurance contracts are contracts of utmost good faith. The failure to disclose information allows the Insurer to refuse or cancel cover or, as the Provider had done in this instance, to void the policy from the outset. 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, void the policy from its inception date.

As the Provider was not made aware of the previous claims made regarding the same risk address the year before, by one of the policyholders, namely, the First Complainant, I am of the opinion that the Provider was not afforded the opportunity to properly assess the risk to be insured. I am satisfied therefore that the Complainants’ home insurance policy came into being on the basis of a false premise.

This Office is aware that the courts have long considered the issues surrounding non-disclosure of material facts. For example, in *Aro Road and Land Vehicles Limited v. Insurance Corporation of Ireland Limited* [1986] I.R. 403, where the Court determined that representations made in the course of an insurance proposal should be construed objectively, Henchy J said that *“a person must answer to the best of his knowledge any question put to him in a proposal form”*.

In *Earls v. The Financial Services Ombudsman* [2014/506 MCA], the High Court indicated, *“The duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources”*.

On the basis of the evidence before me, I do not accept that the answer given on the Proposal Form to the Provider in November 2011, demonstrated a genuine effort to provide accurate information for the purpose of proposing for cover. Accordingly, I am satisfied that the Provider, in accordance with the terms and conditions of the insurance arrangement in place, was entitled to void the Complainants’ home insurance policy from its inception date.

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I note that the Complainants want the Provider to now supply them with a reasonable quotation and to approve them for home insurance. Risk assessments and decisions as to whether to offer policy cover, are however the prerogative of underwriters and it would not be appropriate for this Office to interfere with the commercial discretion of the Provider in that regard.


On the basis of the evidence available, I do not accept that the Provider acted wrongfully, when it decided to void the policy in April 2014. I am nevertheless conscious that the Complainants, having had a policy voided back to 2011, have now been without home insurance cover for a decade. In my opinion, the question arises as to whether, as a matter of policy, the Complainants' insurance history should continue to prevent them, whether individually or jointly, from securing home insurance for the rest of their lives.

The proportionality of that result may seem at odds with the non-disclosure of material facts which occurred in 2011. In those circumstances, I intend to write to the Central Bank of Ireland as the Regulator of insurance providers, to ask it to consider the position of consumers, in circumstances such as those of the Complainants, and to consider whether as a matter of policy, there ought to be some form of option for consumers in such circumstances, to secure insurance cover for their property. For the reasons outlined above, on the evidence before me 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

19 July 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.

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