Decision Ref:	2021-0299
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Mis-selling (insurance)
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the Complainant's request for property insurance and the Complainant's concern that the Provider quoted insurance cover based on incorrect information. The complaint is made by the Executive of the Deceased's Estate.

The Complainant's Case

The Complainant is the sole executor of an estate of a deceased relative. The deceased relative lived in a property in Dublin. In his efforts to administer the estate in his capacity as executor, the Complainant explains that the estate has paid the home insurance on the property since the date of death in 2013 up to until the policy came up for renewal at the end of March 2018.

The Complainant discovered that the locks to the property had been changed by the person residing at the property and he therefore had no access to the property. He commenced legal proceedings to remove the person from the property and to regain access to the property. However, in March 2018 the existing insurance broker was notified regarding the fact that there was no access to the property and the broker in question advised that it was not possible to get a quotation under those circumstances.

Following this, the Complainant's solicitor approached the Provider in order to ascertain whether a quotation could be obtained through the Provider. The Complainant states that

the Provider initially stated that it would not be possible to get an insurance quote but subsequently said that there might be a possibility.

The Provider explains that there was one underwriter who had said that they would do their best to provide a quote but there would likely be restrictions on the level of cover due to the ongoing situation and circumstances surrounding the property.

The Complainant completed a home quote sheet and filled out the questionnaire and furnished it to the Provider. The Provider returned to the Complainant with a quotation statement of fact which contained questions over and above those that had been completed in the home quote sheet and which had been answered. The Complainant says that many of the answers were inaccurate and did not reflect the Complainant's circumstances.

The Complainant brought this to the attention of the Provider and the Provider subsequently advised that the underwriter had been furnished with the updated and amended answers provided by the Complainant.

The Complainant states that the Provider contacted the underwriters on 1 October 2018, stating that the reason for so many amendments, was due to the limited number of questions asked on the Provider's home quote sheet which, as a result, meant that the assumptions were made by the underwriters when completing the statement of fact. The Complainant submits that the underwriter responded to the Provider's email suggesting that nothing needed to be changed.

The Complainant contends that by issuing this response from the underwriters, the Provider appears to be suggesting that the statement of fact document remains in its original form with incorrect information contained within it.

The Complainant states that he received an email dated 23 November 2018 from the Provider advising him that the original quotation was subject to a 45 day validity period and given that this period had expired, he would be required to make a fresh application. The Complainant contends that he was not in a position to accept the previous quote as the policy did not reflect the true facts and the Complainant asserts that the disclosure of material information was ignored by the Provider.

The Complainant wants the Provider to acknowledge that the quotation was an invalid quotation as it was based on incorrect information.

The Provider's Case

The Provider states that the original statement of fact which was issued to the Complainant was based on answers provided in a risk information form which he completed. The Provider states that assumptions were made on the balance of the questions that did not appear in the risk information form. The Provider states that the statement of fact was forwarded to the Complainant on 26 September 2018 for his review and he replied with various corrections on 30 September 2018. The Provider states that these updated answers were in

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turn advised to the underwriters and the underwriter's response was sent to the Complainant on 2 October 2018.

The Provider states that since that point the Complainant did not ask the Provider to proceed further with the insurance query, including the finalisation of a formal insurance quotation based on a revised statement of fact.

The Provider rejects that it enticed or tried to persuade the Complainant to proceed with cover based on incorrect information.

The Complaint for Adjudication

The complaint is that the Provider was willing to issue an insurance policy in the knowledge that the information it was reliant upon within the statement of fact schedule was incorrect.

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 11 August 2021, 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

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Recordings of telephone calls have been furnished in evidence. I have considered the content of these calls.

These calls detail phone calls between the Provider and the Complainant and the Provider and the Complainant's solicitor between the period of July 2018 and September 2018. The calls relate to various conversations with the Provider discussing whether or not it will be possible to obtain an insurance quotation from an insurer under the circumstances prevailing in relation to the property as outlined above. The phone calls demonstrate that it was unclear and there was some conflicting information as to whether or not it would be possible to obtain a quote but ultimately, the Provider advised the Complainant and his solicitor that they may be able to provide a quote upon receipt of a completed risk form which would be submitted to the proposed insurers for consideration.

The Provider furnished the Complainant with the document setting out certain and specific information required which the Complainant duly completed and furnished to the Provider.

The documentation furnished to this office demonstrates that on 26 September 2018, the Provider emailed the Complainant thanking him for requesting a quotation from [the underwriter] and providing an attached statement of fact quotation which details the cover and any terms. The email expressly asks the Complainant to check this carefully to ensure all information is correct.

It is the case that the statement of fact quotation contained questions in addition to those that were set out and completed by the Complainant in the document furnished to him by the Provider. It is also the case that those questions appear to have been completed or answered by the insurer, but not the Provider, against which this complaint is made. The Complainant, having read through the statement of fact, emailed the Provider on 28 September 2018 thanking the Provider for the quote and stating that some of the information on the schedule was incorrect.

The Provider responded that same afternoon stating that once the amendments were received from the Complainant, they would be forwarded to the underwriter for a revised quote.

The Complainant followed this up with an email on 30 September 2018 setting out those parts of the quotation schedule statement of fact which were inaccurate, or he felt he was unable to answer under the circumstances.

The Provider furnished this to the underwriter and the underwriter responded stating to the Provider that it did not feel that anything needed to be changed as the questions related to the deceased relative and did not need to be associated with the executor. The insurer expressly stated that provided the questions about the condition of the property were answered to the best of the executor's knowledge "*there is not a problem*".

By email dated 2 October 2018, the Provider furnished this response to the Complainant.

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On 2 October 2018, the Complainant responded by email to the Provider requesting the Provider to confirm that if the answers in the statement of fact are incorrect, that it is not a problem and also to confirm the person's name from the insurer who was giving this advice or, in the alternative if it was the advice of the Provider.

The Complainant's email was forwarded by the Provider to the insurer looking for a response to the Complainant's email. On 3 October 2018, the insurer responded to the Provider stating that it was under the impression that the risk information was correct to the best of the client's knowledge and that the insurer was covering the estate while probate settled. The email goes on then to ask, "have I missed something?".

On 23 November 2018, the Provider emailed the Complainant stating that it was following up on the quotation furnished on 2 October 2018 and advising the Complainant that the original quotation was subject to a 45-day validity period and as such, the Provider would need to reapproach insurers for fresh quotation as the Complainant did not proceed with cover prior to the expiry of the validity period. The email went on to state that in the event that the Complainant required a new quotation, to please contact the Provider's office.

Thereafter, it is apparent that the Complainant did not pursue taking out the policy as quoted but endeavoured to get clarification as to precisely what was being considered as relevant and accurate information in providing the quote.

The complaint against the Provider, not the insurer, and the Complainant expressly states that his concern is that he believes that he was offered a quotation to entice him to buy a policy which was based on incorrect information.

The Provider furnished the Complainant with the statement of suitability dated 26 September 2018 along with its terms of business.

The Provider submits that it did not entice or try to persuade the Complainant to proceed with cover based on incorrect information and that it endeavoured to act in the Complainant's best interests at all times, given the urgency of the cover requirement and the very limited nature of the insurance markets available. The Provider explains that it obtained a quotation which the Complainant was under no obligation to accept and which was the only insurance quotation that the Provider was able to obtain. The Provider submits that from the outset, it endeavoured to help the Complainant in obtaining an insurance quotation and at no time did it encourage him to buy the policy without complete information.

The Consumer Protection Code 2012 provides:

GENERAL PRINCIPLES

A ***regulated entity*** must ensure that in all its dealings with ***customers*** and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its ***customers*** and the

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integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its ***customers;***

2.3 does not recklessly, negligently or deliberately mislead a ***customer*** as to the real or perceived advantages or disadvantages of any product or service;

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;

2.5 seeks from its ***customers*** information relevant to the product or service requested;

2.6 makes full disclosure of all relevant material information, including all ***charges,*** in a way that seeks to inform the ***customer;***

2.7 seeks to avoid conflicts of interest;

2.8 corrects errors and handles ***complaints*** speedily, efficiently and fairly.

Having considered all of the evidence furnished and the submissions made by both parties, I have been furnished with no evidence of wrongdoing or conduct based on an improper motive or conduct that could be considered unreasonable on the part of the Provider.

The Complainant completed a questionnaire furnished to him by the Provider. The Provider then furnished this to the insurer who then returned an additional statement of facts which contained statements of facts over and above what had been in the Provider's document. The Provider quite rightly furnished this to the Complainant and asked him to carefully consider it and in turn, the Complainant quite rightly carefully considered it and identified information that was inaccurate from his point of view and brought it to the attention of the Provider. The Provider then immediately brought that to the attention of the insurer and the insurer then responded to the Provider indicating that it was satisfied that if the information provided by the executor was information to the best of his knowledge, then it did not change the quote. This response was immediately furnished by the Provider to the Complainant. The Complainant then sought further clarification and the Provider immediately sought that clarification from the insurer.

Any information or factual statements which the Complainant observed was inaccurate, was not created by the Provider but was created, it would appear, by the insurer. The Provider relayed the information to the insurer as to the inaccuracy of the information in accordance with the instructions of the Complainant and the insurer responded indicating its position on this.

There is no evidence before me to support a finding of impropriety, unreasonableness or wrongdoing on the part of the Provider or that the Provider sought to entice the Complainant to take out the policy as alleged.

For this reason, I do not uphold this complaint.

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<u>Conclusion</u>

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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

3 September 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.