



<u>Decision Ref:</u>	2021-0534
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

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

The Complainant holds a private home insurance policy which was incepted on **1 February 2014** with the Provider and renewed annually thereafter.

The Complainant's Case

The Complainant submits that an incident causing damage to his property, took place on **21 April 2017** whereby his kitchen roof was damaged following a storm. On **21 June 2017** the Complainant submitted a claim to the Provider regarding his roof leaking into his kitchen as a result of what he said was storm damage. The Complainant submits that this one claim, registered on **21 June 2017**, was the sole claim made under his home insurance policy since its inception on **1 February 2014**.

The Complainant argues the Provider's construction contractors, engaged to carry out the repair works on his roof, did a poor job and damaged the kitchen area and ultimately left the Complainant cause to complain that the roof was leaking again on **6 June 2019**.

The Complainant outlines, by email to the Provider dated **17 November 2017**, that residual issues were left when the initial **21 June 2017** roof repairs were done, and he submits as follows:

"1. The ceiling has to be fixed again as it was poorly done originally. It will also have to be repainted as there is water damage to it due to the roof not been fixed properly by your agents. The roof was done and then leaked again some two weeks later. Again your roofers came back and said they re fixed same. The roof then leaked again the following week and the roofer returned for a third time and said that they now fixed same.

2. The Tiler fitted new tiles to the kitchen which resulted in the blinds not been able to be let down due to the Tiles been inadequately fitted. The solution arrived at was to cut the blinds so as they fit. Two gentlemen arrived and cut the blinds however they done this with the blinds still hanging which resulted in the fittings holding same to the window tops becoming damaged (as [Provider Senior Loss Adjuster] saw and can confirm). The fittings are effectively loose/broken and unable to hold the blinds up properly. The tiler also left the tiles not fitted properly as the rough edges were left exposed. The tiles had then to be re done for a second time.

3. Your agents that done the ceiling in the kitchen damaged the kitchen by knocking a lump off the kitchen unit. [Provider Senior Loss Adjuster] took photos of same. [Agent of Provider's Construction Contractor] spent several months trying to source a replacement for same. He was and is unable to get a replacement for same. This damage is right in the line of sight...

**The ceiling will have to be fixed again for a second time.*

**The plugs are not fitted correctly and will have to be fixed again.*

**The blinds/fittings are broken now and will have to be re done and new fittings fitted.*

**The roof was fixed three times now and we are not comfortable that it is done properly.*

**The kitchen was damaged by the your work agents.*

**I have taken several days off work to deal with this issue and I am now at the loss of same. We have also cleaned the kitchen area several times after your workmen left."*

The Complainant also argues, by letter dated **15 July 2019**, that:

"They said after three attempts that the roof was fixed. However on the third occasion a guy we never saw before, called to our house to try and see why the roof was still leaking. He had nothing but a bucket of some sort of sealer with him and proceeded to put all over the Velux window area (where the leak was). The roof has started to leak again in the exact same area and [the Provider] are now saying that the guarantee was for one year? ...

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At the start of the repairs we were advised by them, that they would have to use a dehumidifier to dry out the walls. (Which they did not) sorry I am now worried about the small structure itself. They destroyed our kitchen with a [Provider's Construction Contractor] worker putting a hammer through our kitchen presses."

By email, dated **18 December 2017** and addressed to the Provider, the Complainant also outlines that:

"I have taken several days off work to be here for most of the time and to meet people like [Provider Property Services Manager], [Agent of Provider's Construction Contractor] and [Agent of Construction Contractor's Subcontractor (roofing)]. on the last occasion both [Agent of Provider's Construction Contractor] and [Provider Property Services Manager] did not turn up."

The Complainant submits by email dated **17 November 2017** to the Provider that:

"This morning we sought legal advice regarding the whole issue. The damage caused to the kitchen is solely your and your agents responsibility as it was caused by same. The damaged unit can not be sourced or replaced."

By email dated **21 May 2020**, the Complainant contends that:

"please note that we are making complaint against [the Provider] regarding the roof and not the internal area off the kitchen (previous work done). This case is regarding the failed repairs of the roof."

By email dated **21 May 2020**, the Complainant submits that:

"The fact is that Storm Doris in 2017 caused the roof damage in 2017 and we never had a problem with the Velux roof at all. The leak was coming from some broken tiles near the Velux window. We did call [the Provider] in June and advised that we would have to make a claim and get the roof repaired... During the repairs been carried out we did allow [Provider's Construction Contractor] to send in a sub contractor to do the roof tiles. Please note that the [Construction Contractor's Subcontractor (roofing)] company were also tasked with fixing the water damage to the kitchen area. They were also tasked with repairing the wet wall tiles in the kitchen with a dehumidifier (this was never done). They were also tasked with taking down the existing ceiling and replacing it putting in new electrics wall sockets and wall repairs/Painting and trying to fix other items also.

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These facts have been conveniently left out by [The Provider] I.E. a roofing company was employed by [The Provider] to carry out all these works when I believe they did not have the legality or ability to do so. The sub- Contractor at that time did confirm to ourselves and [The Provider] that the damage was indeed consistent with storm damage.

...

There were issues/severe damage and we made it quite clear that we were not happy with what was happening to our kitchen/home, the term used amicably by [The Provider] does not justify the problems there were, when this roofing contractor was doing the kitchen etc. My wife picked out replacement wall tiles (flat faced tiles) to be used in the kitchen The sub-contractor refused to get these flat tiles with the quote to my wife 'sure what would you know you're a woman' after this was said to my wife I got a call in work and rang [The Provider] straight away and told them to get these people out of my house immediately. Also note my wife was correct as the roller blinds were not able to be shut as the tiles were too bulky. ...So to say amicable was the result is incorrect in that we were so fed up and [The Provider] and the €3000.00 did not cover the damage that we were left to fix. However we did accept it on the basis that we would sort it all out ourselves and we just wanted an end to this sorry mess and get these people out of our home."

The Complainant submits by email, dated **18 December 2017**, that:

"We simply wanted our roof fixed and allowed these workmen in to our home, we were polite and courteous at all times and all we got was dreadful disrespect and our home turned upside down for months. Indeed my wife was not at ease in her own home because of same I took days off work to be at home with my wife as she is suffering from severe anxiety."

The Complainant submits, by email dated **10 July 2020**, that:

" I never requested to have the repairs done by any other company other than the insurers own contractors. I feel that this was a terrible mistake in trusting them to do the repairs properly, indeed they actually added to the issue with the cracked Velux window. They were the only people on the roof and no one has been on it since. I feel and believe that the facts of this case are plain and simple.

- 1. I believe that it is quite obvious that the roof was not repaired properly or indeed at all and I have talked to other builders who have informed me that the black tar that was put on the roof by their builders was a type of Bitumen (hope I got that word correct).*

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Bitumen is not a permanent fix for a leaky roof and will only temporarily fix the issue. This makes sense in that the contractor called after the third request to stop the leak and put this stuff on the roof (he told myself and my wife this at the third time of trying to fix the leak.)

2. The Velux window is cracked and was done so by their contractors at the time (as it was confirmed to me by several contractors). They were the only workmen on the roof ever. No one else has been on that roof other than them. Even up to the present day.

3. I believe that the inspections that they say were done were more of a cursory look rather than an investigation.

4. I believe that [the Provider] should take full responsibility for the very poor workmanship and inability to fix the leak in the 1st 2nd and 3rd place instead of offering €3000.00 as a good will gesture.

5. The amount to complete the repair is €5200 approximately, so surely they should do the responsible/decent thing rather than trying to muddy the straight forward issue with conflicting arguments etc. The facts have been put on paper over several months now and they should be aware that this is becoming much more, in that its becoming a matter of them doing the right thing."

The Complainant submits that a storm caused his property damage and was reported on **21 June 2017** to the Provider. The Provider accepted the claim and paid it out and the Provider's Construction Contractor carried out the repairs on the roof which was leaking. The Complainant says that the roof was damaged by the storm but that the Velux window was cracked as a result of Provider's Construction Contractor's repairs, and that further the roof required re-repair on a number of occasions including on one occasion by using a short-term tarring solution. The Complainant also submits that the blind fixtures were damaged, that tiles were re-repaired and that plugs were left unfixed to the wall. The Complainant argues that a hammer was put through his kitchen presses, that a dehumidifier was not utilised as promised and that the ceiling repairs were inadequate. The Complainant also asserts that an inadequate inspection was done by the Provider of the roof, that he had to take time off work for missed meetings and that the Provider's Construction Contractor was rude to his wife and she was left with anxiety. The Complainant also complains about the length of time it took the Provider to resolve this claim.

The Complainant complained again to the Provider about a leak in the roof on **6 June 2019** from the same area that the initial roof repairs were carried out. The Complainant wants to resolve the situation himself and to that end wants the Provider to compensate him for the poor repairs to his property so that he may have repairs carried out by "*a reputable company.*"

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The Provider's Case

The Provider submits that the Complainant's roof suffers from an inherent design defect which is likely to lead to leaks. The Provider says that on this basis, it should never have accepted to fix the roof initially regarding the **21 June 2017** claim. However, the Provider submits that it is willing to honour the repair works which were carried out on **31 July 2017** by amending any damage caused by these works. In terms of compensation the Provider paid out the original claim for repairs works in the amount of €3,858.90 (three thousand eight hundred and fifty eight euro and ninety cent) and the Complainant paid a €275.00 excess towards this claim on **5 July 2017**.

The Provider estimates that resolving outstanding issues arising from the repair works which were carried out on **31 July 2017** would cost €1,180.75 (one thousand one hundred and eighty euros and seventy five cent) but paid out €3,000.00 (three thousand euros) on **23 January 2018**. On **14 May 2020** the Provider offered a further €3,000.00 as a gesture of goodwill but this was declined by the Complainant who submitted his higher estimate of compensation which the Provider asserts is "*overstated in both scope and quantum.*"

The Provider submits that:

"we accept that our approved contractor, [Provider's Construction Contractor], acted as our agent for carrying out repairs to the Complainant's property in 2017. [Provider's Construction Contractor] are a qualified, vetted, and approved building contractor on [the Provider's] Property Services Panel. A Contract/Service Level Agreement is in place between [the Provider] and [Provider's Construction Contractor] to carry out direct reinstatement repair works on our behalf when the scope and cost of the works have been agreed with the insured."

In relation to the Complainant's first contact with the Provider **on 21 June 2017** the Provider submits the following:

"The claim handler explained that the damage would be covered if it was a result of storm damage however it would not be covered if the leak had occurred as a result of wear and tear. It was agreed that the Complainant would proceed to get an estimate and contact us if he wanted to make a claim."

The Provider outlines inspections carried out at the Complainant's property as follows:

- On **28 June 2017** a Site inspection was carried out in relation to the external damage. This inspection was carried out by [Agent of Construction Contractor's Subcontractor (roofing)].

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- On **3 July 2017**, a second inspection at the property was carried out by [Provider's Construction Contractor].
- On **4 July 2017** we received the sub-contractor's causation report. They reported that the damages were as a result of storm and the required repairs were quoted at €3,858.90. We emailed the Complainant our settlement offer in line with the sub-contractor's quote. We advised him that the policy excess of €275 would need to be collected prior to the commencement of works.

The Provider notes that on **5 July 2017** "the Complainant accepted the settlement proposals and paid the policy excess of €275.00. We advised the repairer that they could commence repairs."

On **4 August 2017** the Provider submits that the Complainant's concerns about the contractor were relayed to it by telephone call. The Provider sent an email to their Construction Contractors relaying the Complainant's concerns.

On **8 August 2017** "the surveyor from [Provider's Construction Contractor] arranged to visit the Complainant's property to investigate the repair issues. They also appointed [New Construction Contractor's Subcontractor (roofing)] in place of the previous sub-contractor."

On **9 August 2017** the Provider submits that:

"the [Provider] claim handler requested an update from [Provider's Construction Contractor's] surveyor. He confirmed that his meeting with the Complainant went well and noted that after the retiling of the backsplash, the blinds were not opening/closing as smoothly as they should have been (blind was catching the tile). He confirmed that a new tiler had been appointed to examine this.

He also noted that the grouting detail was not the standard we would expect, and he examined the damage to the cornice/pelmet which had been reported by the Complainant as being caused by the sub-contractor. We emailed the Complainant to advise that [Provider's Construction Contractor's] Surveyor would return to their home in the coming days in order to establish a plan of action relative to the issues they were dissatisfied with."

By **8 November 2017** the Provider submits that the pelmet was an outstanding issue and said as follows:

"The [Provider's Construction Contractor] surveyor called to site and confirmed to the Complainant that they were unable to source a matching section of cornice/pelmet. Without our authorisation; a €150 compensation payment, equal to the value of replacing the entire cornice was offered by our contractor to the Complainant. This proposal was rejected."

The Provider submits that:

"As an alternative to allowing our contractor to finish the snags, the Complainant opted for a cash settlement to be issued so that he could arrange these repairs himself. In order to bring the matter to an amicable conclusion, we proposed a payment of €3,000.00. As a consequence of not being allowed to complete the required repairs/snagging items, we were not in a position to carry out a final assessment of the repairs."

The Provider submits that on **17 November 2017** - *"Our [Provider Property Services Manager] received an email from the Complainant outlining his position. He was dissatisfied with the finish on the ceiling, the kitchen window blinds, the damaged pelmet/cornicing and the length of time it had taken to arrive at this point. The Complainant requested that the full kitchen be replaced at [the Provider's] expense."*

The Provider submits that in response on **30 November 2017** *"a €3,000.00 compensatory payment was offered to the Complainant. This was to address the issues surrounding the cornice/pelmet along with the remaining snagging issues. The Complainant rejected the offer and asked for €8,750 to include for replacement of the undamaged kitchen units."* The Provider also submits that the €3,000.00 (three thousand euro) *"would cover the cost of replacing the damaged cornice himself, completing the last few snags (as the Complainant was not agreeable to our contractors doing so) and would compensate the Complainant for the inconvenience he had experienced."*

On **18 December 2017** the Provider submits that:

"an email was sent to the Complainant advising that a colour matched section of cornice/pelmet was in stock and all three sections could be replaced. Given that the cornice/pelmet could be replaced (albeit not identical replacement) and given that [Provider's Construction Contractor] were on hand to finalise the remaining snagging issues, the Complainant was advised that our offer of €3000 remained the same. The Complainant responded and rejected our offer. "

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The Provider submits that on **13 January 2018** “having reviewed the proposed cornice/pelmet, the Complainant rejected same advising that it was not identical.” The Provider submits that on **22 January 2018**, “the Complainant accepted the offer of €3000” and on **23 January 2018** “payment of €3000 was discharged.”

The Provider submits that on **6 June 2019** “a call was received from the Complainant advising that the roof was leaking again” and on **11 June 2019**, “the inspection took place and it was noted that the roof pitch relative to the roof tiles was insufficient.” The Provider asserts that on **10 July 2019**, “the complaint handler called the Complainant to advise of the underlying issue. We explained that we were still willing to cover the cost of the localised repairs, but we would not pay to rectify the defective roof.”

In relation to the Complainant’s second contact with the Provider on **6 June 2019**, the Provider submits that:

“On 6 June 2019, the Complainant contacted us to advise that the roof was leaking once again. He informed us that the leak was emanating from the same location as where the 2017 repairs had been carried out. We arranged for our internal Loss Adjuster to carry out an inspection of the roof in order to ascertain the cause of damage and this went ahead on 11 June 2019. In addition, we also reviewed the original 2017 claim file once again. On review of the damage caused by the more recent leak, we were satisfied that this was **unrelated to the previous repairs** that were carried out in 2017 for the following reasons:

(1) While the source of the leak in 2019 was in the same vicinity of the previous leak, around the Velux window, the source of the leak was in a different section of the Velux. The area surrounding the Velux window is a weak point of any roof.

(2) On reviewing the 2017 claim file, it was evident that the roof had a history of leaking which was demonstrated by the presence of historic repairs/application of silicon fillers.

(3) Most crucially, the 2019 roof inspection revealed that the **roof pitch relative to the roof tiles in situ was insufficient**. The roof pitch was 16.8 degrees whereas the roof tiles specified for a roof pitch no less than 20 degrees. When the pitch of the roof relative to the roof tiles is inadequate, the roof is susceptible to various issues such as:

- Roof tiles are prone to lifting during windy conditions
- The roof is prone to wind driven rain entering underneath the roof tiles

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- *The inadequate roof pitch inhibits the flow of rainwater off the roof thus exacerbating the roofs vulnerability to point 2 above.*

*The incorrect roof tiles relative to the pitch of the roof have made the occurrence of loss and damage to the roof an **inevitability** rather than a fortuitous event. We are satisfied that this is a clear case of defective workmanship/ use of unsuitable materials which is not something that is covered by the Complainant's home insurance policy. The defective design/material on the roof is a latent defect which has been present since the roof's original construction."*

The Provider contends that:

"Since completion of the original roof repair in October 2017 to the date that the second leak was notified to us on 6 June 2019; there was approximately forty instances of strong winds (Gusts in excess of 40 knots) including hurricane Ophelia."

The Provider also asserts that:

"As the leaks that were experienced with this roof are attributable to faulty workmanship/unsuitable materials, a latent defect dating back to the original construction of the roof, we now know that the 2017 claim should have been declined.While we do concede that payment of the original claim should not have been made as the damage was not caused by an insured peril, we do accept that it is not possible to assess this claim retrospectively. It is important to note however that this does not mean that all future claims should be paid as a result."

The Provider also argues that:

"No repair estimate has been provided by the Complainant in respect of the damage that occurred in 2019."

The Provider also asserts that:

"The Complainant has not produced any evidence that is contrary to our findings, nor have they provided any reasoning as to why they feel we should be paying for the rectification of the design flaw in their roof."

The Provider submits that the scope of insurance cover offered to the Complainant is that of damage caused by a storm and does not extend to inherent design defects in the roof.

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The Provider submits that as a result of the second complaint dated **6 June 2019**, their internal Loss Adjuster inspected the roof and reviewed the original 2017 claim file and was satisfied that the leak was unrelated to the previous repairs that were carried out in 2017 as it was in a different section of the Velux and they noted a history of leaking which was demonstrated by the presence of historic repairs and the application of silicon fillers.

The Provider also says that the roof pitch was 16.8 degrees whereas the roof tiles were for a roof pitch no less than 20 degrees. The Provider says that the payment of the original claim should not have been made as the damage was not caused by an insured peril, but it accepts that it cannot assess this claim retrospectively. As a result, the Provider has not declined the claim. The Provider submits that it has paid €3,000.00 (three thousand euros) to amend any damage caused by its repairs works in 2017, which is over and above the Provider's estimate of these works and it has offered further compensation as a gesture of goodwill.

The Complaint for Adjudication

The complaint is that the Provider, through its agent proffered a poor standard of work when repairing the Complainant's damaged roof in 2017, causing extensive damage to the kitchen area and resulting in a further leak in the same part of the roof in 2019. The Complainant wants the Provider to compensate him for the poor repairs to his property so that he may have repairs carried out by "*a reputable company.*"

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.

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A Preliminary Decision was issued to the parties on **25 November 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.

The Provider relies on *"the policy introduction"* on page 3 of the **Policy Booklet** (as amended) which it submits was *"valid at the inception of this policy"* and which says as follows:

"We will settle claims by either repairing, replacing or reinstating the property or by making a payment or stage payments."

The Provider relies on its *"General Policy Exclusions - All Sections"* detailed on page 24 of the **Policy Booklet** which says that:

"Existing or deliberate damage"

6. We will not cover loss or damage which happens before cover starts or arising from any event which happened before cover started."

The Provider also submits that on page 24 of the Complainant's **Policy Booklet** under the heading *"General Policy exclusions - All Sections"* it states:

"Wear and Tear"

• We will not cover loss or damage caused by wear, tear or by anything which happens gradually."

The Provider further submits that on page 7 of the Complainant's **Policy Booklet**, Section 1, it says:

<i>Events insured</i>	<i>Exclusions</i>
<i>3. Storm or flood</i>	<ul style="list-style-type: none"><i>• due to frost;</i><i>• caused by water entering your home due to wear, tear or deterioration;</i><i>• to fences, gates or decks;</i>

I also note that page 23 of the **Policy Booklet** under “*General Policy Conditions – All Sections*” the heading “**Matching Items**” notes as follows:

“We will not pay for the cost of replacing any undamaged items forming part of a set, collection, suite or larger item. In the case of floor coverings, we will only pay for the cost of replacing the damaged part or, if a match is not possible, the floor covering in the room where the damage happened.”

I also note that page 24 of the **Policy Booklet** under “*General Policy Exclusions – All Sections*” a heading “**Existing or Deliberate Damage**” notes as follows:

“We will not cover loss or damage: which happens before cover starts or arising from an event which happened before cover started; or caused by any deliberate or malicious act of any member of your household.”

The Provider Property Services **Brochure**, printed **April 2017**, under the heading “*Peace of Mind*” says the following:

- *“We provide a quick response for inspecting the damage and scoping the cost of repair.*
- *We carry out essential repairs to the property to minimise disruption to the customer.*
- *We agree the work that has to be done with the customer.*
- *We repair the damage.”*

Under the heading “*Great Service*” the **Brochure** says as follows:

- *“Access to a reputable Irish owned company.*
- *Quality repair with a full 12 month guarantee on all work carried out.*
- *We survey every customer upon completion of repair to ensure excellent customer satisfaction”*

I note that the home insurance **Renewal Offer Policy Information Summary** notes the cover renewal start date as **1 February 2017** and the year of the construction of the house as 1965.

The relevant sections of the **Consumer Protection Code 2012 (as amended)** are 4.1, 7.13, 7.14 (b) and 7.15. 4.1 of the **Consumer Protection Code 2012 (as amended)** says:

*"A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information."*

7.13 of the **Consumer Protection Code 2012 (as amended)** states:

*"Where an **insurance undertaking** appoints a third party to undertake restitution work in respect of a claim, the **insurance undertaking** must provide the **claimant** in advance and on paper or on another **durable medium**, with details of the scope of the work that has been approved and the cost."*

7.14 (b) of the **Consumer Protection Code 2012 (as amended)** says:

*"Where a method of direct settlement has been used, a **regulated entity**:*

- (a) must not ask the **claimant** to certify any restitution work carried out by a third party appointed by the **insurance undertaking**; and*
- (b) must certify, on paper or on another **durable medium**, to the **claimant** that the restitution work carried out by the third party appointed by the **insurance undertaking** has been carried out to restore the **claimant's** property at least to the standard that existed prior to the insured event."*

7.15 of the **Consumer Protection Code 2012 (as amended)** says:

*"A **regulated entity** must ensure that any claim settlement offer made to a **claimant** is fair, taking into account all relevant factors, and represents the **regulated entity's** best estimate of the **claimant's** reasonable entitlement under the policy."*

I note that during a telephone call on **21 June 2017** the following was said:

Complainant: "it's only when it's raining, I think there is a gap somewhere between the roof and the, something has developed, because it never done that before, something has developed, between the window and the tiles."

In relation to this telephone call with Provider Agent 1, the Provider submits that: *"we discussed the circumstances and explained that wear and tear was not covered under the policy. We informed the Complainant of the policy excess and the impact to their No Claims Bonus should they proceed with a claim."*

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During a telephone call on **23 June 2017** the Complainant said:

Complainant: *"storm damaged, to the tiling on top, they are cracked and broken.."*

Provider Agent 2: *"storms damage to the tiling and its's resulting in the water coming in?"*

Complainant: *yeah."*

Commenting on this telephone call, the Provider submits that *"the Complainant called us and advised that he had obtained a quotation of €7,298 to repair the damage. We registered the claim and appointed [Provider] Property Services to investigate."*

By email dated **21 May 2020**, the Complainant submits that:

"The repairs in 2017 were carried out on the tiling near the Velux window and I can confirm that the issue/problem now is exactly in the same place with also the Velux window been cracked. The builder I got to inspect also saw the damaged Velux and he believed that someone must have put a weight on same to do this damage. [The Provider] say in the same vicinity and myself and wife can confirm that it's exactly the same spot. We live there and know our own home so [The Provider] can make claims about something that they did not even inspect properly.

As per my last email you will note that I stated [The Provider] did call out to inspect the roof but they did not even bring a ladder to check same. I lent them a small step ladder (which only got them to eye level) and allowed them to look down on the roof from my Daughter's bedroom. That's not an inspection. I can confirm that we never had any issues with this roof before and there is no history to repairs on same. It seems to me that [The Provider] can just say that with no collaborative evidence and can put it out there just to suit their case. If that is even remotely true then why would [Provider's Construction Contractor]/[The Provider] roofing contractor not point that out at the opening of the claim when they all say they inspected same?

Again it seems to me [The Provider] have come up with every/any excuse for not taking responsibility for their own failings. We have had the following from them.

- 1. The roof pitch is wrong*
- 2. Previous repairs silicone etc?*
- 3. Bad original building work*
- 4. Wrong tiles used*
- 5. Prone to rain?*

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6. *They then say that their own builder got it wrong and should not have done the work because of above but only raise that issue after it was pointed out to them that the issue arose from their sub contractors Sub contractor made a hems of the roof (and kitchen)*
7. *Different area on roof."*

By email dated **21 May 2020**, the Complainant submits the following in relation to the roof:

" If you see the photos [the Provider] themselves took at the beginning of all this, they show the tiles on the roof. One tile is broke beside the Velux window, however I would like you to note that they show no previous repairs nor do they show any silicone or anything of that nature, that's factual evidence showing that what they are saying now is totally untrue.."

I have considered all photographs submitted in evidence and note in particular *"Figure 2: pre-existing sealer to roof as inspected June 2017"* which I find shows black sealant on the roof tiles.

The Provider's Construction Contractor carried out the repairs on the roof which was leaking. The Complainant says that the roof/window were damaged by a storm and that subsequently the Velux window was cracked as a result of Provider's Construction Contractor's repairs. The Provider submits by letter to the Complainant, dated **10 July 2019**, that *"prior to roof repairs having been completed by our contractor in August 2017, there was evidence that a silicone-based adhesive/sealer had been used to seal the junction between the roof tiles and the Velux flashing tray which indicates that the roof may have been subject to previous repairs in the past."* I note the contents of the Complainant's email, dated **21 May 2020**, where he submits that:

"we agreed with [The Provider] and yourselves to have a structural engineer/Architect to call and inspect same however after [The Provider] agreed and asked for same they then withdrew from sending him/her out to inspect same the roof."

I also note that the Complainant says that no previous repairs were carried out and no one has been on the roof.

I note that the **Contractor Causation Report** was dated **4 July 2017** and says:

"This claim relates to storm damage to the lean to roof at the rear of the property. The flashing and tiling at the edges and base of the Velux have been disturbed..."

/Cont'd...

Importantly, I note the contents of the Provider's submission that *"we arranged for our internal Loss Adjuster to carry out an inspection of the roof in order to ascertain the cause of damage and this went ahead on 11 June 2019."*

This report notes that *"no opening up works were carried out during the inspection on 11th June 2019"* and found that *"on review of the damage caused by the more recent leak, we were satisfied that this was unrelated to the previous repairs"* and that *"the 2019 roof inspection revealed that the roof pitch relative to the roof tiles in situ was insufficient."*

I note that the Provider also submits that:

"Having performed a site inspection and carefully considered the Complainant's concerns, we were completely satisfied that incorrect roof tiles relative to the pitch of the roof is the reason for its continuous leaking. In light of the history of leaks in this roof from different areas (the 2019 leak was higher on the internal plaster than the previous 2017 leak)."

Whilst I accept that the Complainant had a less than positive experience with the Provider's building contractors, in 2017, I am satisfied on the evidence that the damage to the roof as assessed by the Provider's Internal Loss Adjustor revealed that *the roof pitch relative to the roof tiles in situ was insufficient* and that this is, on balance, the most likely cause of the leaks. In my opinion, it is likely that there was some history of repairs as noted by the Provider's Internal Loss Adjustor, that an inspection did take place and that the source of the leak was in a different section of the Velux window.

I note that the Provider says that *"we do concede that payment of the original claim should not have been made as the damage was not caused by an insured peril, we do accept that it is not possible to assess this claim retrospectively."* The Provider submits that in relation to their *"General Policy Exclusions - All Sections,"* detailed on page 24 of the **Policy Booklet**, that as *"the policy was incepted in February 2014, the issue with the tiles is therefore a clear example of something arising from any event which happened before cover started."* I note that the **Policy Booklet** excludes *"loss or damage which happens before cover starts or arising from any event which happened before cover started,"* and *"will not cover loss or damage caused by wear, tear or by anything which happens gradually"* and specifically excludes storm damage *"caused by water entering your home due to wear, tear or deterioration."*

I also note that by email dated **20 December 2017** from the Provider to the Complainant the Provider said *"we accept and sincerely regret the issues which did occur during the repair of your home by [Provider's Construction Contractor]."*

I am satisfied that as the Provider considered the **21 June 2017** claim to arise from an insured peril at that time, and indeed paid out that associated claim, that it is bound by the acts of its Construction Contractor and its agents. In this instance this includes any residual damage caused by these Contractor's / subcontractor's repair efforts.

The Provider assessed the **6 June 2019** claim and found that this leak was located in a separate location of the Velux and noted that there was a general design flaw in the roof pitch - *"the 2019 roof inspection revealed that the roof pitch relative to the roof tiles in situ was insufficient."* I am satisfied that this does not fall under storm cover as per the **Policy Booklet** and I am satisfied that the Provider was entitled to refuse cover for new issues which arose in 2019, that were associated with the roof pitch issue, constituting *"loss or damage which happens before cover starts or arising from any event which happened before cover started."*

I also note that repairs for the **21 June 2017** claim were completed by the Provider's Construction Contractor on **31 July 2017** and that the warranty is cited on the **Brochure** as *"quality repair with a full 12 month guarantee on all work carried out."* Importantly, this warranty would have expired on **31 July 2018** for the repairs undertaken and therefore the Complainant's second leak complaint on the **6 June 2019** was not covered by this warranty. I also note that the Provider submits by letter, addressed to the Complainant and dated **10 July 2019**, that *"the leak occurred outside of the 12-month Guarantee provided by [the Provider]."*

The Provider submits that it has met its obligation pursuant to 7.13 of the **Consumer Protection Code 2012 (as amended)** to provide the claimant with the details of the scope of the work that has been approved and the cost and the Provider submits that:

"We are satisfied that we have complied with Provision 7.13. As evidenced within the Schedule of Evidence, on 4 July 2017 we emailed our settlement proposals to the Complainant. This email included an 'Estimated Cost & Scope of Repair' document. The scope of works was confirmed as:

- (c) *Repair rear lean to roof*
- (d) *Replace damaged ceiling plaster, wall plaster, spotlights, splashback and insulation*
- (e) *Remove and refit upper kitchen units*

The cost summary confirmed that works totalled €3,858.90 inclusive of VAT."

The quote dated **4 July 2017** in the amount of €3,858.90 (three thousand eight hundred and fifty eight euro and ninety cents), inclusive of VAT, was broken down as follows:

Relocation of contents to carry out works	1.00	hr			
Return contents once works are finished	1.00	hr			
Protections to floor coverings and lower kitchen units	12.00	m2			
RESTORATION WORKS:					
Skip hire	1.00	item			
Protection to driveway	1.00	item			
Dehumidifier, Estimated drying time 1 week	1.00	item			
Electric Fan, Estimated drying time, 1 week	1.00	item			
Treatment of timbers	1.00	item			
Electrical Attendance - Disconnection and reconnection of services	1.00	item			2 Visits
Roof repairs					
Strip roof tiles					
Replace felt and battens					
Replace velux flashing					
Retile section of roof					
Roofing ladder & working platform	1.00	item			
Internal works					
Remove and refit upper kitchen units	8.00	hrs			1 carpenter & 1 GO
Remove and dispose of attic insulation	6.45	m2			
Remove and dispose of ceiling plaster	6.45	m2			
Remove and dispose of wallplaster	9.00	m2			
Remove and dispose of splashback tiles	7.50	m2			
Remove and dispose of spotlights	1.00	item			
Replace roof insulation	6.45	m2			
Replace ceiling plaster	6.45	m2			
Skim ceiling	6.45	m2			
Replace wall plaster	9.00	m2			
Skim walls	9.00	m2			
Replace splashback tiling	7.50	m2			
Replace spotlights	4.00	item			
Paint ceiling	6.45	m2			
Paint walls	9.00	m2			
Final Clean on completion of the works			3,269.14		
Subtotal:				€3,269.14	
Prelims @ 4%				€130.77	
Total Excluding VAT				€3,399.91	
VAT @ 13.5%				€458.99	
Total Including VAT				€3,858.90	
Note: A full reinspection will need to be carried out once all drying out works has been finished					

The Provider also refers to the **21 June 2017** telephone call, and asserts that:

"the claim handler clearly explained the options under the policy. The claim handler explained what type of damage would be covered, the effect a potential claim would have on the Complainant's policy and advised him of the policy excess... a letter was issued to the Complainant which included the [Provider] Claims Process and a brochure explaining how the [Provider] Property Services works. The [Provider] Claims Process outlines how the Complainant has the right to appoint a loss assessor to act on their behalf at their own expense."

I am satisfied that the Provider met its obligation pursuant to 7.13 of the **Consumer Protection Code 2012 (as amended)**. In relation its obligation, pursuant to 7.15 of the **Consumer Protection Code 2012 (as amended)**, to ensure that a settlement offer made to a claimant was fair, the Provider submits that:

/Cont'd...

"The claim was registered on 23 June 2017, the property was inspected on 28 June 2017 and again on 3 July 2017.

We were advised by that the cost of repairs would be €3,858.90 and settlement proposals were communicated to the Complainant by email on 4 July 2017. The Complainant accepted these proposals and paid the policy excess on 5 July 2017. We are satisfied that our offer was fair and represented the cost of repairing the damage to the Complainant's property."

I am satisfied that the Provider met its obligations appropriately in that regard.

In relation to the obligations of the Provider under provision 4.1 of the **Consumer Protection Code 2012 (as amended)**, to ensure that all information it provides to a consumer is clear, accurate, up to date, the Provider submits that:

"It was not until it was reported to us on 6 June 2019 that the roof had leaked again that we became aware of the issue in respect of the defective construction/unsuitable materials used in the construction of this roof... it was at this point that it was realised for the first time that there was a latent defect with the design and construction of the Complainant's rear kitchen roof."

In my opinion, the Provider met its obligations in that regard.

In relation to 7.14 (b) of the **Consumer Protection Code 2012 (as amended)**, to ensure to restore the claimant's property *at least to the standard that existed prior to the insured events*, the evidence suggests to me that this was not done through the repairs carried out on the Complainant's property at that time, leading to considerable discord.

In terms of compensation, a €3,858.90 (three thousand eight hundred and fifty eight euro and ninety cent) claim for storm damage was registered by the Complainant on **21 June 2017**. The Claimant paid a €275.00 (two hundred and seventy-five euro) excess towards this claim on **5 July 2017**, the claim was paid out by the Provider and works were completed on **31 July 2017**.

The Provider submits that:

"After some initial problems with the repairs, we appointed a second roofer who rectified any outstanding issues. This repair was completed in October 2017 and we had no further communication from the complainant in relation to this until we were notified of a potential issue again on 6 June 2019."

/Cont'd...

In fact, I note that a residual snag list / repair list was being negotiated between the Complainant and the Provider between **31 July 2017** and **November 2017**.

On **30 November 2017** a €3,000.00 (three thousand euros) payment was offered to the Complainant. I note that by email dated **6 December 2017** and addressed to the Complainant, the Provider noted that this offer was not accepted by the Complainant. In this email the Provider reflects on the €3,000 00 offer that had been made and argues that:

"at the time of our meeting you had suggested an allowance of €2,250 to reflect the damage to your kitchen as a result of the damaged pelmet. Whilst it was my view that the allowance suggested was somewhat high we accepted the allowance in an attempt to reach an amicable conclusion of the matter. [Provider's Construction Contractor] are prepared to address the other outstanding issues including the skimming and painting of the ceiling, the fixing of the window blind brackets and the tightening of the wall sockets. However we included an appropriate allowance for these items to be carried out by your own contractor."

I note the Complainant was particularly concerned about a matching pelmet. By email dated **18 December 2017** and addressed to the Complainant, the Provider submits as follows *"[Provider's Subcontractor (Kitchen Supplier)] have established that the damaged Cornice is actually available and in stock. We can arrange for the entire cornice to be replaced rather than just the chipped section of cornice. We understand that your initial preference was to have the cornice replaced.... We had previously offered €3000.00 to resolve the matter on the basis that we understood that the cornice was not available. Taking into account that the cornice is available and although [Provider's Construction Contractor] are available to complete the remaining snags we are in a position to offer compensation of €1000.00 in addition to replacing the cornice."*

The Complainant submits by email, dated **18 December 2017**, that:

"We have no confidence in [Provider's Construction Contractor] or their workmanship. I believe that 1000.00 is an inadequate amount for this mess, considering the problems caused by your workmen and plus the time I had to take off and the stress that it has caused us. Now I think we all know where this is heading. I want this sorry mess sorted out by the end of this week as we are the only ones at a loss because of same. After that I will have no option other than to publicise same with several broadcasting agencies and all and any internet outlets possible as you have kept this on the long finger for far too long now. It seems to us that this is the only solution now as you are constantly dragging the whole mess out."

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Given the Complainant's experience of poor workmanship by the Provider's Contractor in question, his position in that regard is understandable.

The Provider's submission, dated **14 May 2020**, listing the outstanding issues from late 2017 as:

- *"The Cornice had been chipped during the repair process by the original sub-contractors.*
- *The splashback tiling needed to be replaced*
- *The Velux window was leaking*
- *The Complainant was unhappy with the finish of the plastering of the kitchen ceiling*

The Complainant also expressed discontent with the sub-contractor, [Construction Contractor's Subcontractor (roofing)]. In response, a new [New Sub-contractor, Construction Contractor's Subcontractor (roofing)] construction was appointed to take over. Upon review, the Complainant's concerns were justified, and steps were taken to remedy the issues. We accepted the Complainant's contention that the kitchen ceiling required additional attention but did not agree that the ceiling itself required replacement. Filling/reskimming and painting the ceiling was all that was required, and this cost would not exceed €200.00. The issue with the tiling splashback around the window reveal was already replaced and we found no issues with the secondary repair other than that an electrician's attendance was required to tighten the kitchen plug socket once again, a cost that would not exceed €120.00. The plug socket was left loose so as not to compromise the tiles and to allow adhesives to dry. The cost of replacing the blind would be in the region of €350.00 however we were completely satisfied that a replacement blind was not required; tightening of the blind bracket was the only issue noted.

The Complainant advised that he no longer wanted any of our contractors on site. He wanted to complete these outstanding items himself and be paid for same by [The Provider]. While we would have preferred to finish out the last of these snagging issues, we were anxious to make amends for these issues therefore on 30 November 2017, we confirmed that we were agreeable to allowing a compensatory payment of €3,000.00 to bring the matter to an amicable conclusion. As outlined, the cost of the repairs outstanding was as follows:

/Cont'd...

Cornice	€ 510.75
Ceiling works	€ 200.00
Electric	€ 120.00
Blinds	€ 350.00
Total	€ 1,180.75

Considering the outstanding works that were required, we feel that our offer of €3,000.00 to cover these outstanding issues in addition to addressing customer issues was fair and reasonable. The Complainant ultimately accepted our offer of €3,000.00 on 22 January 2018 which was discharged on 23 January 2018."

On **14 May 2020**, the Provider submitted that:

"In respect of the damages that were caused to the kitchen in 2017, this element of the complaint was agreed and settled in January 2018 for the sum of €3,000.00. We are satisfied that this amount was adequate to cover the cost of repairs and was inclusive of compensation for the inconvenience caused. However, we must concede that with the benefit of hindsight, we are not satisfied with the customer journey experienced by the Complainant. This is not the kind of service we expect from our service providers. It is for this reason we would like to offer the Complainant a payment of €3,000.00 (Inclusive of the €1,000.00 already offered) as a gesture of goodwill. This payment will provide the Complainant with the opportunity to repair the damage to his roof or can go towards re-felting and re-tiling the roof with the appropriate tiles."

I note the Provider's apology and recognition that *"the Complainant's concerns were justified"*. In particular, I note that *after* the claim was settled, an agreed sum of €3,000.00 (three thousand euros) was paid to the Complainant on **23 January 2018** in respect of the damage that had been caused to the kitchen in 2017 and I note that in 2020, *"a further €3,000.00 (three thousand euros) was offered as a gesture of goodwill"*.

By email dated **4 June 2020**, the Complainant commenting on the goodwill offer, submitted that:

"the offer €3000.00 is insufficient I would rather continue this case as the facts are irrefutable and the work has to be done.....[The Provider] would have to increase their offer to €4400.00 for this mess to be sorted."

By email dated **8 June 2020**, the Provider submitted that:

"Unfortunately we cannot comment on the Complainant's email as we have never received a quote for the repairs during the claim investigation. As such the figure referenced is arbitrary and we are happy that our offer of €3,000.00 is sufficient to cover the necessary localised repairs and includes a gesture of good will."

By email dated **16 June 2020**, the Complainant submitted a home maintenance quote, dated **January 2020**, from a property company who quoted for:

"Redo Roof in existing extension; Redo all electrics in existing extension; Fit new Velux window in existing extension; Re-plasterboard + skim ceiling in existing Extension; Repaint+ decorate ceiling in existing extension."

I note that the total of this quote was €5,221.00 (five thousand two hundred and twenty one euros) (including VAT).

By email, dated **22 June 2020**, the Provider submitted that:

"We note having reviewed the estimate provided by the Complainant which totals €4,600 ex VAT, that it is lacking in detail and does not provide an itemised breakdown of the items quoted for. In respect of "Redo Roof in existing extension," it would seem apparent, having carefully considered the overall amount quoted, that replacement of the entire extension roof cladding has been quoted for. Given that the crux of this complaint is in respect of the localised repairs in the vicinity of the Velux window, and considering that works performed by our appointed contractor were confined to this area also, any estimates provided by the Complainant should be confined to these localised issues. It is also unclear why exactly a replacement Velux window is required. Additionally, while we accept that the ceiling will require redecoration, including making safe the recessed lighting in the vicinity of the Velux window so that localised repairs can be carried out, we note that the estimate allows for the removal and replacement of the entire ceiling altogether and to "Redo all electrics in existing extension." We have identified that the roof tiles in situ relative to the pitch of the roof are inadequate and therefore defective. While we can appreciate that this must be a source of concern to the Complainant, this is not an issue of our making nor is it something that is covered by the policy of insurance. At this juncture, we are satisfied that the estimate provided by the Complainant is overstated in both scope and quantum."

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If it is the Complainant's intention to rectify the pre-existing design issues with the roof, which the estimate provided would seem to suggest it is, we have already offered the Complainant €3,000 which we feel more than adequately covers the cost of the required localised repairs. Of course, the Complainant is free to use this allowance as a contribution toward rectifying the pre-existing design issues with the roof.

In order to comment further, we would require the following information from the Complainant's contractor:

- *An itemised cost breakdown of the items quoted*
- *Contractor's VAT number*
- *A contractor's report confirming:*
 - I. Why is re-cladding of the entire roof is required*
 - II. Why is a replacement Velux window required*
 - III. Why is it necessary to remove and replace the entire kitchen ceiling*
 - IV. Clarification on why ALL electrics in the extension need to be re-done and what exact works are proposed under this item....At this juncture, we are satisfied that the estimate provided by the Complainant is overstated in both scope and quantum."*

I note that on **14 May 2020** the Provider listed the relevant repairs as a replacement of cornice, filling/reskimming and painting the ceiling, tightening the kitchen plug socket and replacing the blind. The Provider estimated that this would cost € 1,180.75. (one thousand one hundred and eighty euro and seventy five cents) but the Provider nevertheless paid out €3,000.00 (three thousand euros) on **23 January 2018**, which had been agreed with the Complainant.

The Complainant's subsequent **16 June 2020** quote includes "*Redo Roof in existing extension*" and "*new Velux window.*" I note that the total of this quote was €5,221.00 (five thousand two hundred and twenty-one euros) (including VAT).

I note that by email dated **17 November 2017** to the Provider, the Complainant submits that "*a replacement kitchen to be fitted*" and "*the kitchen will now have to be replaced due to the workers damage etc.*" I note that the pictures submitted indicate a chip out of the kitchen pelmet's wood but no other damage to the kitchen cabinets.

Having considered the matter in detail, I accept the Provider's suggestion that the Complainant's estimates are "*overstated in both scope and quantum.*" The "*Redo Roof in existing extension*" quote is vague and I accept that there is no obligation on the Provider under the policy, to replace the entire roof arising from the events of 2017, given indeed the noted design defect.

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I am satisfied that the Provider is not required to cover any claim relating to the pitch of the roof as per its own policy terms and conditions. I am also satisfied that the Provider's offers of compensation to date have been reasonable and cover its responsibility to repair and amend its contractor's work, which in 2017 fell short of quality customer service and the Provider's obligation pursuant to 7.14 (b) of the **Consumer Protection Code 2012 (as amended)**.

In all of the circumstances, I am satisfied that the Provider has adopted a reasonable position in respect of the Complainant's ongoing dissatisfaction, notwithstanding that the Complainant essentially settled his claim in 2018 by accepting a payment of €3,000 to take over responsibility himself for effecting the required repairs. Since that time indeed, the Provider has recognised the poor customer journey which the Complainant has experienced and in that context, I note that it subsequently offered an additional compensatory payment to the Complainant in the sum of €3,000, which it made clear, would remain open to the Complainant for acceptance.

In my preliminary decision, I noted that this compensatory payment remained available to the Complainant for acceptance, and in those circumstances, I did not consider it appropriate to uphold this complaint.

Whatever shortcomings the Provider was guilty of during 2017, I am satisfied that it has since taken the appropriate steps to offer appropriate redress to the Complainant, both in 2018, and again more recently, upon further reviewing the events which have led to this complaint.

I note that since the preliminary decision of this office was issued, the Provider has confirmed that the Complainant made contact with it on 26 November 2021, and at that point he accepted the compensatory measure which had been offered by the Provider, and payment to him was arranged.

Accordingly, on the reasons outlined above, 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

17 December 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.