



<u>Decision Ref:</u>	2022-0003
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim – partial rejection Rejection of claim - freezing or escape of or overflow of water or oil Disagreement regarding Settlement amount offered
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a household insurance policy that was underwritten by the Provider. The policy period in which this complaint falls, is **7 December 2010** to **7 December 2011**.

The Complainant's Case

Prior to the Provider becoming the underwriter of his home insurance policy, the Complainant vacated his residence for approximately seven months following an escape of oil at the insured property on **25 September 2010**, on instruction from the Loss Adjusters. The claim in relation to that matter was settled by the Insurer at that time in full.

When he resumed residing in his house in **June 2011**, the Complainant first noticed water damage in and around the front porch area and separately in the upper landing of the main hallway of his property. He notified his Broker of these two claims on **21 June 2011** and the Broker forwarded a Household Claim Form to the Provider's Loss Adjusters, as follows:

"NATURE OF LOSS: Escape of water

FULL DESCRIPTION OF CIRCUMSTANCES: Water leaked into hallway + Porch".

The Provider-appointed Loss Adjuster Mr M. F. called to the property on **5 July 2011** to carry out an inspection, with the Complainant and his Loss Assessor in attendance. The Complainant notes that the Loss Adjuster examined both areas of damage and even climbed a ladder to inspect the roof damage that had caused the dampness in the upper landing of the main hallway. However, the Complainant later learnt that the Provider had only registered one claim, a claim relating to an escape of water in and around the front porch area, which was subsequently settled in **December 2012** in the amount of €3,956.79.

As a result, the Complainant complains that the Provider failed to register a claim relating to the storm damage to the roof that had caused the dampness in the upper landing of the main hallway of the property, despite the Loss Adjuster Mr M. F. having examined this damage during his inspection on **5 July 2011**.

In this regard, in its email to the Loss Adjuster on **13 March 2013**, the Complainant's Broker submitted, as follows:

"I appreciate that the information we passed on did not properly describe the cause of damage. But the damage was immediately inspected by [the Loss Adjuster] and [the Loss Assessor]. Surely, the incorrect notification was noticed at that time.

We were not told of any problem until Nov. 2012 when we were asked to re-notify the damage properly. Had this been brought to our attention in June 2011 by [the Loss Adjuster], [the Loss Assessor] or [the Complainant], [the Broker] could have rectified the notification at that stage".

The Complainant states that at the insistence of the Provider, he furnished a further claim notification to the Provider in **November 2012** in respect of storm damage to the roof resulting in dampness in the upper landing of the main hallway of the property.

Following this claim notification, the Provider-appointed Loss Adjuster Mr B. B. carried out an inspection on **29 November 2012** and subsequently wrote to the Complainant on **18 December 2012** to advise on behalf of the Provider that this claim was declined due, in part, to late notification.

In this regard, in his email to this Office on **12 February 2018**, the Complainant submits, among other things, as follows:

"I advised my [Broker] that I had water ingress into the house in the hallway.

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I indicated to [the Broker] quite clearly that there were two locations where water came in, one in the front hall beside the main door where there was a burst pipe and second one in the landing of the main hallway where roof damage caused substantial water ingress.

[The Provider] are maintaining that I only advised them in relation to the front hallway which was a relatively minor claim. However when the house was inspected by [the Loss Adjuster]...both locations were inspected on a number of occasions. As far as I am concerned [the Provider] knew full well that there were two parts to the claim ...

[The Provider] were clearly advised at a later stage of the two claims by [the Broker] but that didn't matter, they still deny the second claim completely.

... I had to take up residence in a rental house for a 7 month period as there had been an oil leak in my house. The insurance company insisted that I move out due to the dangers of the oil smell. During my period of absence a lot of water came into the walls of the upper hall landing and ceiling. This was caused by storm damage where some slates were displaced. Had I been aware of it sooner, in other words, had I been living in the house, I would've taken corrective action sooner.

I reported the damage to [my Broker] as soon as I moved back into the house.

*I set about repairing the damage as soon as I could afterwards, which I had to do out of my own resources as I was getting nowhere with [the Provider] and there is an obligation on the owner to maintain the property and insure that further damage does not occur. I completely re-roofed the valley and put a new covering on the flat roof section also. This work was underway at the time of the last inspection by [Loss Adjuster Mr B. B. on **29 November 2012**]*”.

In addition, in his email to this Office on **23 May 2018**, the Complainant submits, among other things, as follows:

“I advised my insurance broker on June 21, 2011, of both claims. When the [Loss Adjuster] arrived out on two occasions to inspect these claims, he said that I had only made the one claim but agreed to look at both nevertheless, as I said that I had made a claim for both. Why would he have bothered to look at the roof damage on the upstairs landing otherwise? He did tell me that only one claim was made, but I'm sure I refuted this and this was why he looked at the roof above the landing.

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He saw the damage before it was patched up. Shortly after he inspected the damage in both locations, in July 2011, I patched up the roof above the landing, on the advice of my insurance broker that it was my responsibility to stop the ingress of water”.

In his email to this Office on **17 July 2018**, the Complainant submits, among other things, as follows:

*“As far as I am concerned I notified the [Provider], through my broker of 2 areas of damage “ingress of water in the **HALLWAY & PORCH**”. In plain English this means two clearly distinct locations where damage occurred. I did not know that there was a difference between roof/storm damage and other damage or that there was any necessity to make 2 separate claims. When the [Loss Adjuster Mr M. F.] came out he inspected both instances of damage, twice. I clearly stated to him that I was claiming for the two locations. Eventually, after nothing was happening, on the advice of my broker a second claim was submitted. This was done with great reluctance on my part as I felt I had advised my broker about the two areas of damage 16 months previously. I did this 2nd claim notification, under duress, as the insurance company had, in the intervening period, done nothing about the hallway claim. Now I feel that this is being used against me as they state that “the roof damage claim due to storm damage was not notified until November 2012”. This is not correct.*

[The Provider] goes on to say that “there was clear late notification of this claim”. Again this is being used against me and is not the case.

[The Loss Adjuster Mr M. F.], who looked at the roof twice, clearly saw the damage the first time. The second time it has been patched up and when [Loss Adjuster Mr B. B.] came out work had started on the roof”.

Furthermore, in his email to this Office on **27 August 2018**, the Complainant also submits as follows:

“[The Provider] have not yet accepted that all along I advised them of two locations of claim...This was stated in plain English as the Porch and Hallway and subsequently clearly stated to [the Loss Adjuster] when he called to inspect the damage. As a result of what I said to him he inspected the upper hallway damage and I organised a ladder to get him up (precariously – he was very nervous of the height involved) to see the roof damage which caused the dampness in that area. That is a fact. Why would he have carried out the second inspection unless he accepted what I said? ...

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I'm not sure if I have a copy of [my Broker's] advice of my claim to [the Provider] but I'm 100% sure I said that there was damage in the porch and hallway caused by frost and storm respectively. It is not my fault that this got lost in translation as between [the Broker], the Loss Adjusters and [the Provider].

On the insistence of [the Provider] I advised them through [my Broker] of the part of the claim they said I didn't make. I didn't want to do this but was advised by [the Broker] to make a fresh notification of this and I felt under duress to do so. Now it appears that because I did so, [the Provider] are saying that I didn't notify the hallway claim on time ...

They confirm that I reported water damage. In both the hallway and porch it was "water damage". In the hallway ingress of water through damaged slates, much the larger claim and in the porch water ingress from a burst down pipe. Very conveniently [the Provider] and their agents chose to completely disregard the larger claim".

In his email to this Office on **19 April 2019**, the Complainant submits, among other things, as follows:

"In summary, I don't think the Broker did any wrong other than perhaps give an inadequate description. Even so the claim form they filled clearly states "hallway + porch", which are two separate locations. Is it a requirement under insurance claim legislation to make 2 separate claims if there are two locations involved? [The Loss Adjusters] inspected the two locations 3 times...They were made fully aware by me of two claims at those inspections ...

It was [the Loss Adjusters] who suggested I fill a second claim form and I was worried that by virtue of so doing I would be effectively conceding that the original claim form did not refer to the two areas of water ingress. They are now saying that the second claim form is not being accepted after they asked me to submit it. This cannot be fair or correct.

I still believe that [the Provider and the Loss Adjusters] are the problem here rather than the broker. They have clearly been more influenced by the claim history in their defence of this claim, than its validity. The water ingress happened, I didn't make it up".

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In his email to this Office dated **12 June 2020**, the Complainant submits, among other things, as follows:

“The issue in my case is not the small part of my claim involving the front porch but the larger part of my claim regarding the hallway. Mt original claim referred to damage in the porch and hallway. These are two separate locations within my house and the damage in each was of a different nature. The damage in the porch was caused by a burst water release pipe coming from the roof of the portico over the front door down through the wall which was burst by frost. The damage in the main hallway landing was caused by substantial water ingress due to storm damage and was inspected twice on behalf of [the Provider] by [Loss Adjuster Mr M. F.] and later by [Loss Adjuster Mr B. B.]. [The Provider] were clearly aware of this damage and subsequently forced me to submit a second claim, which I was concerned about doing, as it was effectively making an admission that my original claim was not valid. I contend that my original claim was valid and that the 2 locations were stated in plain English on the first claim”.

In his email to this Office on **12 February 2018**, the Complainant submits, as follows:

“I feel completely messed around by this and have spent a lot of time and effort trying to get it sorted out to no avail so far.

If [the Provider] were prepared at any stage to have offered me a reasonable settlement I would’ve talked to them but they have never entertained my claim at all”.

Similarly, in his email to this Office on **31 January 2020**, the Complainant submits, as follows:

“I firmly believe [the Provider] should pay the claim in full and my conscience is clear on that”.

The Complainant seeks for the Provider to admit his claim relating to storm damage to the roof of his property, which he sets out in the Complaint Form he completed, as follows:

“The cost of all the repair work on the second claim would be of the order of €35,000. Replacing badly damaged leaking roof and valley €25,000, making good internal cornicing and re-painting €5,000 and scaffolding/hoist hire €5,000. Some of this work has been carried out since but such was the extent of water ingress the internal walls are still damp and internal work cannot be carried out”.

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The complaint is that the Provider wrongly or unfairly declined the Complainant's household insurance claim in respect of storm damage to the roof of his property, that resulted in water damage to the upper landing of the main hallway of his property.

The Provider's Case

The Complainant held a household insurance policy underwritten by the Provider. The policy period in which this complaint falls is, from **7 December 2010 to 7 December 2011**. Provider records indicate that the Complainant amended his policy midterm by way of reducing the building sum insured from €1,705,425 to €750,000 and the contents sum insured from €227,389 to €150,000 with effect from **13 June 2011**.

By way of background, prior to the Provider becoming the underwriter of his home insurance policy, the Complainant had submitted a claim in respect of an escape of oil with a date of loss of **25 September 2010** under claim reference ending *****180. This claim was settled by the Insurer at that time in the amount of €55,025.20 and this settlement included six months alternative accommodation costs, remediation works and restoration of the property.

The Complainant contacted the Provider through his Broker on **21 June 2011** to notify it of an escape of water at his property, which was discovered by the Complainant after he moved back into his property following the previous escape of oil. In this regard, the Broker submitted a Household Claim Form to the Provider's Loss Adjusters that stated, as follows:

"NATURE OF LOSS: Escape of water

FULL DESCRIPTION OF CIRCUMSTANCES: Water leaked into hallway + Porch".

This claim was assigned reference ending *****468. Loss Adjuster Mr M. F. was appointed on **24 June 2011** and attended the property on **5 July 2011** to carry out an inspection, where he was advised that the Complainant had discovered water damage to the plaster work, ceiling, coving and redecoration in the entrance porch and sitting room in **June 2011**, which investigations revealed was due to a backup of water from a drain above the porch and sitting room. During this inspection, the Loss Adjuster requested a statement from the Complainant detailing the discovery of the loss and the occupancy of the property. Numerous reminders followed requesting these outstanding details, with a statement dated **3 January 2012** finally furnished by the Broker on **8 October 2012**. Issues also arose as it was determined that the Complainant's property was underinsured.

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This claim was eventually progressed to final settlement and a payment of €3,956.79 was sent by cheque to the Broker on **17 December 2012**.

The Complainant contacted the Provider through his Broker mid-**November 2012** to notify it of storm damage to the roof of his property with an undetermined date of loss. This claim was assigned reference ending *****473. Loss Adjuster Mr B. B. was appointed on **14 November 2012** but inspections arranged for **16th and 22nd November** were cancelled by the Complainant's Loss Assessor. The Loss Adjuster finally attended the Complainant's property on **29 November 2012** to carry out an inspection. The Complainant was not present and the Loss Adjuster met only with the Loss Assessor, who advised that the Complainant had originally noticed the damage in **June 2011** when he observed an ingress of water on the landing and bedroom ceilings at top floor level. The Loss Assessor explained that, to the best of his knowledge and based on his recollection, temporary repairs to the roof were completed shortly after the damage was discovered.

As he states he was denied access to the inside of the property, the Loss Adjuster's inspection was limited to the external areas of the property only. In this regard, as stated in the Preliminary Report dated **4 December 2012**, the Loss Adjuster was physically on the roof and noted on close inspection that the lead valley and chimneys were in poor condition and suffering from general wear and tear, the slate had undergone repairs over the years and the roof had bitumen applied to the joints in order to stop the ingress of water.

In terms of the discovery of this particular loss, the Provider notes that it had been mentioned to Loss Adjuster Mr M. F. when he attended in **July 2011** to inspect the escape of water damage in and around the front porch area, that there was damage to the roof most likely due to storm. He made a note of this and some photographs were taken on a without prejudice basis, but both the Complainant and his Loss Assessor were advised by the Loss Adjuster that as this was a separate matter and not one that he had been appointed to deal with, that the storm damage loss should be reported separately, as a new claim. The Provider states that this did not happen at that time and the Provider was not properly notified of this particular loss until **November 2012**.

Following its claim assessment, the Loss Adjuster wrote to the Complainant on behalf of the Provider on **18 December 2012** to decline the claim on a number of grounds, namely, that the roof of the property had not been maintained in a good state of repair, that there was no evidence that an insured peril had operated and that there had been late notification.

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The Provider appointed a Loss Adjuster to report on the circumstances of the claim and in its expert opinion the roof had not been maintained in a good state of repair. The Loss Adjuster concluded that the damage was due to wear and tear and a lack of maintenance over a long period of time, which bad weather brought to light. The Provider points out that there is a general policy exclusion which excludes loss or damage as a result of wear and tear, gradual deterioration or a lack of maintenance. In addition, there is no evidence that a storm occurred at the risk address and an actual date of the alleged storm could not be provided or identified. In this regard, the onus is on the policyholder to prove that the damage being claimed for, in this instance storm damage, was caused by an insured peril.

Furthermore, the Provider states that the claim was notified late, nearly 18 months after the discovery of the damage. This is a breach of the claim conditions listed in the policy, which state that a claim must be notified as soon as is reasonably possible and that the policyholder must provide written details of what has happened within 30 days. In addition, the Provider states that repairs had been carried out before the claim was notified and the damage could be inspected.

The Loss Adjuster also mentioned in his Preliminary Report dated **4 December 2012** that the property had been unoccupied for a number of months during **September 2010 to June 2011**. The Provider notes that the Complainant had moved back into the property in **June 2011** following a large oil loss, which was dealt with as a separate claim in **2010**. In this regard, the Provider points to a number of specific policy terms and conditions which apply in the event that the property is unoccupied and also cover restrictions where the property is unoccupied for 30 days or more. However, the Provider notes that this specific aspect was not investigated any further as it asserts that the Complainant's claim was not valid due to other reasons, but it was drawn to his attention in the declinature letter dated **18 December 2012**.

The Provider states that the Complainant was informed in **July 2011** to submit a new claim in relation to the storm damage as this was a separate incident, unrelated to the escape of water claim, but he elected not to do this and the Provider was not formally notified of the storm claim until **November 2012**, which it states prejudiced its position in terms of properly investigating the claim.

The Provider states that it is satisfied that the Complainant's Broker only notified one claim in **June 2011**, that being an ingress of water into the hallway and porch and one claim form was completed. There was no mention of a second claim or of any roof or storm damage by either the Broker or the Complainant himself.

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The Provider states that it was whilst the Loss Adjuster was at the property to inspect the escape of water damage in and around the front porch area that the Complainant mentioned damage to his roof but the Provider states that the Complainant was clearly informed to submit a separate claim for this damage for consideration as it was a separate matter and not connected to the porch area. The Provider asserts that it is also clearly documented that the Broker only reported the storm damage to the roof in **November 2012**, therefore the Provider categorically rejects that the Complainant submitted two claims in **June 2011** and instead asserts that the roof damage claim due to storm was not notified until **November 2012**.

The Provider states that in addition to the clear late notification of this claim, the Loss Adjuster did examine the roof on **29 November 2012** and there are several photographs of this on file. It asserts that these demonstrate the condition of the roof and provide evidence of wear and tear can be clearly seen. The Provider states that the Loss Adjuster is appointed because of his expertise and his opinion is of great importance and cannot be disregarded without very good reason. The Provider states that the Preliminary Report prepared by the Loss Adjuster dated **4 December 2012** is very clear as to the poor condition of the roof and there is no reason why it should be disregarded. In addition, the date of loss is not known and has never been provided, so the presence of storm conditions could not be validated. The Provider states that there are therefore several reasons why the roof damage claim is not covered, it is not solely because of the late submission of the claim.

The Complainant's policy ceased on **7 December 2012** as the Provider did not offer renewal terms beyond that date as the risk presented no longer met its underwriting criteria.

The Complainant challenged the decision to decline the roof damage claim in **January 2013** but on review the Provider maintained its declinature. The Provider notes that the Complainant did not pursue the matter any further at that time and waited for just over three years before electing to make any further contact with the Provider and raise a complaint.

The Provider states that it is satisfied that it declined the Complainant's claim in respect of storm damage to the roof of his property in accordance with the terms and conditions of his household insurance policy and that it did not act unreasonably or contrary to these terms and conditions.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainant's household insurance claim in respect of storm damage to the roof of his property, that resulted in water damage to the upper landing of the main hallway of his property.

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 30 November 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.

The Complainant held a household insurance policy underwritten by the Provider. The policy period in which this complaint falls, is from **7 December 2010** to **7 December 2011**.

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In **June 2011**, the Complainant states that he first noticed water damage in and around the front porch area and separately in the upper landing of the main hallway of his property and that he notified his Broker of these two claims on **21 June 2011**.

The Provider-appointed Loss Adjuster Mr M. F. called to the property on **5 July 2011** to carry out an inspection, with the Complainant and his Loss Assessor in attendance. The Complainant notes that the Loss Adjuster examined both areas of damage and even climbed a ladder to inspect the roof damage that had caused the dampness in the upper landing of the main hallway. However, the Complainant advises that he later learnt that the Provider had only registered one claim, a claim relating to an escape of water in and around the front porch area, which was subsequently settled in **December 2012** in the amount of €3,956.79.

The Complainant complains that the Provider failed to register a claim relating to the storm damage to the roof that had caused the dampness in the upper landing of the main hallway of the property, despite the Loss Adjuster Mr M. F. having examined this damage during his inspection on **5 July 2011**.

The Complainant states that at the insistence of the Provider, he furnished a further claim notification to the Provider through his Broker in **November 2012** in respect of storm damage to the roof resulting in dampness in the upper landing of the main hallway of the property. Following this claim notification, Loss Adjuster Mr B. B. carried out an inspection on **29 November 2012** and subsequently wrote to the Complainant on **18 December 2012** to advise on behalf of the Provider that this claim was declined, in part due to late notification.

I note from the documentary evidence before me that the Broker wrote to the Provider's Loss Adjusters on **21 June 2011**, as follows:

"Please note that [the Complainant] has advised us of a possible claim as a result of the following: -

Type of Claim: - escape of water

Date of Incident: - 21/06/2011.

We have forwarded the appropriate Claim Form to [the Complainant] for completion and shall submit this together with estimates in support as soon as they come to hand".

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In addition, I note that the Broker then submitted a Household Claim Form, as follows:

“ALL ANSWERS MUST BE ANSWERED IN FULL ...

NATURE OF LOSS: Escape of water

FULL DESCRIPTION OF CIRCUMSTANCES: Water leaked into hallway + Porch”.

I am of the opinion that it was reasonable for the Provider and its Agents to infer that the claim in question related to an escape of water in the front porch and hallway area. I am not of the opinion that the full description of circumstances furnished, that is, *“Water leaked into hallway + Porch”*, indicates or suggests that an element of the loss being notified included storm damage to the roof and/or water damage to an upper landing.

I note that in his email to this Office on **23 May 2018**, the Complainant submits, among other things, as follows:

“[The Loss Adjuster] said that I had only made the one claim but agreed to look at both nevertheless, as I said that I had made a claim for both. Why would he have bothered to look at the roof damage on the upstairs landing otherwise? He did tell me that only one claim was made, but I’m sure I refuted this and this was why he looked at the roof above the landing. He saw the damage before it was patched up. Shortly after he inspected the damage in both locations, in July 2011, I patched up the roof above the landing, on the advice of my insurance broker that it was my responsibility to stop the ingress of water”.

I am therefore of the opinion that the Complainant himself recalls that the Loss Adjuster had advised him during the site inspection on **5 July 2011** that the Provider had only registered one claim, namely the claim relating to an escape of water in and around the front porch area. It would have been prudent of the Complainant at that time to have promptly notified the Provider of the second separate loss relating to storm damage to the roof, regardless of whether he himself considered that he had notified the Provider of two separate losses and made two claims previously, particularly before he proceeded to make any repairs.

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In this regard, I note that the 'Claims Conditions applicable to the whole of this insurance' section of the applicable Household Insurance policy document provides, among other things, at pg. 10, as follows:

"Your duties

In the event of a claim or possible claim under this insurance

- 1. you must notify your broker as soon as reasonably possible giving full details of what has happened.*
- 2. you must provide your broker with written details of what has happened within 30 days and provide any other information we may reasonably require".*

In any event, I note that the Provider did not decline the Complainant's claim relating to storm damage to the roof solely on the basis of late notification.

In this regard, following the claim assessment, I note that the Loss Adjuster wrote to the Complainant on behalf of the Provider on **18 December 2012**, as follows:

"Your claim has been declined and therefore we are unable to recommend payment to your insurer.

The reason for the declinature is there had been a breach in claim conditions in relation to the notification of your claim. Our position has also been prejudiced on the basis that some repairs were carried out prior to our inspection. We also wish to advise that there is clear evidence of wear and tear on the roof and chimneys and it is our belief that this is the proximate cause of the damage and ultimately the ingress of water. There is no evidence of the operation of an insured peril in this case and Insurers are in a position to repudiate liability.

Your policy states under the General Conditions applicable to the whole of this insurance [that] your duties are:

- 1. You must take all reasonable steps to prevent loss, damage or any accident and keep the building in a good state of repair.*
- 2. You must tell your broker immediately if you:*

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- *Stop using the home as your permanent residence, or*
- *Regularly leave the home unattended by day or night other than for your normal job of work and holidays not exceeding 30 consecutive days in length.*

3. *You must tell your broker if you start any conversions, extensions or other structural work to the building*

- *Change the use of the building in any way*
- *Involves the external surfaces of the building as being affected/changed*
- *Means you having to move [out] of the buildings for any period of time.*

When [the Provider] receive this notice we have the option to change the condition of this insurance.

If you fail to comply with any of the above duties this insurance may become invalid.

We would also draw your attention to the inoccupancy clause on your policy which reduces the perils to fire, lightning, explosion and earthquake when the house is unoccupied for more than 30 consecutive days.

We would also draw your attention to the General Exclusions on the policy under (g) wear and tear.....“we will not pay for loss or damage as a result of wear, tear, gradual deterioration or a lack of maintenance”.

We would also wish to draw your attention to the Claims Conditions applicable to the whole of this insurance and your duty:

1. *You must notify your broker as soon as reasonably possible giving full details of what has happened.*
2. *You must provide your broker with written details of what has happened within 30 days and provide any other information we may reasonably require.*

We would also draw your attention to the actual storm peril under the policy which confirms what is not covered “(d) loss or damage caused by ingress of water due to wear, tear or deterioration”.

In summary, the Provider declined the Complainant’s claim on a number of grounds, namely, that the roof of the property had not been maintained in a good state of repair, that there was no evidence that an insured peril had operated and that there had been late notification.

In this regard, I note that the Loss Adjuster’s Preliminary Report dated **4 December 2012** provides, among other things, as follows:

“Description of Premises

The building at the risk address comprises a large two storey over basement Georgian style dwelling which is approximately 180 years old.

The building is located in a rural area and has its own private driveway leading up to the dwelling.

The dwelling is surrounded by forest and set on [the Complainant’s] farm of approximately 50 acres.

We noted during our inspection that there was a large glass conservatory attached to the rear of the dwelling.

The building is a typical structure of its era with stone walls and pitched slate roof. We note that the natural slates on the roof have had some repairs in the past and it would appear that the inner valley between the double apex roof has been replaced sometime in the past as these slates are cement slates, and not natural blue bangor slates, like the remainder of the roof.

Description of Occupation:

We are advised that the property is occupied for domestic purposes only.

We believe that [the Complainant] resides at the property on his own ...

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During our inspection, we met with the Public Loss Assessor and access to the internal sections of the house was not provided.

We had a number of difficulties trying to organise an inspection of this property and two previous appointments were cancelled. On the third attempt the appointment went ahead but the Assessor advised, when we arrived at the property, that the Insured was not available to meet our Adjuster nor did he provide access to the internal sections of the property. Therefore our inspection was purely external.

During the inspection our Adjuster noted that the roof, in a number of areas, is not in a good condition. We noted from close inspection that the natural slate has had some repairs over the years which included putting bitumen at the joints in order to stop ingress of water. We also noted that all of the chimneys at this property are not in a good condition and substantial repairs are necessary. As advised, access internally was not provided during our inspection, and therefore our Adjuster cannot comment on the condition of the property internally.

Discovery:

At the time of our inspection we met and discussed the matter with [the Loss Assessor]. [He] advised our Adjuster that the loss was discovered in approximately June 2011.

He advised that the Insured had a large oil loss (which was dealt with by one of our Adjusters) and that the Insured was out of his dwelling for a number of months between September 2010 and June 2011. He advised that when he returned to his property in June 2011, he discovered the ingress of water on the landing and bedroom ceilings at top floor level. To the best of his knowledge, he believed that temporary repairs were completed to the slate roof at that juncture. However, the insured was not available for comment and we have been unable to clarify this point.

We are aware that the circumstances surrounding this new claim for storm occurred following the inspection of one of our Adjusters to [the] most recent claim for ingress of rain water under claim no. TYR/10/2890 with a date of loss of 21/06/2011. Our adjuster inspected in July 2011. We believe this claim has not been settled. (During our recent inspection we requested confirmation of acceptance of the outstanding claim with [the Loss Assessor], and he advised that [the Complainant] did not wish to accept settlement proposals until this new storm was dealt with. Our Adjuster clearly pointed out that both claims are entirely separate and therefore the outstanding claim for the ingress of water should be either accepted or rejected, without any connection with this storm claim.)

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When our Adjuster inspected the property on 5/7/2011, it would appear that the Public Loss Assessor advised that there was damage to the roof, most likely as a result of storm. Our Adjuster noted the damage and photographed same and advised that this was a separate claim to the one he was appointed upon and if a claim wished to be pursued that it should be notified in the normal manner. Our Adjuster duly noted the damage, took some photos, but the onus of submitting an official claim rests with the Insured, the PLA and/or the broker. We believe it has now come to light that the brokers do not appear to have been notified of this loss until November 2012 ...

Cause of the Damage

The Insured's Public Loss assessor is advising that the loss is related to storm. We have sought clarification as to the exact date of loss but again the Loss Assessor was not able to confirm the date of loss. He advised that the damage was evident when the Insured returned to the property following the oil spill, in June 2011.

Therefore, whilst the claim is being submitted as being storm, we do not have a specific date of the storm, and therefore are unable to check same with the Meteorological Office.

Also, as previously advised, the Insured was not available to meet our Adjuster on the day of our inspection, thus, we are unable to ascertain from him when he believes the storm actually occurred.

Nature & Extent of Damage

The writer of this report was unable to gain access internally and thus we were only able to examine the property externally.

Our Adjuster climbed to the top of the scaffolding erected to the side of dwelling and examined the roof. It is clear that some patch work repairs has been completed in the past, our Adjuster also noted that the roof was not in a great condition.

Due to the age of the property, it is clear that running repairs will always be required at this dwelling.

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Whilst it is impossible to tell when the actual patch work repairs were completed, without a statement, report or invoice from the building contractor who did so, we can only rely on the comments from the Loss Assessor advising that, shortly after the discovery of the loss, that these temporary repairs were completed by a building contractor.

Again, the Insured was not available for questioning in this regard.

We have, on file, a report from [the Complainant's Engineering Contractor]. Whilst the actual report makes comment to two separate problems, the front door/porch damage and the roof valley area, this report is noted to be drafted on the 23/09/2011. This report suggests that the valley and centre roof area has been damaged by storm and that substantial repairs are necessary to include the re-roofing of the valley area, replacement all lead flashing and re-plaster the three chimneys adjacent to the valley.

The quotation submitted allows for repairs necessary following both claims but we are able to ascertain that the claim submitted for the Storm damage is circa €33,000.

Initial Measures

The Assessor advises that once the Insured discovered water ingress at roof level that the temporary repairs were completed. We have no evidence of this to date and hence this is hearsay at this juncture ...

Policy Liability

Our investigations to date have revealed that this claim was not notified to the brokers until November 2012. Whilst it would appear the Insured was aware of the damage to the roof as early as June 2011, it appears that notification of the Storm claim did not occur until November 2012. This has been confirmed by [the Broker].

There is clear late notification and thus [the Provider] may wish to repudiate liability on this point.

Moreover, we also note...the condition of the roof, lead valley and chimneys at this property. There is clear wear and tear on this roof due to the age of the property. The Insured, or their Public Loss Assessor, had not provided an actual date of loss when

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storm conditions prevailed. They have only advised that the loss was discovered in June 2011 but have not verified the date of loss.

It is therefore our view that this claim should be repudiated and we await [the Provider's] instructions in this regard".

The Complainant's household insurance policy, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, I note that Section 1, 'Buildings', of the applicable Household Insurance policy document provides, among other things, at pg. 12, as follows:

"What is covered

This insurance covers the buildings for loss or damage directly caused by

- 1. storm and flood ...*

What is not covered

We will not pay ...

d) for loss or damage caused by ingress of water due to wear, tear or gradual deterioration".

I accept that it was reasonable for the Provider to conclude from the documentary and photographic evidence before it that the damage to the roof of the Complainant's property was attributable to wear and tear and gradual deterioration, which is specifically excluded from cover by the policy terms and conditions.

As a result, I accept that the Provider declined the Complainant's claim in respect of storm damage to the roof of his property in accordance with the terms and conditions of the Complainant's household insurance policy.

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

Conclusion

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

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**

5 January 2022

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.