



<u>Decision Ref:</u>	2020-0360
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a home insurance policy with the Provider, via a Broker, on **18 April 2017**, with a buildings sum insured of €250,000, a contents sum insured of €30,000 and a specified items sum assured of €5,000.

The Complainant's Case

Having identified dampness on a chimney breast wall in a first floor bedroom of her property in **January 2018**, the Complainant submitted a claim to the Provider in **February 2018** relating to a chimney fire and the cost of relining the chimney flue and the associated redecoration.

Following a site inspection on **27 February 2018**, the Provider-appointed Loss Adjuster calculated the repair cost to be in the amount of €8,160.29.

In addition, the Loss Adjuster initially calculated the value at risk to be €472,780.75, based on a property measurement of 307m² and applying the rebuilding rates for [specified city] as set out by the Society of Chartered Surveyors Ireland. As the Complainant had incepted her policy with a buildings sum insured of €250,000, the Provider concluded that the Complainant's property was underinsured and it offered a net claim settlement offer of €3,965.05 on **25 April 2018**.

Following communications between the parties, the Loss Adjuster agreed to amend the property measurement to exclude the converted attic space from the full rebuild rates, thereby reducing the measurement from 307m² to 260m² and the value at risk from €472,780.75 to €413,500. As a result, the Provider made the Complainant a revised net claim settlement offer of €4,583.67 in September 2018.

The Complainant does not accept this claim settlement offer as she considers that the Loss Adjuster incorrectly measured her property and unfairly applied excessive rebuilding rates that resulted in the Provider overstating the value at risk and wrongfully calculating the amount by which her property is underinsured, which in turn resulted in the Provider then wrongfully calculating the claim settlement amount.

In this regard, the Complainant engaged the services of a Quantity Surveyor in **May 2019** to carry out a detailed Bill of Quantities on her property and it calculated the rebuild cost of her dwelling to be €299,904.16. This was later revised by the Complainant to €318,847.16 to include €14,442 for the rebuild cost of a single garage and €4,500 for engineer fees. Based on this rebuild cost of €318,847.16, the Complainant considers that the Provider ought to amend its net claim settlement offer to €6,048.27.

In her email to this Office dated 7 June 2019, the Complainant sets out her complaint, as follows:

"[My property is] insured for a rebuild value of €250,000, which I was wholly confident was sufficient as my father...built this house as a self-build for approximately €150,000 in 1999...He is not a property developer, nor has he any connection with such. He is a self-employed taxi driver. He and my mother built this home in 1999 and lived in it for several years. My husband and I subsequently rented it and then purchased it in 2008.

Damage to a chimney breast wall in a first floor bedroom was identified in January 2018. Having opened my claim in February, I was required by my insurance company to pay €200 to have a chimney scope performed. I did this immediately. Cracks and structural issues were confirmed in the chimney.

The settlement amount needed to repair my home was conveyed to me by my insurance company to be €8,160.29, set by Loss Adjustors...They identified my Value at Risk to be €472,780.75. I am insured for €250,000 so effectively, they deemed me to be underinsured by almost 50%. The revised settlement (due to being deemed underinsured) would be €4,315.05, which less the excess of €350 would leave a net settlement of €3,965.05, rendering me unable to repair my home.

I provided evidence of a rebuild costing from [my Contractor] dated 3rd September 2018. He identified a rebuild of €247,997.50 including VAT @ 13.5%. Following this [the Loss Adjusters] adjusted their Value at Risk and reduced it to €413,500 as forwarded to me in an email dated 27th September 2018 ...

The main point of contention is the build figure of €413,500 as presented to me by [the Loss Adjustors] in September 2018. I am not attempting to swindle my insurers. The issue of repairing my home is my foremost concern and I also want peace of mind that I am comprehensively insured. To clarify this issue once and for all, for the benefit of all parties concerned, in May [2019] I enlisted the services of [a Quantity Surveyor].

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I paid €500 for a Bill of Quantities report. This breaks down the rebuild cost of my home. [In the] cover letter from [the Quantity Surveyor dated 24 May 2019]...it is made very clear that the formula applied by [the Loss Adjusters] using the Society of Chartered Surveyors website is not applicable to my house due to the very nature of its construction in 1999. Going on the construction of the house as it stands, it would be fully covered for rebuild at the sum of €299,904.16, including VAT.

The Bill of Quantities report was most detailed (comprising a 57 page breakdown of costings). This Report outlined the rebuild cost to be €299,904.16 including VAT @ 13.5%. Accepting this figure, there is a discrepancy of €49,904 in my cover as at present I am insured for €250,000. I will be using this report to form the basis of my insurance policy at renewal and I plan to insure my home for €300,000 going forward. There is also a discrepancy with [my Contractor]'s costing of €247,997.50. [He] did not include the attic floor, his quotation is based on the Co. Council plans which show a square foot measurement of 2,200 square feet. [The Quantity Surveyor] has measured the three storeys of our home including the attic floor. This would mean that the adjusted settlement figure should be as follows:

Sum Insured €250,000 ÷ Value at Risk €299,904.16 x €8,160.29 [amount of claim] = €6,802.41 ... less excess €350 = Net Settlement €6,452.41.

I would respectfully request reimbursement of out of pocket expenses of €200 for the scope that the insurance company requested and €500 for the Bill of Quantities I procured from [the Quantity Surveyor]. Including out of pocket expenses, I am requesting as follows:

Final Net Settlement of: €7,152.41

... I had no choice but to seek a quotation from an independent surveyor to support my case.

At no time have I ever claimed on my insurance or has my policy been called into question in ten years of insuring my home. I feel that had this been a more urgent matter, such as pipes bursting costing perhaps tens of thousands, I would have faced potential financial ruin ...

My main aim now, is to repair the worsening damage to my chimney and home”.

In his cover letter to the Bill of Quantities dated **24 May 2019**, the Quantity Survey states, as follows:

“[Quantity Surveyor] was engaged by [the Complainant] in early May 2019, to obtain the cost for a full rebuild of their domestic house located at...Co. [specified].

Planning was granted by [specified] County Council for the construction of this dwelling on the 1st of September 1998 and all planning documents are available from [specified] County Council's online repository

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A full inspection was performed on May 8th at the house...The dwelling was constructed in compliance with the planning conditions set out by [specified] County Council and is finished to a high standard. No structural defects were observed, outside of the chimney in question, and all Mechanical/Electrical services are operational with a traditional oil fuelled heating system in place and natural passive ventilation only. An attic conversion was carried out subsequent to the completion of the dwelling with all materials and processes easily identified.

A fully priced Bill of Quantities has been prepared and has been returned to [the Complainant]. Costings have been prepared in accordance with the original plans and modified using site observations/measurements. Also pricing has been done using 2019 rates, but the final price deviates from the [Society of Chartered Surveyors Ireland]'s approximated indices as the house was not required to be built in accordance with 2019 regulations. Mechanical and Electrical services installations are the most significant example, with the omission of a heat pump fuelled system, mechanical heat recovery ventilation etc. allowing a significantly less expensive build. Otherwise, the structure was completed to a standard comparable to the most recent standards and associated costs are incurred, (precast concrete floor slab etc.).

Our Bill of Quantities has been prepared and measured in accordance with the rules set out in ARM4; The Agreed Rules of Measurement 2009. Material and labour rates have been priced using current rates in circulation from the [specified] area in May of 2019".

The Complainant advised the Provider's Complaints Handler in their telephone call at 09:40 on 23 August 2018, as follows:

"The resale value of my house is less than what I'm being quoted to rebuild. So if you take into consideration the price of the site and so on and so on, there is a huge discrepancy there, I think that's very obvious, now the quotation of the rebuild is higher than what my house would actually sell for, given where it is".

Similarly, in her correspondence to the Provider dated 13 July 2018, the Complainant also submits, *inter alia*, as follows:

"What we have been led to believe is that due to our Postal Address, we are being unduly discriminated against and as such, our rebuild costs are deemed to have doubled to almost €500,000".

In addition, in her correspondence to this Office dated 29 October 2019, the Complainant submits, *inter alia*, as follows:

"Most people insure their homes based on what they built it for or indeed bought it for, not being aware of the [Society of Chartered Surveyors Ireland guides] etc. Insurance companies can take advantage of people encouraging them to over insure their home, such as in our case, then when a claim is made they will only pay the

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rebuild value at that time, which...fluctuates all of the time. Therefore while we agree that the cost of building is increasing at the moment and our Bill of Quantities is in line with the current rates it can just as easily decrease due to economic factors such as a recession...an individual can only insure their home as it stands, insuring like for like. If we were to over insure our house that would be fraudulent ...

We have also contacted the [specified] County Council Planning Office. The planning office have never had an instance where a home has been completely burnt to the ground and needed to be completely rebuilt. When we asked them about building regulations they said that planning is dealt with on a case by case basis. Plans are submitted and it is down to the engineer to sign off on the construction and insure compliance with legislation and regulations ...

Through a friend we were put in contact with an insurance representative who has worked with several insurance companies ...

He said that an insurance company has to take into consideration that the lay person taking out insurance would not for the most part be aware of building laws and regulations or insurance in general so therefore they insure their homes in good faith based on the information they know, such as the cost of building their property or the cost of buying their property...This is exactly relevant to us as we initially continued a policy on our home from the previous owners to the value of €200,000 and subsequently rose this to €250,000 thereafter ...

We also spoke to [Mr X.], a representative from Insurance Ireland. We were told that the policy applies from the date of the incident which is February 2018. We are not compelled by any legislation or regulations as of this date in terms of our rebuild and we can rebuild the house as it stands. We were also advised when we took out our insurance there was no mention of special conditions on the rebuild of the property ...

We spoke with [a Complaints Handler with the Provider] at length about the measuring of the property. We did not trust the measurements presented by [the Loss Adjusters] as they had miscalculated the square metres. We were told we could appoint our own surveyor ...

We have made no significant changes to the property. The structure is as it was per 1999 construction. The original kitchen, utility, sanitary ware, windows, doors, floors, heating and plumbing are unchanged. We have made superficial changes such as painting the 20 year old kitchen, painting the pipe doors, wall papering the sitting room, painting the wooden fireplace surround, wall papering the downstairs hall, and painting the stairs. We did not renovate the attic, the previous owners did. As such there were no omissions on our part at the time of brokering our insurance or at the time of renewal. We have not retiled the original bathroom, or en suites. All the fixtures are itemised on the Bill of Quantities. The cover letter from [the Quantity Surveyor] also makes reference to the age of the house. The house is by no stretch of the imagination "modern", nor has it undergone substantial refurbishment by us. It is simply well maintained and well built.

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Also [the Provider] states, the property would be "Re-built and re-finished to the pre-loss condition and finish". This contradicts the specifications [the Provider] outlines...following this statement as pre-loss finish does not include air to water [heating], dry lining or air tightness ...

We have the architects plans of the houses...What we would have to pay would be engineer's fees in the unprecedented event of a total loss. I have a quotation for these at approximately €4,500 circa the time of the claim ...

[The Provider] stated that the policyholder should "Review the amount for which you have insured your buildings and contents". We are satisfied we have done this by having a Bill of Quantities prepared that is specific to our home. To further refer to the [Provider] website it states the rebuilding cost of your property as follows:

"It should include the cost of fixtures and fittings like kitchen units, built-in wardrobes bathroom sanitary fittings, carpets, permanent structures such as out buildings (e.g. garages/garden sheds) garden fences or walls, along with the cost of site clearance and architects fees (if the property needs to be rebuilt)".

From our understanding of this it is clear that the rebuilding is by definition the rebuilding of the existing house with its present specifications ...

In the interest of fairness and we have always been fair, we outline the costs as following:

- Rebuild €299,904.16 (inclusive of VAT, attic floor and site clearance fee...)
- Single garage €14,442 (as per [Society of Chartered Surveyors Ireland])
- Engineers fees €4,500 ...

Total = €318,847.16

$€250,000 \div €318,847.16 \times €8,160.29 = €6,398.27 - €350 \text{ Excess} = €6,048.27$

$€6,048.27 + \text{scope } €200 + \text{surveyors fees } €500 = €6,748.27.$

We believe €6,748.27 is reflective of a fair and correct settlement, bearing in mind this does not account for the inflation in the cost of repairing our home, due to the rise in building costs.

We should point out we have not requested any further reparations for the time, stress and mismanagement of this claim.

In summary, we have reviewed the value of our house...We are still satisfied we are correct in accepting the Bill of Quantities as a true reflection of the rebuilding cost. Going forward we will use this to form the basis of our renewal...We would prefer to

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have been able to take our business elsewhere but were compelled to remain [with the Provider] while the claim is still open ...

The principle of this case if the reason we have pursued it as we know we are correct with our costings and we will not be penalised over the term of our mortgage by paying over the odds for home insurance”.

As a result, the Complainant seeks for the Provider to increase its claim settlement offer to €6,048.27 and to reimburse her for her out of pockets expenses in the amount of €700, that is, €200 for the chimney scope and €500 surveyor fees.

The Provider's Case

Provider records indicate that the Complainant incepted a home insurance policy with the Provider, via a Broker, on 18 April 2017, with a buildings sum insured of €250,000, a contents sum insured of €30,000 and a specified items sum assured of €5,000.

The Complainant notified the Provider on 7 February 2018 of a claim relating to a chimney fire. The Provider-appointed Loss Adjuster inspected the loss on 27 February 2018 with the Complainant's Loss Assessor in attendance. A CCTV survey of the chimney confirmed that the flue liners had been damaged by excess heat generated during the course of a chimney fire. The Loss Adjuster calculated that the repairs to the chimney stack, the replacement of the flue liners and the redecoration of the rooms in which opening up works were required was in the amount of €8,160.29.

The Provider says that following her site inspection, the Loss Adjuster concluded that the buildings sum insured was inadequate and thus that the Complainant's property was underinsured. In this regard, the Loss Adjuster initially quantified the value at risk in April 2018, as follows:

Buildings:

307m² (including attic) @ €1,475 per m² = €452,780.75 (should be €452,825)
+ Garage = €20,000
Total €472,780.75 (inadequate)

Calculation:

Buildings sum assured €250,000 ÷ value at risk sum €472,780.75 x amount of claim €8,160.29 = €4,315.05 - policy excess of €350 = net claim settlement offer €3,965.05.

The Provider says that subsequent to this, communication took place between the Loss Adjuster and the Loss Assessor regarding the level of underinsurance, noting that the measurements originally taken with a laser measuring tool included an attic floor at a full rebuild rate of €1,475 per m². The Loss Adjuster accepted that the original full rebuild rate should not apply to this space and agreed to reduce the measurement and value at risk calculation, hence the revised net claim settlement offer of €4,583.67 in September 2018 as follows:

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Buildings:

260m² @ €1,475 per m² = €383,500

+ Garage = €20,000

+ Attic = €10,000

Total €413,500 (inadequate)

Calculation:

Buildings sum assured €250,000 ÷ value at risk sum €413,500 x amount of claim
€8,160.29 = €4,933.67 - policy excess of €350 = net claim settlement offer €4,583.67.

The Provider says that the Complainant's home insurance policy is subject to index linking. On reviewing the file as part of this complaints process, it came to light that the sums insured were not automatically index-linked as they ought to have been and that the buildings sum insured on the renewal papers in April 2018, if the policy had been index-linked correctly, should have been listed as €262,500, representing the minimum increase of 5%. Based on this figure, the Provider revised its net claim settlement offer in September 2019 to €4,830.35, as follows:

Calculation:

Buildings sum assured €262,500 ÷ value at risk sum of €413,500 x amount of claim
€8,160.29 = €5,180.35 - policy excess of €350 = net claim settlement offer €4,830.35.

The value at risk calculations undertaken by Loss Adjusters are usually based on rebuilding rates as set out in the Society of Chartered Surveyors Ireland guides in force at the time. These rebuilding costs guides are accepted in the insurance industry as starting costs for value at risk calculations and are minimum base costs that do not include, for example, hard landscaping, garden walls or gates. Whilst these guides are limited in their nature and cannot cater for all house types, in particular older properties, in this instance the Provider notes that the Complainant's property is modern and is a suitable case for referral to the Society of Chartered Surveyors Ireland guides.

The Provider says that the Loss Adjuster discussed the value at risk with the Complainant's Loss Assessor, who advised that he had not taken his own measurements to calculate same. In this regard, the Provider notes that the Loss Assessor was present when the Loss Adjuster measured the Complainant's property on 27 February 2018 and he did not dispute how the property was measured and used the dimensions taken by the Loss Adjuster in his own report. In addition, the Provider also notes that the Complainant's Loss Assessor did not dispute the value at risk calculated by the Loss Adjuster, nor did he submit a separate value at risk calculation.

The Complainant's Contractor advised by letter dated 14 May 2018 that he estimated the rebuild cost of the Complainant's property to be €247,997.50 and by letter dated 3 September 2018 that the dwelling measurement was 204m² / 2200ft², though no breakdown was included indicating how these calculations were reached. The Loss Adjuster did not discuss the property measurements with the Contractor. In addition, the Provider was furnished with the County Council planning documents for the Complainant's property

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which also state a dwelling measurement of 204m², though the Provider submits that this does not prove the final measurements of the completed property.

The Provider says that in view of the discrepancy regarding the actual measurements, the Provider, in an effort to resolve this matter, suggested that a joint measure take place at the Complainant's property with the Loss Adjuster, the Loss Assessor and the Complainant's Contractor present. This attendance would clarify that all parties were using the correct measurements to determine both the value at risk and the sums insured. The Complainant declined this offer.

In addition, the Provider also offered to cover the costs associated with commissioning a review of the value at risk by an independent surveyor, agreed by both parties, to provide a detailed report on the rebuilding cost of the property (and which would also encompass all items that form part of the applicable home insurance policy definition of buildings, such as the stone boundary walls (these are very substantial, bounding the entire property), the garage and the driveway), but the Complainant also declined this offer.

The Provider notes that the Complainant instead independently engaged a Quantity Surveyor in May 2019 to prepare a detailed Bill of Quantities to calculate the rebuild cost of the risk address. The overall measurement of the property as presented by this Quantity Surveyor is marginally greater than the Loss Adjuster's measured area, at 277m² as opposed to 260m². The original County Council planning documents submitted by the Complainant are not in line with the measurements taken by either the Loss Adjuster or the Quantity Surveyor. In this regard, the calculations presented by each party are, as follows:

The Complainant's Quantity Surveyor:	277m ²	2,981ft ²
The Complainant's Loss Assessor:	260m ²	2,799ft ²
The Provider-appointed Loss Adjuster:	260m ²	2,799ft ²
The County Council planning documents:	204m ²	2,220ft ²
The Complainant's Contractor:	204m ²	2,220ft ²

As the offer to have a joint measure take place was declined and the Complainant proceeded to arrange her own surveyor to provide an additional measurement, the Provider submits that the opportunity passed for the parties to validate their measurements and agree where the discrepancy arose.

The Provider notes that when it came to light that there was a discrepancy with the measurements taken and the original County Council planning documents and, in the absence of being afforded an opportunity to undertake a joint measure with the Loss Assessor and the Complainant's Contractor, that the Loss Adjuster referred to www.googlemaps.com in September 2018 simply to sense-check her measurements. The Loss Adjuster did not rely on the measurements taken from this website, though she did conclude that the measurements obtained from the website were more in line with her own measurements as opposed to those suggested by the Complainant's Contractor as being the correct measurements at that time, that is, 204m².

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The Provider says that the Complainant's property is a four-bedroomed detached modern property of standard concrete wall construction rendered externally with a pitched slate roof on timber framework and is a well-finished dwelling.

Whilst the Complainant states that no modifications have been made to it, it is evident that the property was built to a good standard with high quality finishes, including timber/tiled flooring. This affects the rebuild cost and thus the value at risk calculation, as Insurers are liable for the agreed cost of repairs in like form.

In this regard, if the property was destroyed by a total loss event, the Complainant would reasonably expect the property to be rebuilt and refinished to the pre-loss condition and finish. As a result, the value at risk is based on the current rebuilding costs rather than those when the property was built, that is, the buildings sum insured would need to take into account the current day costs of finishing the property to the same high quality and the Provider would not, for instance, discount any settlement costs because the building is some 20 years old.

The Provider says that in addition to a rebuild to the pre-loss condition and finish, the Provider notes that all current building and planning regulations would also need to be complied with and evidence would be sought by a planning body that these regulations were observed and effected. The Provider strongly disagrees with the Complainant's contention that current building regulations do not need to be complied with.

In the event of a rebuild, the property would need, for example, to be brought up to standard in relation to its thermal value and its management of heat and air escape. It is difficult to anticipate what an architect would specify in terms of heating values in order to achieve compliance with building regulations and indeed what the planning authority would insist on, but it is likely, for instance, that dry-lining would be specified as a requirement for heat retention. In this regard, the Loss Adjuster considers that air to water heating, dry-lining and air tightness are examples of omissions from the Bill of Quantities furnished by the Complainant, should the house have to be rebuilt, in addition to any other building regulation requirements. The Provider notes that it has not added on for these items specifically, instead it is following the rebuilding rates of the Society of Chartered Surveyors of Ireland.

Whilst the Provider cannot comment on what discussions the Complainant had with [specified] County Council, the Loss Adjuster has confirmed that it has dealt with multiples of total losses over many years with all planning authorities and that these planning authorities always, as a minimum, expect building regulations to be complied with. In addition, the reinstatement is driven by the regulations required at the time of reinstatement, not the original building spec, and not necessarily at the time of loss either, insofar as it could take 18 months to rebuild a property from scratch and the relevant regulations would be those applicable at the time of the completion of the rebuild.

The Provider says that, in addition, the basis of settlement under the policy is the rebuilding cost rather than the building cost, therefore it will also include debris removal costs, professional fees (such as those of an architect and/or an engineer) and compliance with the current local authority requirements at the time of the completion of the rebuild.

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Regarding the professional fees now cited by the Complainant, the Loss Adjuster has advised the Provider that €4,500 is an extremely low and unrealistic figure and does not accord with its experience.

The onus is on the policyholder to ensure an adequate buildings sum insured for the property. In this regard, the Provider notes that the '**Meaning of Words**' section of the applicable Home Insurance Policy Document offers, at pgs. 10–12, guidance as to what needs to be included when calculating the buildings sum insured, as follows:

"Buildings

The Home, landlord's fixtures and fittings on or in the Home, walls, gates, fences, hedges, terraces, patios, drives, paths, tennis hard courts and swimming pools, all at the situation of the Premises shown in the schedule ...

Home

The private dwelling, garage and outbuildings used for domestic purposes only, all at the situation of the premises shown in the schedule ...

Premises

The Buildings and the land within the boundaries belonging to them".

The Provider also notes that the '**Underinsurance**' section of this Policy Document clearly advises of the importance of insuring the property for the correct buildings value at pg. 6, as follows:

"Protecting your Home and Contents

The purchase of your home represents probably the largest financial investment you will make in your lifetime. It is, therefore, vitally important that you protect your investment by insuring it for the correct value.

Each year you should review the amount for which you have insured your buildings and contents. In addition, if home improvements have been carried out, such as the building of an extension or the conversion of the attic, or if you have purchased additional contents, the sums insured should be increased to reflect this.

It is important that the base value of your buildings and contents are regularly reviewed."

In addition, the Provider notes that the '**Underinsurance (Average)**' section of the Policy Document clearly advises as to the consequences of an incorrect buildings sum insured at pg. 22, as follows:

"If the sum insured on Buildings at the time of the insured loss or damage is less than the cost of rebuilding as new all the Buildings covered than You shall be considered as being your own insurer for the difference and We will pay only that proportion of the loss or damage which the sum insured bears to such cost.

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If it is necessary to make a deduction for wear and tear then the cost for building as new less the allowance for wear and tear will be compared with your actual sum insured. You will only be paid that proportion of the loss or damage which your sum insured bears to this cost of rebuilding”.

Furthermore, the ‘Property to be Insured’ section of the Statement of Fact document that is given to the policyholder at the policy inception lists the buildings sum insured, as follows:

“BUILDINGS SUM INSURED *(replacement value should represent the cost of rebuilding, professional fees, site clearance etc.)”*

The Provider notes that it also has a ‘Home rebuild calculator’ on the household section of its website, with an option for the [specified] area, to assist customers calculate the rebuild cost of their home. This states, as follows:

“Making sure you have the right level of protection for your home is essential. Our Rebuild Calculator is a handy tool that can help you calculate the rebuild cost of your home. Our Rebuild Calculator uses information from the Society of Chartered Surveyors in Ireland to calculate the rebuild cost of your home for insurance purposes. This information is based on the House Rebuilding leaflet which was produced by the Quantity Surveying Division of The Society of Chartered Surveyors. This information should be used in conjunction with the important SCS notes outlined below. You can also access this information on the Society of Chartered Surveyor’s website www.scsi.ie. Once you have the rebuilding cost of your home using the above calculator, you should add to this figure the cost for higher than average quality kitchen fittings, built-in wardrobes, finishes, and so forth. You should also include fire alarms, outbuildings, walls, fences, patios etc. Please keep in mind that this table is intended as a guide only. If you require further information on the rebuilding cost of your home, you should contact the Society of Chartered Surveyors”.

The Provider is unclear as to the point being raised by the Complainant in relation to the postal address being a cause of undue discrimination as the postal and risk address in this case are the same address. The Provider has applied the minimum rate to the rebuild cost valuation for [specified County] as advised by the Society of Chartered Surveyors Ireland and it did not include for, say hardwood floor surfaces. In any event, the Provider would question whether there is a significant difference between rebuild cost valuations for [specified] City and [specified] County and would respectfully reject the Complainant’s contention that she has been discriminated against by the Provider in respect of her address.

The Provider says, in relation to her comments that a layperson taking out insurance would not be familiar with building regulations, it notes that the Complainant engaged a Broker to arrange her insurance, both when the policy was incepted and at its renewal. The Broker, who is not a tied agent of the Provider, is responsible for providing guidance to its customers on the sums insured and how these should be calculated. In this regard, the Provider is not

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in a position to comment on what the Complainant discussed with her Broker when she took out her home insurance policy as it was not party to those discussions.

The Provider says in relation to her out of pockets expenses, the Complainant's home insurance policy does not cover the costs incurred by the policyholder in preparing a claim. In this regard, the onus is on the policyholder to prove that the damage being claimed for was caused by an insured peril. As this case involved damage to a chimney, the Complainant needed to engage a suitable expert to confirm the cause of the damage and thus the cost of the chimney scope is not covered under the policy.

In addition, the Provider says that the Complainant appointed her own Quantity Surveyor to provide her with a Bill of Quantities, which was at her own choosing and cost. Whilst the Complainant submits that she had no choice but to engage a Quantity Surveyor to support her case, the Provider strongly disagrees and notes that during its initial complaint investigation, it offered to cover the costs associated with commissioning a review of the value at risk by an independent surveyor, agreed by both parties, but that the Complainant declined this offer and chose to engage her own Quantity Surveyor, the cost of which is also not covered under the policy.

In conclusion, the Provider is satisfied that it correctly calculated the value at risk of the Complainant's property in September 2018 at €413,500 and therefore that the property was underinsured and that there remains an inadequacy in the current sums insured. In addition, the Provider is also satisfied that its amended net claim settlement offer to the Complainant in September 2019 of €4,830.35 is correct and in accordance with the terms and conditions of her home insurance policy, and remains open to her to accept.

The Complaint for Adjudication

The complaint is that the Provider incorrectly measured the Complainant's property and unfairly applied excessive rebuilding rates that resulted in it overstating the value at risk and therefore wrongfully calculating the amount by which her property was underinsured, which in turn resulted in the Provider then wrongfully calculating the benefit due to the Complainant, on foot of her household insurance claim for repairs following a chimney fire.

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

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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 **24 September 2020**, 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 complaint at hand is that the Provider incorrectly measured the Complainant's property and unfairly applied excessive rebuilding rates that resulted in it overstating the value at risk and wrongfully calculating the amount by which her property is underinsured, which in turn resulted in the Provider then wrongfully calculating the benefit due to the Complainant, on foot of her household insurance claim for repairs following a chimney fire.

In this regard, the Complainant incepted a home insurance policy with the Provider, via a Broker, on **18 April 2017**, with a buildings sum insured of €250,000, a contents sum insured of €30,000 and a specified items sum assured of €5,000.

I note that the Complainant notified the Provider on **7 February 2018** of a claim relating to a chimney fire. The Provider-appointed Loss Adjuster inspected the loss on 27 February 2018 with the Complainant's Loss Assessor in attendance. A CCTV survey of the chimney confirmed that the flue liners had been damaged by excess heat generated during the course of a chimney fire. I note that whilst the Loss Assessor advised the Provider by email on 17 April 2018 that repairs would cost €17,491.08, the Loss Adjuster calculated the repairs to the chimney stack, the replacement of the flue liners and the redecoration of the rooms in which opening up works were required to be in the amount of €8,160.29.

I note that the Loss Adjuster also concluded that the Complainant's property was underinsured and made a net claim settlement offer of €3,965.05 on 25 April 2018 based on a property measurement of 307m² and a value at risk of €472,780.75, having applied the rebuilding rates for [specified County] set out by the Society of Chartered Surveyors Ireland.

I note that the Loss Adjuster revised its net claim settlement offer to €4,583.67 in September 2018, based on an amended property measurement of 260m² and value at risk of €413,500. I also note that the Loss Adjuster further revised its net claim settlement offer to €4,830.35 in September 2019. This was still based on a property measurement of 260m² and a value at risk of €413,500, but now reflected the fact that the minimum 5% index rate ought to have been applied to the Complainant's buildings sum insured at renewal in April 2018, increasing this sum from €250,000 to €262,500.

The Complainant does not accept this claim settlement offer as she considers that the Loss Adjuster incorrectly measured her property and unfairly applied excessive rebuilding rates that resulted in the Provider overstating the value at risk and wrongfully calculating the

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amount by which her property was underinsured, which in turn resulted in the Provider wrongfully calculating the benefit due to the Complainant, on foot of her household insurance claim for repairs following a chimney fire.

In relation to the measurement of the Complainant's property, I note that the Provider-appointed Loss Adjuster inspected the loss on 27 February 2018 with the Complainant's Loss Assessor in attendance and she measured the property with a laser measurement tool to be 307m², including the converted attic space. I note that the Loss Adjuster later accepted that the original full rebuild rate should not apply to this space and agreed to reduce the measurement of the dwelling to 260m² (and apply a flat rebuild rate for the attic).

I also note from the documentary evidence before me that the Complainant's Contractor then advised in his letter dated 3 September 2018 that the property measurement was 204m². I also note that the County Council planning documents for the Complainant's property also state a dwelling measurement of 204m².

Given the discrepancy between the Loss Adjuster's measurements and the measurements supplied by the Complainant's Contractor and those stated in the original County Council planning documents, I note that the Provider, in an effort to resolve this matter, suggested that a joint measure take place at the Complainant's property with the Loss Adjuster, the Loss Assessor and the Complainant's Contractor in attendance.

In this regard, I note the recording of the telephone call that took place between the Complainant and the Provider's complaints handler at 15:45 on **26 September 2018** and note the complaint handler's proposal, as follows:

"... I have a proposal which I think is the only way that this matter may get resolved. There appears to be a possible difference in opinion as to the size of the property. The Loss Adjuster's report initially received from [the Loss Adjuster] instructed and appointed on our behalf confirmed a size of 307m². That was later agreed to be reduced down to 260[m²] because it had included the attic. So when your own builder's report came in, I sent it directly to the underwriters...and they have now noted on review that the builder has indicated a size of the property of 2,200ft², which equates to approximately I think its [204m²]..."

So obviously there's going to be a difference there in sum insured, premium and obviously any claim settlement. So I am going to propose, if you are happy to accept this proposal, that in order for all parties to be satisfied as to the size and the value that your builder's report has repeated of the 247k, that all aspects of the rebuild have been and shall be included, that all parties attend your property at the soonest opportunity and nearest opportunity ...

How do you feel about that? When I say all parties, [the Loss Adjuster] is happy to attend, your [Loss Assessor], I was going to suggest that I ask [the Loss Adjuster] to contact him and he in turn contact [the Complainant's Contractor], but I wanted to run it by you first ...

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I'm really sorry, but because the difference, I just think that this is the only way that we're going to get on top of this and get it resolved. What do you think? How do you feel about that? ...

Now I hope it doesn't inconvenience you in any way to facilitate this and I will hope, I would ask that [the Loss Adjuster], you know, feed it down the line that it has to be at a time and a suitable date for you, but I think that following that we may be able to get a handle on everybody using the correct figures ...

I'm not going to lead you to believe that we're going to, by attending the, by all parties attending and doing a joint measurement, which is exactly what we're looking for, a joint measurement, and that all parties are using the exact criteria required, I'm not going to say that it's going to lead us back to accepting that [€250,000] is an adequate sum insured but if it doesn't lead us back there then all we can do, I'm told by underwriters, is recommend to you as a customer that you increase it to X amount, and until we have the reattendance and the joint measurements I'm not in a position at the moment to say what that is, if it differs from what we have recommended previously ...

I do feel that, for your benefit, at this stage, that if you could allow us the joint measurement attendance by the three parties then hopefully all three parties will agree to attend, at a suitable time for you and you family, so as not to inconvenience you, we should be able to come back to you with our final response".

I note that the Complainant did not wish to pursue this offer of a joint measure by the parties.

In view of the discrepancy regarding the measurements of the property, I am of the opinion that this proposal was a reasonable and appropriate approach for the Provider to take, as a joint measure would have helped clarify that all parties were using the correct measurements to determine both the value at risk and the sums insured. In this regard, I am of the opinion that it would have been prudent of the Complainant to have agreed to such a joint measure at that time.

As the Complainant declined this offer for a joint measure, and in light of the different measurements provided by the Complainant's Contractor and her Quantity Surveyor, I am satisfied that it was reasonable for the Provider to rely on the Loss Adjuster's measurement of 260m².

In relation to the rebuilding rates used by the Loss Adjuster in calculating the value at risk, that is, €1,475 per m², I note that this was the minimum base cost rebuilding rate set out by the Society of Chartered Surveyors Ireland in its '**Are you fully insured?** Guide to House Rebuilding Costs for insurance purposes (August 2017)' document for a typical 4-bedroomed detached house in the [specified County] area.

I am of the opinion that it is reasonable for the Provider-appointed Loss Adjuster to apply the rebuilding rates as set out in the Society of Chartered Surveyors Ireland guides in force

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at the time, as it is standard insurance industry practice to accept these rates as minimum costs when conducting value at risk calculations.

In addition, I note that the Provider has a 'Rebuild Calculator' on the home insurance section of its website, which includes a location option for the [specified County] area, to assist customers in calculating the rebuild cost of their home and this webpage advises, as follows:

"Making sure you have the right level of protection for your home is essential. Our Rebuild Calculator is a handy tool that can help you calculate the rebuild cost of your home. Our Rebuild Calculator uses information from the Society of Chartered Surveyors in Ireland to calculate the rebuild cost of your home for insurance purposes ...

This information is based on the House Rebuilding leaflet which was produced by the Quantity Surveying Division of The Society of Chartered Surveyors. This information should be used in conjunction with the important SCS notes outlined below. You can also access this information on the Society of Chartered Surveyor's website www.scsi.ie. Once you have the rebuilding cost of your home using the above calculator, you should add to this figure the cost for higher than average quality kitchen fittings, built-in wardrobes, finishes, and so forth. You should also include fire alarms, outbuildings, walls, fences, patios etc. Please keep in mind that this table is intended as a guide only. If you require further information on the rebuilding cost of your home, you should contact the Society of Chartered Surveyors".

I note from the documentary evidence before me that the Quantity Surveyor engaged by the Complainant in May 2019 to carry out a detailed Bill of Quantities on her property and calculate the rebuild cost, stated in his letter dated 24 May 2019, as follows:

"A fully priced Bill of Quantities has been prepared and has been returned to [the Complainant]. Costings have been prepared in accordance with the original plans and modified using site observations/measurements. Also pricing has been done using 2019 rates, but the final price deviates from the [Society of Chartered Surveyors Ireland]'s approximated indices as the house was not required to be built in accordance with 2019 regulations".

In the absence of written confirmation from the relevant planning authorities specifically stating that if the Complainant's property was destroyed by a total loss event, that its rebuild would not be subject to the building regulations in force at the time of the rebuild, I am satisfied that it is reasonable for the Provider to conclude that the rebuild of the Complainant's property would have to be compliant with all building and planning regulations in force at the time the rebuild was completed and that in that event, evidence would be sought by a planning body that these regulations were observed and effected.

In this regard, I accept the Provider's position that to rebuild the Complainant's twenty year old property to be in compliance with the current building and planning regulations, increases the cost of the rebuild and that such additional costs were not taken into consideration in the Bill of Quantities made available.

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I am satisfied that the onus is on a policyholder to ensure that the level of insurance cover that they have chosen is adequate to cover the risk. In this regard, I note that the **'Underinsurance'** section of the applicable Home Insurance Policy Document provides, *inter alia*, at pg. 6, as follows:

"Protecting your Home and Contents

The purchase of your home represents probably the largest financial investment you will make in your lifetime. It is, therefore, vitally important that you protect your investment by insuring it for the correct value.

Each year you should review the amount for which you have insured your buildings and contents. In addition, if home improvements have been carried out, such as the building of an extension or the conversion of the attic, or if you have purchased additional contents, the sums insured should be increased to reflect this.

It is important that the base value of your buildings and contents are regularly reviewed."

I note that the Complainant is quite right when she observes that rebuild costs can *"easily decrease due to economic factors such as a recession"*. Similarly, of course, rebuild costs may rise in times of high demand. It is for this reason that the aforementioned 'Underinsurance' section of the Policy Document clearly advises that *"Each year you should review the amount for which you have insured your buildings and contents"*, so that the policyholder can increase or decrease the buildings sum insured to reflect the then current rebuild rates.

In relation to the claim settlement amount offered by the Provider to the Complainant, I note that the Loss Adjuster calculated the repair cost in this instance to be in the amount of €8,160.29. As the buildings sum insured on the Complainant's policy was €262,500 (allowing for the 5% index-linked rise in April 2018 at renewal) and having calculated the value at risk to be €413,500, I am satisfied that the Provider was therefore entitled to conclude that the Complainant's property was underinsured.

In this regard, I note that the 'Underinsurance (Average)' section of the Home Insurance Policy Document provides at pg. 22, as follows:

"If the sum insured on Buildings at the time of the insured loss or damage is less than the cost of rebuilding as new all the Buildings covered then You shall be considered as being your own insurer for the difference and We will pay only that proportion of the loss or damage which the sum insured bears to such cost.

If it is necessary to make a deduction for wear and tear then the cost for building as new less the allowance for wear and tear will be compared with your actual sum insured. You will only be paid that proportion of the loss or damage which your sum insured bears to this cost of rebuilding".

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I note that the Provider therefore calculated its net claim settlement offer to the Complainant, as follows:

Buildings sum assured €262,500 ÷ value at risk sum of €413,500 x amount of claim €8,160.29 = €5,180.35 - policy excess of €350 = net claim settlement offer €4,830.35.

I am satisfied that this claim settlement offer was calculated in accordance with the terms and conditions of the Complainant's home insurance policy. It is now a matter for the Complainant to advise the Provider whether she wishes to accept this claim settlement offer.

Finally, in relation to the Complainant seeking for the Provider to reimburse her for her out of pockets expenses, I note that the Complainant spent €200 for a chimney scope. In this regard, I accept that the onus is on a policyholder to prove that the damage being claimed for was caused by an insured peril. In this instance, as the claim was in relation to damage to a chimney, I am satisfied that the Complainant needed to engage a suitable expert to confirm the cause of the damage and thus the cost of the chimney scope was not covered under her policy. In addition, whilst I note that the Complainant also spent €500 in May 2019 for a Quantity Surveyor to carry out a detailed Bill of Quantities on her property, I accept the Provider's position that this was done at her own choosing and I note that neither is the cost for this covered under her policy.

It is no doubt disappointing for the Complainant that when she found it necessary to pursue a claim against her home insurance policy, the costs of the repair were not recoverable in full from the Provider, because the sum issued was less than the full repair value. I am satisfied however, from the records outlined above, that the position adopted by the Provider was not wrongful, and consequently it is my Decision that this complaint cannot be upheld.

Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

16 October 2020

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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.

