THE HIGH COURT

[2017 No. 387 MCA]

[2021] IEHC 726

IN THE MATTER OF THE CENTRAL BANK ACT 1942 (AS AMENDED) AND IN THE MATTER OF PART VIIIB THEREOF AND IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 57CL THEREOF

BETWEEN

JOHN BILLANE AND DEIRDRE BILLANE

APPELLANTS

– AND –

FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

RESPONDENT

– AND –

RSA INSURANCE IRELAND LIMITED

NOTICE PARTY

JUDGMENT of Mr Justice Max Barrett delivered on 23rd November 2021.

SUMMARY

Mr and Mrs Billane own a cottage that sits near to the river Dodder. Almost a decade ago they entered into a home insurance contract in respect of the cottage. The insurance policy had a duration of one year. During that year the Billanes were unfortunate enough to suffer a burglary at the cottage. Afterwards, they made a claim under their home insurance policy. To their distress this claim was refused. The insurer said that the insurance contract was void. The Billanes complained about this to

the Ombudsman. He did not see that the insurer had done wrong. This appeal ensued. The court sees no deficiency to present in the determination/reasoning/process of the Ombudsman.

1. On 17th July 2014 Mr and Mrs Billane went onto the internet and entered into a home insurance contract *via 123.ie* (acting as broker) with RSA Insurance (Ireland) Limited (an insurer). The insurance commenced on 17th August 2014 and was valid for a year.

2. On 27th February 2015 the Billanes suffered a burglary at their cottage. Thereafter, they made a claim under the insurance policy. By letter of 29th July 2015 the insurer declined the claim and stated that the insurance policy was void. That decision was the subject of a complaint to the Ombudsman. The complaint was decided against the Billanes. This appeal has ensued.

3. As part of the online application process, at least at the time when the Billanes went online with a view to purchasing their home insurance, a *123.ie* customer was presented with a link to detailed assumptions which they had to read and accept if they were accurate. When it came to the Billanes' online experience, two of these Assumptions were as follows:

> "*a.* *Neither you nor any others residing with you have in the last three years….*[m]*ade a claim totalling more than €5,000*
>
> *b.* *The buildings have never suffered damage through flood nor is there a history of such damage in the area and are not within 100 metres of any lake, stream, canal, sea or any other body of water*".

4. Mr and/or Mrs Billane indicated that the facts stated at a. and b. applied. Unfortunately, the opposite is true: they had made such a claim within the previous three years; and their cottage is within 100 metres of the river Dodder. Had they stated the reality of matters they would have been blocked by the *123.ie* system from going further with their online application. (The court notes that it was suggested by counsel for the Billanes at the hearing that few if any buildings in Ireland could satisfy point b. Maybe so, but this is a case about the Billanes' home and it does not satisfy point b).

5. The court emphasises that no-one has suggested or is suggesting that the Billanes deliberately told untruths during the online application process. Their counsel suggested that

they just clicked through the screen containing the above-mentioned representations/warranties in the same way that many people, when online, click a box stating that 'yes' they have read terms which they have not in fact read. Four points fall to be made in this regard. (1) A person who indicates herself to have read terms cannot later rely on her failure to read those terms as the sole reason why those terms should not apply to her. (That person may have other grounds of legitimate objection to the substance of the terms but her free election not to read them does not of itself mean that the terms cannot apply). (2) The same applies when it comes to not reading policy documentation when received. (3) In the insurance context, when an insurer is so dependent on a proposer to state the circumstances in such a way that the insurer can duly assess the risk presenting, it is important that a proposer take care in stating accurately the state of affairs presenting. (4) When the Assumptions were prominently and expressly brought to the Billanes' attention in the policy documentation they did not contact RSA.

6. What happened after RSA declined to make a payment under the policy on the basis of the failure to disclose the above-stated two material facts? The court respectfully adopts the below-quoted elements of the Ombudsman's written submissions as a statement of certain of the applicable facts:

> "*4. Through their solicitors, the Appellants made a complaint to the Respondent (the Ombudsman) under the Central Bank Act 1942, as amended, alleging that RSA ought not to have avoided the Policy in the circumstances.*
>
> *5. By way of a determination dated 15th November 2017, the Ombudsman held that the complaint against RSA had not been substantiated. In this appeal, the Appellants ask this…Court to set that decision aside….*
>
> *6. On 17th July 2014, the Appellants applied for home insurance using the intermediary 123.ie. As part of the application process, they were required to answer the following question concerning their claims history: 'Claims free for – PLEASE SELECT'. Seven possible answers to that question were available, i.e. one year, two years, three years, four years, five years, six years or seven or more years. The Appellants selected 'three years'.*
>
> [Court Note: The court understands that this was after the Billanes had got past the point when (for the reasons identified in para.4 above) they should and would have been blocked out of proceeding further with their application.

The court notes that the answer given by the Billanes was not correct. They had not been claims-free for three years. Even if there was an innocent slip in this regard by the Billanes at the online application stage (as there could easily be), they were later presented with their representations/warranties in the form of the Assumptions – a fact to which the Ombudsman had due regard – and took no steps even then to correct the error presenting. (In passing, the court notes that the Billanes' indication that there had been *a* claim, albeit within a shorter historical timeframe than they indicated, did *not* shift the burden on them as persons seeking insurance into some form of duty on RSA now to explore that claim further).

The court respectfully does not see how it can reasonably be contended that when the Ombudsman had regard (and he had regard) to all the facts before him, to the failures described at paras. 3-4 above, to the scale of the previous claim, to the error made as to the timing of the previous claim, and to the Billanes' failure to contact RSA after receiving the 'Assumptions' and after the significance of the 'Assumptions' had been drawn to their attention, the Ombudsman nonetheless erred in finding that the non-disclosures were material.]

7. *After paying the quoted premium…the Appellants received an email confirming that cover would begin on 17th August 2014. This email also drew the Appellants' attention to the fact that 'the full details of* [their] *insurance policy and* [the] *terms of business' were attached. And under the heading 'Please note!' they were advised that 'The endorsements that apply to your policy can be found on the fifth page of this pack'.*

8. *At page 5 of the material furnished was a document entitled 'Statement of Facts', which the reader was advised in bold font at the top of the page, also acted as the Insurance Schedule'. The reader was also informed that '[t]his document along with the insurance schedule and policy booklet shall form the basis of the contract between you and the insurer.' As relevant here, the Statement of Fact provided as follows:*

> *'1. Failure to disclose all material information (i.e. information likely to influence the assessment and acceptance of your*

Proposal) or providing false information could result in one or more of the following actions: a) your policy being cancelled; b) your policy being treated as null and void; c) a claim not being paid; d) claims being recovered from you; e) you become liable for additional premiums which the insurer reserves the right to collect; f) terms and conditions of the policy being amended. Should any of these actions be taken against you, then you will be obliged to disclose this on any future request for cover or quotation, which may cause you difficulty in trying to purchase insurance elsewhere. Also, failure to have property insurance in place could lead to a breach in terms and conditions attaching to any loan secured on that property. If you are in doubt whether any information is material, it should be disclosed.

2. This Statement of Fact document contains all of the information provided by you in respect of your insurance risk and has been used to calculate your premium, Check the following information carefully. You should ensure it is accurate and let us know of any errors. If any of the information is different, the insurer reserves the right to amend or withdraw cover.

3. Please ensure that you read the Assumptions and the Statement of Facts as failure to comply could invalidate this insurance.'

9. *The list of assumptions (the Assumptions) referred to were to be found on a separate page of the attachment. Under a heading in bold font which said 'The acceptance of this policy is based on the following assumptions. If you cannot meet them, please let us know immediately' were,* inter alia*, qualifying assumptions (a) and (j): 'a. in respect of the property being insured , you and anyone living in the home in the last three years, have…ii) not made more than one household insurance or liability claim (whether the claim was covered by the policy or not; iii) not made a claim totalling more than €5,000; iv) no open claim….(j) The buildings have never suffered damage through flood nor is there a history of such damage in the area and are not within 100 metres of any lake, river, stream, canal, sea, or any other body of water."*

[Court Note: The status of the Assumptions was the subject of some attention at the hearing of this matter. They are just the insurer re-stating back to insureds certain representations/warranties that they made and which the insurer relied upon in entering into the contract.]

10. *A policy booklet in which the terms and conditions of the Policy were outlined was also included with the material attached to the email. These terms and conditions confirmed that the Appellants had the benefit of a cooling-off period….*

11. *The policy booklet also addressed the question of disclosure, stating (insofar as is relevant here):*

> *'The information provided by the insured is shown in the Statement of Fact. Please check that all of the information provided is accurate. If there are any errors, please contact us immediately. Your attention is drawn particularly to Section 8 Terms and Conditions on page 52 of the Policy. The cover granted and the premium calculated are based on the information provided by the Insured. You must give us immediate notification of any change in the risk which materially affects the insurance. Failure to disclose all material information, or disclosures of false information could result in the policy becoming void, a claim not being paid, claims paid being recovered from you, you becoming liable for additional premiums which we reserve the right to collect and the terms and conditions of the policy being amended. Material information is any fact that RSA…would regard as likely to affect the acceptance or assessment of the risk. Information is material if it would reasonably change the premium we charge, or would change a decision to provide you with insurance. Information we require includes for example…details of any claims previously made or submitted by you….'*

12. *As stated above, the Appellants had made an insurance claim under a previous home insurance policy in October 2011….*

13. *As noted, the Appellants submitted a claim to RSA following the burglary on 22nd February 2015. The 2011 flood damage claim was disclosed to RSA, for the first time, in the claim form completed to that end. Following an investigation of the claim, RSA decided to avoid the Policy and the Appellants were informed of this decision by way of letter dated 29th July 2015. In the letter, RSA explained that the Policy had been avoided because of the Appellant's failure to disclose material facts 'at inception and during the lifetime of the policy'. Referring to the Statement of Fact and the Assumptions, the letter confirmed that the decision had been taken by reason of the failure to disclose the October 2011 claim and the fact that the insured property had previously been the subject of flood damage.*

14. *A loss adjuster retained by the Appellants made representations to RSA and a review of the decision to avoid was conducted. By way of a letter dated September 2015, RSA reaffirmed its original decision. In so doing, it addressed a number of arguments made by the Appellants' loss adjuster. First, he had suggested that the answer to the 'claims free for' question had in fact been accurate in that 'three years' was the closest available answer to the correct one (the prior claim having been approximately two years and ten months prior to the application). RSA responded by noting that the answer was incorrect, the Appellants having only been claims free for two years, not three years at the time of the application. Second, the loss adjuster had queried the materiality of the non-disclosure. In response, RSA stated that it would have declined to quote had it been aware of the 2011 claim. Third, it was suggested that RSA was aware of the risk of flooding. RSA addressed this by clarifying that while its system recognised certain areas that may be at greater risk of flooding, it could not 'identify risks that suffered flood damage in the past' and hence it had included qualifying assumption (j)….*

15. *In their written complaint to the Ombudsman, the Appellants articulated their complaint as follows:*

> *'The complainants purchased the policy of insurance from the service provider's agents using a pre-formulated online form.*

This allowed the complainants to select a claim-free period of 1, 2 or 3 years. The complainants had an insurance claim 2 years and 10 months previously and thus selected 3 years as the most accurate reflection of the time period available. The complainant's previous claim arose as a result of a flooding event as a consequence of which all insurance companies, including the service provider, exclude such risk from the cover for properties in the locus of the complainants. On foot of a subsequent claim arising from a burglary on 22nd February 2015 a claim for jewellery…cash and material damage to the property was lodged. During the course of processing this claim the service provider revoked the policy of insurance on the alleged grounds of non-disclosure….

16. *The grounds of complaint were set out in greater detail in* [a]*…letter of 27th October 2015 from the Appellants' solicitors…enclosed with the complaint form….*
18. *Insofar as the issues raised by the Appellants were concerned, RSA's position can be summarised succinctly. Following the Appellants' completion of the online application form, they were given the Statement of Facts and the Assumptions underlying the Policy. Their attention was drawn to the basis upon which cover had been granted and the consequences of failing to make full disclosure (either prior to or subsequent to the inception of the Policy). It had transpired that the information provided in response to the question about prior claims was not correct and that the Appellants did not in fact satisfy two of the qualifying assumptions underpinning the Policy. Had RSA been aware of the true position in relation to prior claims it would have declined to quote for cover….*
19. *A Preliminary Finding issued to the parties on 31st May 2017 and they were invited to furnish further submissions raising any pertinent additional points of fact arising or any errors of fact or errors of law that they wished to highlight. The Appellants' solicitors took up this offer, contending in a letter dated 13th June 2017 that the Ombudsman had erred in law in a number of*

respects, in particular, but not exclusively, in his interpretation of the relevant case-law….

21. *The Ombudsman's Legally Binding Finding issued on 15th November 2017. His decision can be summarised thus: (i) The Statement of Fact and Assumptions were specific and clear. Had the Appellants, or any prudent proposer, read this documentation, they ought reasonably to have realised that the cover was provided on the basis of certain assumptions. (ii) The Appellants or any prudent proposer ought reasonably to have known that the fact that they had a prior claim…within the previous three years meant that they did not meet qualifying assumption (a). (iii) The Appellants, or any prudent proposer, ought reasonably to have known that the fact that the Property had a history of flood damage meant that they did not meet qualifying assumption (j). (iv) There was no evidence that the Appellants took the opportunity to notify RSA of any errors or corrections necessary. (v) Both the fact of the prior claim…within three years and the fact that the Property had suffered material damage were material to the assessment of the risk. (vi) Even if the prior flood damage was not material in view of the fact that flood damage was excluded by the Policy…the failure to disclose the prior claim…within three years entitled RSA to avoid the Policy. (vii) There was no evidence of improper motivation on the part of RSA relating to its claims policy in declining the claim*."

7. Following on the Binding Finding this appeal has ensued.

8. Turning to Mr Billane's grounding affidavit, he avers, amongst other matters, as follows (his averments are in Bold text; the court interjects certain observations of its own at various points):

"***21. The decision of the FSO*** **[Ombudsman]** ***suffers from numerous infirmities giving rise to this appeal. It is clear that the FSO misdirected himself on the applicable law, fell into error on the facts and misinterpreted how the law applied to the applicable facts. It is also clear that some aspects of the decision were irrational and unsustainable on the facts and in law. In particular, the following aspects of the decision are unsustainable:***

(i) ***At page 3 of the FSO Finding it is stated that "[t]he Provider states that, following inception of the policy on the 17th July, 2014, a Statement of Fact which contained…qualifying assumptions, along with details of how to access the policy booklet was issued to the Complainants. The Provider submits that the Statement of Fact formed the basis of the contract and contained a declaration that the statements made by the Complainants, or on their behalf, were accurate, true and complete.' In accepting this submission without analysis the FSO erred in law and in fact in several material respects:***

(a) ***The proposal had been accepted, the policy incepted and the premia paid before these documents were forwarded.***

[Court Note: This is true but nothing turns on it.]

The import of the documents or their contents were never specifically drawn to our attention.

[Court Note: As can be seen from the facts quoted in para.7, the importance of the Assumptions was expressly highlighted.]

It is not open to an insurer to unilaterally alter the terms of a consumer contract of insurance after inception.

[Court Note: Even the Unfair Terms in Consumer Contracts Regulations contemplate that there may be instances in which unilateral variation is permissible. However, the point does not arise as there has been no such unilateral variation here.]

(b) ***To have any validity and in order to form the basis of a contract of insurance the term, condition, or declaration must be specifically brought to the attention of the other party to the contract in advance of the contract of insurance being concluded. That did not occur.***

[Court Note: It is, with respect, common knowledge, that when one completes an insurance application, whether online or in-person, one's representations/warranties may be relied upon by the insurer in terms of whether or not to issue and/or honour the insurance policy. Here, the insurer took care to flag expressly (in the form of the 'Assumptions') the representations/warranties on which it had relied and explained what to do if any issue presented.]

(c) ***The Statement of Fact relied upon by the Insurer contains assumptions drafted by the Insurer and not responses to questions provided by the proposer.***

[Court Note: With respect, this is not correct. At the start of the online process the Billanes were presented with a link to detailed Assumptions which they had to indicate themselves to have read and (if correct) accept before they could proceed further. They so indicated/accepted. The Statement of Facts captures the Assumptions and the information provided from what the Billanes inputted.]

We filled out an online form which made a different statement about claims history.

[Court Note: See paras. 3 and 4 above.]

The phrasing was materially different to what is stated in the Assumptions now being relied upon. That particular question was not asked or answered. Had we been asked the question contained in the Statement of Facts regarding claims history it would have been answered correctly. There would have been no confusion. It is far clearer and less ambiguous than the question we were asked in the Online Form which we believe is accurate because we were almost three years claims free at the time.

[Court Note: See paras. 3 and 4 above.]

(d) ***The second 'Assumption' being relied upon does not come from the information supplied or questions asked in the online form.***

[Court Note: With respect, it does. See paras. 3 and 4 above.]

(e) ***Both assumptions are contained in an attachment to an email that was not received before the contract of insurance was incepted and was never read. The covering letter which acknowledges that the policy had been incepted makes no reference to the importance of reading the documentation carefully or to the potentially catastrophic impact of a failure to do so.***

[Court Note: See paras. 3–6 above.]

(f) ***Both assumptions relate to a risk that the insurer expressly excluded under the contract of insurance in question. There was thus no evidence before the FSO that the alleged non-disclosure was in any way material to underwriters.***

[Court Note: It does not follow that because a risk is excluded from the scope of a policy, previous questions posed by an insurer at the proposal stage and pertaining to that excluded risk are necessarily irrelevant. The key test for materiality is whether a matter/circumstance would reasonably influence the judgment of a prudent insurer in deciding whether to take a risk and (if so taken) what premium would be demanded (see *Chariot Inns v. Assicurazioni Generali* [1981] I.R.199). There is no hard and fast rule as to what is material in any one instance: the vagaries of human existence and the types and terms of insurance are so varied that materiality falls necessarily to be decided on a case-by-case basis. The Ombudsman does not err in his reasoning in this regard.]

(g) ***The foregoing practice is in breach of the provisions of the consumer and other applicable legislation relied upon by the Applicants in the within proceedings.***

[Court Note: This is a very general point on which it is not possible to adjudicate properly.]

(ii) ***The claim was made by Claim Form dated the 23rd February 2015*** **[and]** ***was investigated by loss adjusters shortly thereafter. No explanation has been given for the delay between that date and the letter of declinature of the claim and repudiation of the policy dated the 29th July 2015. This letter was received days before the period of cover lapsed.***

[Court Note: The court does not see that this has anything to do with the validity of the Ombudsman's decision.]

(iii) ***The letter of 29th July 2015 relies only upon assumption (a) – the alleged failure to disclose a previous claim. There is no mention of any reliance upon assumption (j) – that the buildings have never suffered damaged from flood [etc.]….***

[Court Note: If an insurance contract is void or voidable, then it is void or voidable. Provided an insurer recognises that it is void (or avoids the voidable) in accordance with the terms of the contract and with the law more generally, (i) the said contract does not somehow cease to be void or voidable because a second or further ground for voidness or avoidance goes un-mentioned in the initial letter in which voidness is recognised or avoidance effected, (ii) the said second ground does not necessarily and instantly evaporate as a ground on which reliance may subsequently be placed by an insurer solely because it is not mentioned in the initial letter.]

(iv) ***In light of the foregoing the decision not to hold an oral hearing was in error. The foregoing facts could have been elicited from an oral hearing and/or a request for the relevant files and documents in the possession of the insurer.***

[Court Note: The court does not see any deficiency to present in the Ombudsman’s decision not to hold an oral hearing. Nor was any good reason identified at the hearing of this appeal or otherwise how such a hearing would have advanced matters, who would fall to be cross-examined, and what factual dispute it would resolve.]

(v) ***The FSO failed to appreciate that we disclosed a claims history. They were specifically put on notice that there was a recent claim. Thereafter the Insurer either failed to enquire into the nature of the claim as it determined it was immaterial or it was aware of the specifics of the claim….In either case the Insurer has manifestly failed to make out a case of material non-disclosure. It accepted the risk knowing there was a recent claim in respect of the property.***

[Court Note: See the court’s answer to point (c).]

(vi) ***The FSO failed to have regard to the damage to our good name in holding that there was material non-disclosure without holding a proper inquiry into the conduct of the insurer.***

[Court Note: The court does not see that the good name of the Billanes has at any time been impugned or damaged by the insurer. The insurer considers that it is not required to make a pay-out because an ostensibly valid insurance policy is voidable. That is an everyday occurrence in the insurance world. No-one has sought to besmirch the good name of the Billanes. They leave the court as they entered it: with their good names intact.]

(vii) ***The FSO failed to consider that we never saw the purported Assumptions prior to the inception of the policy, nor were they specifically drawn to our attention.***

[Court Note: This seems to be a duplicate of point (a).]

(viii) ***The FSO failed to consider the bald assertion of the Insurer that its underwriters would have considered the risk to be materially different if we had informed them that we had been claims free for 2 years, as opposed to three years.***

[Court Note: There was no reason to disbelieve this. Nor has any reason been offered. See further paras. 3–6 above.]

(ix) ***The FSO failed to inquire into why the Insurer failed or neglected to rely upon assumption (j) in its initial letter of declinature and despite having many months to investigate all aspects of the policy and claim made thereunder.***

[Court Note: This seems a duplicate of point (iii).]

(x) ***The FSO failed to have regard or due regard to the further submissions made by letter dated 13th June 2017.***

[Court Note: There was no such failure. The Ombudsman did not change his mind but he had regard to such submissions as were made (as evidenced by his response to certain concerns raised as to the precise legal status of *123.ie*).]

(xi) **…[The FSO failed]** ***to have any or any due regard to the express exclusion of flood damage from the policy and that the facts relied upon by the insurer to repudiate were not therefore material to a proposal for this particular policy of insurance. The Insurer also failed to have regard to the relevance of this issue in assessing the credibility of what was being urged upon him by or on behalf of the insurer.***

[Court Note: This seems but another way of coming at point (iii).]

(xii) ***The FSO misinterpreted the dicta in the decision of*** **Earls v. FSO** ***and the decisions cited therein and all applicable legal principles.***

[Court Note: This is essentially to assert that in all points and in every respect the Ombudsman got matters wrong. He did not. His sole error was not to address the argument which rested on the insurance in this case being, it is alleged, OTC insurance. But the insurance at issue in this case is not OTC insurance as that term is deployed in *Aro Road Land Vehicles Ltd v. ICI Ltd* [1986] IR 403. What is in issue is not, for example, (i) a form of insurance that expressly or by necessary implication excludes the requirement of full disclosure, (ii) a situation where the requirement of full disclosure is so difficult, impractical, or unreasonable, that the insurer must be held to have ruled it out as a requirement, (iii) a case where there was an implied willingness on the part of the insurer to provide the cover sought without requiring disclosure of all material circumstances (not at all). So although the Ombudsman missed out on considering a point made in *Earls* concerning OTC insurance (all other aspects of *Earls* were considered and applied), his failure so to do is of no practical consequence because the present case is not a case concerning OTC insurance. To the extent that it is suggested that an insurance policy that is sold over the internet is an OTC policy within the meaning of *Aro Road* solely by virtue of being sold online, the court respectfully does not agree that this is so.]

(xiii) The FSO failed to have any or due regard to the fact that the Insurer was dealing with consumers.

[Court Note: There is nothing to indicate that this was so.]

(xiv) The FSO failed to have any or due regard to the manner in which the insurance product was marketed and sold to consumers and the complete absence of acceptable guidelines for such persons on how to answer questions and the potentially fatal and catastrophic nature of an incorrect answer.

[Court Note: There is nothing to indicate that the Ombudsman so failed. The court does not see that the suggested guidelines are required. The level of truthfulness demanded of all of us when approaching an insurer is common

knowledge. (Lest the court's last observation would be construed otherwise, there is no suggestion that the Billanes are untruthful).]

(xv) ***The FSO failed to have due regard to the manner in which the contract was formed. He also failed to have due regard to the fact that the attention of the consumer is not drawn to the potential impact of a failure to read, consider and notify the insurer of various assumptions which do not accurately reflect information provided by the proposer and is not consistent or coterminous to the answers to the questions actually asked and answered prior to the inception of the policy.***

[Court Note: This seems but a duplication of points (a), (c), (v) and (xiv).]

(xvi) ***We were never asked to sign the declaration or any form containing the assertion that assumptions furnished by the insurer would become the basis of the contract if not corrected within seven days."***

[Court Note: This seems to be but a variation of point (a)].

9. It was suggested that a deficiency presents in the Ombudsman's having considered the Statement of Fact without considering whether the duty of disclosure was limited by the questions asked. Even if one accepts this deficiency to present, when one considers matters in the round the court respectfully does not see how it can reasonably be contended that when the Ombudsman had regard (and he had regard) to all the facts before him, to the failures described at paras. 3-4 above, to the scale of the previous claim, to the error made as to the timing of the previous claim, and to the Billanes' failure to contact RSA after receiving the 'Assumptions' and after the significance of the 'Assumptions' had been drawn to their attention, the Ombudsman nonetheless erred in finding that the non-disclosures were material

10. Discovery was ordered in the course of these proceedings. The Billanes claim that this revealed certain technical information. It is not clear how this information is relevant (or, to the extent that it relates to materiality, how it would affect the Ombudsman's consideration of the hypothetical insurer).

11. The court notes that throughout this judgment the standard of review which it has brought to bear is that identified in such cases as *Orange v. Director of Telecoms (No 2)* [2000] 4 I.R. 159, *Ulster Bank Investment Funds Ltd v. Financial Services Ombudsman* (Unreported, High Court, Finnegan P., 1st November 2006), *Hayes v. Financial Services Ombudsman* (Unreported, High Court, MacMenamin J., 3rd November 2008), and *Millar v. Financial Services Ombudsman* [2015] IECA 126. The just-mentioned decisions are binding on this Court which must apply and has applied the standard of review that they identify. (The judgment in *Hayes* is especially helpful in the guidance it offers as to the role of the court in an appeal such as this). It does not seem to the court that there is a need to consider the just-mentioned cases at length. That would be to re-plough an already well-ploughed legal field. Suffice it to note that they collectively identify the standard of review that this Court should and has brought to bear in the within appeal.

Conclusion

12. The sole relief now being sought in these proceedings is an order pursuant to s.57CM of the Central Bank Act 1942 (as amended) setting aside the decision of the Ombudsman made on 15th November 2017 in the matter of the complaint made by the Billanes as against RSA dated 8th February 2016. For the reasons aforesaid, the court sees no significant and serious errors to present in the Ombudsman's determination, reasoning or process. Hence the court respectfully declines to grant the relief sought. The court will hear the parties as to costs.

To Mr and Mrs Billane:
What does this Judgment Mean for You?

Dear Mr and Mrs Billane

In the previous pages I have written a long judgment about your appeal. The judgment is full of legal language and you may find it, at points, difficult to follow. I am always concerned that consumers should be told in 'plain English' what I have decided in a judgment that affects them. That is why I have added this note to you. Everyone else in the case will get to read this note but really it is addressed just to you and written for your benefit. The Ombudsman and RSA are well-used to legal cases and so well able to understand my judgment without any need for a 'plain English' summary.

Because lawyers like to argue over things, I should add that this note, though a part of my judgment, is not a substitute for the detailed text of my judgment in the previous pages. It seeks merely to help you understand what I have decided in what is your appeal.

Almost a decade ago you considered that you had entered into a valid home insurance contract in respect of your cottage. The insurance policy had a duration of one year. During the course of that year you were unfortunate enough to suffer a frightening burglary at the cottage. Afterwards, you made a claim under your home insurance policy. To your great disappointment this claim was refused. The insurer even said that the insurance contract was void. You complained to the Ombudsman. He did not see that the insurer had done anything wrong. You then brought this appeal to the High Court. I was tasked with hearing it.

So, what have I decided? I have considered all the arguments made by your counsel and respectfully do not see any deficiency to present in the reasoning of the Ombudsman and/or the process he applied. Your lawyers will be able to explain my reasoning in more detail. I know that you will be disappointed by this outcome and am sorry to be the bearer of bad news.

Yours sincerely

Max Barrett (Judge)