

THE HIGH COURT

2017 No. 387 MCA

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

BETWEEN:

JOHN BILLANE AND DEIRDRE BILLANE

APPELLANTS

– AND –

FINANCIAL SERVICES OMBUDSMAN

RESPONDENT

– AND –

RSA INSURANCE IRELAND LIMITED

NOTICE PARTY

JUDGMENT of Mr Justice Max Barrett delivered on 11th July, 2019.

1. On 08.10.2018, the court ordered discovery of certain documentation. These included "(ii) *All documentation in the power, possession or procurement of RSA Ireland Ltd, its servants or agents which evidences their knowledge of the location of the Property, past episodes of flooding at the Property and the fact that any prior claim has been made for flood damage*" and "(iv) *The Notice Party's Underwriting Guidelines and/or applicable manual/s which was/were utilised, relevant or applicable to the Policy of Insurance and/or the claim made thereunder.*" This is an application for further and better discovery.

2. As to (ii), as the court understands the application to be made by the Billanes, they will contend, *inter alia*, that certain contentions made to/conclusions reached by the Financial Services Ombudsman concerning the RSA's factual knowledge were just wrong, impacting, *inter alia*, on the issue of non-disclosure, a critical issue that fell for resolution by the Ombudsman. The Billanes consider (rightly or wrongly) that the Ombudsman was told or left with the impression about factual matters that were wrong. So, unusually for judicial review proceedings, there is a dispute about the underlying facts at play, both the facts of which it is claimed that the insurer ought to have been and/or was aware and, as a consequence, about the basis on which the Ombudsman proceeded and the conclusions that he reached. Hence this is a case in which discovery in the context of judicial review proceedings seems appropriate, notwithstanding the exceptionality standard identified in *Sheehy v. Ireland* (Unreported, High Court, Kelly J., 30 July 2002). It is clear from the documentation before the court that although there is an online process whereby once an address is entered, flood-related information is thereafter sourced from a database; however, it is equally clear that RSA is the source of all of this factual information and that the entirety of such information as it possesses has not yet been provided.

3. As to (iv), an affidavit has been placed before the court, sworn by the IT Project Manager of 123.ie, an insurance intermediary that distributes insurance products underwritten by RSA. That affidavit points to the stand-alone nature of the online insurance sales process. This makes clear that there are no such Guidelines and/or manuals applicable to the insurance policy in issue. The online system is designed so that a policy issues as standard provided certain one 'ticks the online boxes' so to speak. Underwriting policies may have informed the initial design of the system but they play no part in its operation, which entails a stand-alone process where certain information into the system will automatically lead to issuance/declinature of a policy.

4. The court will order further and better discovery of item (ii).