



<b><u>Decision Ref:</u></b>	2018-0009
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Retail
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - stealing or attempt stealing
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant incepted a Policy of Insurance, in respect of his petrol filling station/shop/commercial units, on 23rd May 2008. The Policy was sold to him by an Insurance Broker and is underwritten by the Provider.

The Complainant leased the premises to a tenant, on the 06<sup>th</sup> June 2012, for a period of two years and nine months, and this Agreement was in place at the time a theft occurred at the property, on the 19<sup>th</sup> February 2015. As a result of this theft, a number of items were removed from the property, both from the retail unit and the forecourt.

The Provider has declined cover on the basis of the terms and conditions of the Policy, which the Provider says, does not provide cover for contents and specifically excludes cover for the theft of property “in the open or to any outbuilding”, and/or where there has been no forced or violent entry.

The Complainant’s complaint is that the Provider has wrongfully and unreasonably declined cover.

### **The Complainant's Case**

The Complainant's position is that the Policy of Insurance which was in place provided cover in respect of the buildings, fixtures and fittings and the contents.

As a result of a theft which occurred at the property, on the 19<sup>th</sup> February 2015, the Complainant suffered loss when a number of items were removed both from the retail unit and the forecourt. The Complaint calculates the value of the losses in the sum of €17,640 for interior fixtures and fittings, and €44,050 in respect of exterior items.

The Complainant submits that the Provider has attempted to limit the extent of the coverage under the Policy to the shop portion of the property and that it has attempted to exclude the theft of petrol pumps and signage from the forecourt on the basis that the items claimed fall to be classified as "property in the open".

The Complainant submits that the Provider has erred in this regard and submits that the petrol pumps are an intrinsic part of the building, being, as they are, permanent structures, anchored to the ground, as are the signs. The Complainant submits that the Provider is attempting to equate them to a movable display stand, with stock. He submits that the damage to the pumps and signage should be considered either under the relevant provisions dealing with material damage, or theft.

The Complainant submits that the said property is not "*property*" in the sense meant by the said Policy and that the property in respect of which the claim relates is an intrinsic part of the building. He submits that, for example, if damage was done to the exterior of a building, this would not preclude the building being covered by the Policy of Insurance.

The Complainant also submits that the Provider has erred in not providing cover for those items taken from within the building, on the basis that there was no forcible entry and the Complainant maintains that there was a forcible entry.

The Complainant's position is that the Provider has acted wrongly in declining cover for the losses claimed.

### **The Provider's Case**

The Provider states that all of the policy documentation including the full policy wording, policy schedules and endorsements were at all times provided to the Complainant's Broker.

It submits that the Complainant's Broker notified it of a break in with a date of loss of 19<sup>th</sup> February 2015. It says that it appointed an independent firm of Loss Adjusters, [the Company's Loss Adjusters] to handle the claim on its behalf.

It submits that the Loss Adjuster appointed on its behalf, carried out an initial inspection at the premises on the 26<sup>th</sup> February 2015.

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The Provider says that the Loss Adjuster was informed by an employee at the petrol filling station, who had arrived to open the premises on the 20<sup>th</sup> February 2015 that he required keys to unlock the side door, to gain entry.

Regarding ownership of the items of property which were taken, the Provider submits that the Complainant advised the Loss Adjuster that the property had been let, "ready to go" and that there had been four pumps with single hoses on the forecourt, which were later replaced by the tenant with two "quad units" but that there was an agreement whereby these would be left *in situ* when the lease ended.

The Provider submits that no such written agreement has been furnished and that it therefore appears that the tenant owned the pumps and was entitled to remove them. It submits that the Lease Agreement does not determine who owned or was responsible for these.

It further submits that the Complainant's Policy is a Buildings Only Policy and that there is no cover provided under this policy for contents. It says that the Policy does, however, provide cover for items which are fixtures and fittings belonging to the Policyholder/Complainant. It states that it has not, however, been provided with proof of ownership for any of these items.

The Provider goes on to submit that the policy wording excludes loss arising from:

*Theft (which shall be deemed to include attempted theft)*

*(a) Which does not involve*

*(i) Entry to or exit from a Building by forcible and violent means or*

*...*

*(c) to property in the open or from any outbuilding.*

The Provider submits that no theft took place but rather that there appears to have been a civil dispute regarding the deposit and the end of the lease agreement which led to the tenant removing items from the premises.

The Provider has summarised that it was entitled to decline the Complainant's claim for the following reasons:

- There is no evidence that a theft took place, it appears the tenant removed the items as the lease was coming to an end.
- There is no evidence that the policyholder owned any of the items taken, and that the pumps and alarm system were upgraded by the tenant.
- Even if it was accepted that there was a theft and that some of the items taken belonged to the policy holder, there are two exclusions that are applicable:

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- There is no cover unless there is a violent or forcible entry. There is no cover provided under the policy for property in the open.

### **Decision**

During the investigation of this complaint by the Financial Services Ombudsman's Bureau, 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.

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 was satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I was also satisfied that the submissions and evidence furnished were sufficient to enable a determination to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Finding was issued to the parties on 31<sup>st</sup> October 2017 outlining the preliminary determination of the Financial Services Ombudsman 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 Finding would be issued to the parties, on the same terms as the Preliminary Finding, in order to conclude the matter.

The Complainant submitted additional submissions dated 12<sup>th</sup> December 2017 and the Provider responded with additional submissions dated 15<sup>th</sup> December 2017.

Following the commencement of the ***Financial Services and Pensions Ombudsman Act 2017***, on 01<sup>st</sup> January 2018, the final determination of this office is now issued to the parties, by way of this Legally Binding Decision of the Financial Services and Pensions Ombudsman.

All submissions received since the Preliminary Finding was issued have been considered and are reflected throughout this Legally Binding Decision. However, these submissions do not alter the outcome of my Decision.

The Complainant incepted the Policy of Insurance on 23<sup>rd</sup> May 2008. The Policy was sold to him by an Insurance Broker and is underwritten by the Respondent Provider. I note that a new proposal form was submitted by the Complainant's Broker, in respect of the Policy, in 2012, as the Complainant wished to hold the Policy in his own personal name; until then the Policy had been held in the name of a limited company.

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The Complainant leased the premises to a tenant, on the 06<sup>th</sup> June 2012, for a period of two years and nine months, and this Agreement was in place at the time a theft occurred at the property, when a number of items were removed from the property, on the 19<sup>th</sup> February 2015, both from the retail unit and the forecourt.

As a preliminary point, I note that the Provider has submitted that there is no evidence that a theft has taken place and that it appears the Complainant's tenant removed the items as the lease was coming to an end. I am aware that there does appear to have been a dispute between the Complainant and his tenant, as evinced by the contents of the Statement of Complaint, made by the Complainant to the Gardai, in respect of the incident, on the 11<sup>th</sup> March 2015. The Complainant's representative has submitted, by letter to this Office dated 09<sup>th</sup> December 2016 that *"our clients are aware that the pumps are in the possession of the former tenant. However, we do not know whether or not it was the tenant who took them. They simply know that he has them in his possession now."*

Whilst reference is made throughout the Decision to a "theft", I am not purporting to confirm or otherwise, nor do I intend to determine, whether a theft occurred at the property, and it would not be appropriate of me to do so, as, of course, such matters fall squarely within the realm of criminal law. Rather, this term is used in circumstances where the Complainant's position is that a theft occurred, which has caused him loss, in respect of which the Provider has refused to provide cover. This forms the basis of the Complainant's complaint and I propose to proceed to examine the complaint on this basis.

The issue to be determined herein is, therefore, whether the losses incurred by the Complainant as a result of the removal of the said items, comprise losses in respect of which cover is provided under the Policy of Insurance which was in place at the time.

#### The Policy of Insurance

I have had regard to documents furnished by the Provider, which it received from the Complainant's Broker, which includes correspondence issued to the Complainant by his Broker between 2008 and 29<sup>th</sup> May 2014. A letter issued to the Complainant confirming receipt of payment for the renewal of the Complainant's Policy, in May 2014.

The Complainant has submitted that he did not receive documentation in relation to the Policy, at any time during the period of insurance cover.

I note that by letter dated 30<sup>th</sup> June 2009 the Broker wrote to the Complainant and advised as follows:

*"I refer to the above policy and I now have the pleasure of enclosing herewith the Policy Document and Schedules for your attention. I would ask you to examine the contents of the policy and endorsements thereon to ensure that everything meets your requirements."*

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On the basis of the above letter, it appears that the Policy Document was furnished to the Complainant. In respect of any contention that the Complainant did not receive documentation in relation to the Policy, at any time during the period of insurance cover, I consider that this is a matter for the Complainant's Broker rather than the Provider herein.

*Nature of the Policy*

The Provider has submitted that the Policy is for Building Only/Public Liability Cover, whilst the Complainant has submitted that it also provides cover for contents.

An examination of the documentation discloses that the 04<sup>th</sup> February 2008 the Complainant requested a reduction in the scope of insurance cover to *"Fire, Glass Breakage and Public Liability Insurance as [he] has ceased trading."*

On the 23<sup>rd</sup> May 2009 the Complainant's Broker issued a Renewal Notice to the Complainant reminding him that his insurance was due for renewal. The Cover details are described therein as *"Fire and Public Liability Insurance."*

On the 07<sup>th</sup> May 2014, the Complainant's Broker wrote to the Complainant advising him that it had secured renewal of the insurance and the *"Cover Details"* are described as *"Property Owners Liability Insurance"*. The period of cover includes the date upon which the removal of items took place at the Complainant's property.

In determining the extent of the cover which was in place at the time of the incident, I have had regard to both the Proposal Form submitted in 2012 and the Renewal Schedule, for the relevant period, *i.e.*, the 23<sup>rd</sup> May 2014 to 22<sup>nd</sup> May 2015. This Renewal Schedule sets out the Policy Summary as comprising Material Damage and Public Liability, as follows:

### RENEWAL SCHEDULE

Forming part of Property Owner Policy Number [REDACTED]

**Insured:** [REDACTED]

**Intermediary:** [REDACTED]

**Business/Occupation:** Property Owner

**Period of Insurance:** 23rd May 2014 to 22nd May 2015

**Renewal Date:** 23rd May

<b>Renewal Premium:</b>		
Premium	€	723.97
Government Levy	€	36.20
<b>Total Premium</b>	€	<b>760.17</b>

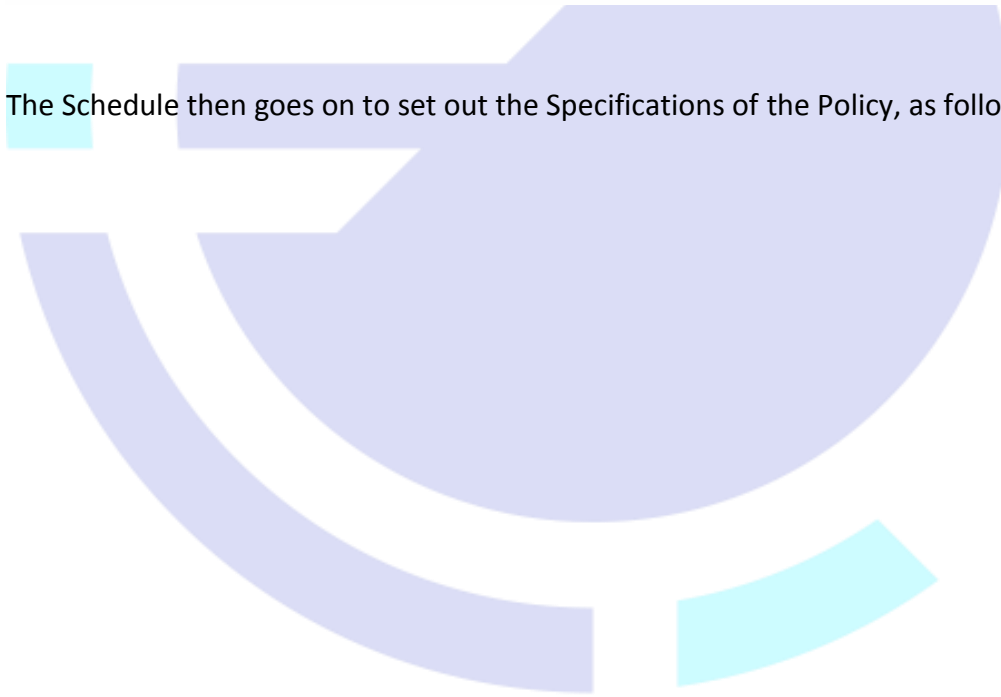
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#### Policy Summary

#### Renewal Premium

Risk Description	Premium
Material Damage	€ 503.47
Public Liability (ref 001/002)	€ 220.50

The Schedule then goes on to set out the Specifications of the Policy, as follows:



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### SPECIFICATION

Forming part of Property Owner Policy Number 

#### MATERIAL DAMAGE

It is Understood that the property insured under the respective column headings is as follows:-

- Column I: On Building(s) situate as described herein
- Column II: On Contents described herein, the property of the Insured or held by them in trust for which they are responsible.
- Column III: On Stock as described herein, the property of the Insured or held by them in trust for which they are responsible
- Column IV: On Miscellaneous - as per Description
- Column V: Totals:

Location Property Insured	Column I: Buildings: in €	Column II: Contents in €	Column III: Stock in €	Column IV: Misc. in €	Column V: Total in €
Location 001 					
Item 001001 Occupied by tenant as Petrol Filling Station/Shop & 3 commercial units	402,500 (350,000)	--	--	--	402,500
<b>Totals</b>	<b>402,500</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>402,500</b>

I accept that the empty space within Column II, 'Contents', indicates that there is no provision in place for contents cover under the Policy.

The Complainant's Representative has submitted that contents are included with the policy and has pointed to Page 10 of 58 of the Policy Document in support of this contention. This page is headed "Material Damage/Business Interruption Sections Definitions" and contains at section 4(b) a definition of "Contents at the Premises". This page is reproduced overleaf.

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**MATERIAL DAMAGE/BUSINESS INTERRUPTION SECTIONS  
DEFINITIONS**

1. **Damage** shall mean direct physical loss or destruction of or damage to the Property Insured, and the word Damaged shall be construed accordingly.
2. **Premises** shall mean the location of Property Insured as stated in the Schedule.
3. **Business Interruption** shall mean loss resulting from interruption of or interference with the Business carried on by the Insured at the Premises in consequence of Damage to property used by the Insured at the Premises for the purpose of the Business.

**4. Property Insured**

**(a) Buildings at the Premises**

buildings being built mainly of brick, stone or concrete and roofed with slates, non-combustible tiles, concrete, asphalt, metal or sheets or slabs composed entirely of non-combustible mineral ingredients (unless otherwise stated in the Schedule) including:

- (i) landlord's fixtures and fittings
- (ii) outbuildings
- (iii) walls, gates and fences
- (iv) piping ducting cables wires and associated control gear and accessories on the Premises and extending to the public mains, but only to the extent of the Insured's legal responsibility.
- (v) yards car-parks roads and pavements.

**(b) Contents at the Premises**

The term "Contents" includes

- (i) machinery plant trade fixtures and fittings
- (ii) tenants' improvements alterations and decorations
- (iii) so far as they are not otherwise insured, employees' directors' and visitors' pedal cycles tools and other personal effects of every description (other than motor vehicles) for an amount not exceeding €650 in respect of any one person
- (iv) contents of outbuildings.

The term "Contents" excludes (except as provided for under Material Damage Extension 1 All Other Contents)

- (i) landlord's fixtures and fittings
- (ii) stock and materials in trade

I accept that the above does not demonstrate or confirm that contents are covered under the Complainant's Policy, but rather, it simply provides a definition of same, where applicable.

Having had regard to the evidence furnished, I accept that the Policy in place is in respect of Building Only/Public Cover and that Contents Cover is not included.

*The Loss Adjuster's Report*

The Loss Adjuster who inspected the premises on the 26<sup>th</sup> February 2015 issued his preliminary report on the 04<sup>th</sup> March 2015. This stated the "Cause" as "theft from retail unit and forecourt. No forced entry was made to the main retail unit but padlocks were broken to gain entry to the wash buildings at the rear. These had been sublet to the cleaning people".

### Loss

Under the heading, “*Nature and Extent of Damage*” the Loss Adjuster sets out those items which were removed from the property. The report states that the Complainant advised, in respect of the petrol pumps, that at the inception of the Lease, there were four pumps with single hoses, in place, on the forecourt and that these were replaced by the tenant with two “quad” units, i.e., each unit had four hoses. These two quad pumps were removed despite, the Complainant says, it having been agreed that these would be left in situ when the tenancy ended. A kerosene pump and green diesel pump were also removed. It says that the Complainant explained that the tenant had added four security cameras however, the six original cameras as well as the original alarm system were also removed. The following items were also taken: a fuel display sign, a fuel price display sign, side signage, fuel pump signage, a pedestrian lamppost and an oil tank. From within the unit the following items were taken: a WC hand-dryer and toilet paper holder, shelving, cold wall display cabinet, ice cream freezer, drinks fridge, open drinks fridge, mobile power washer, filing cabinet, wall shelving. The Complainant advised that an oil tank at the rear of the premises had also been removed.

The Loss Adjuster’s Report identifies that damage is excluded under the Policy, where this does not involve entry to or exit from the building by forcible and violent means. The Report concludes that:

*“We are satisfied the tenant, who allegedly carried out this theft, did not break into the main retail unit as they would have had keys and access to the alarm code. The external car wash area, which we believe was sub-let, was broken into and two padlocks were damaged. These were retained for our inspection. We also note that theft is excluded to property in the open or from any outbuilding. On the face of it the fuel pumps, signage, oil tank and four of the security lights would be “property in the open”.*”

In examining this issue I have examined the provisions relating to theft within the Policy of insurance.

### Theft under the Policy

The Policy provides cover for losses caused by theft, but subject to the following exclusion:

*Theft (which shall be deemed to include attempted theft)*

#### **Excluding** *Damage and Business Interruption*

(a) *Which does not involve*

(i) *Entry to or exit from a Building by forcible and violent means or*

...

(b) *to property in the open or from any outbuilding.*

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(Damage is defined as direct physical loss or destruction of or damage to the property insured). I will deal with each of these exclusions in turn.

1. Entry by Forcible or Violent Means

There was some disagreement between the parties over where a padlock which was damaged during the incident, had been located. As noted above, the Loss Adjuster initially determined that it was attached to an outbuilding. It was subsequently clarified by the Complainant that the padlock which had been broken was attached to a screen door of the main premises, and not an outbuilding as suggested by the Loss Adjuster's Report.

I note that the Provider's position remains that the broken padlocks came from the external car wash area and porta cabins in the corner of the property.

The Complainant submits that he was first alerted to the situation by the tenant's employees, who discovered that a "theft" had occurred when they arrived for work, on the 19<sup>th</sup> February 2015.

I have had regard to a "Contact Note" completed by the Loss Adjuster, dated 21 April 2015 which states that the Loss Adjuster had spoken with an employee of the tenant who advised him that the *"cigarette man was there wanted to get in – let him in through side door. Needed keys to open – is nearly certain the door was locked."*

I note from the Statement of Complaint made to the Gardai on 11<sup>th</sup> March 2015 that the Complainant was not present when the staff arrived at the premises.

The Complainant subsequently informed the Loss Adjuster that, contrary to the Loss Adjuster's initial understanding that one of the damaged padlocks was actually attached to the steel grate door to the back of the building unit.

I note the contents of an email from the Loss Adjusters, sent to the Provider dated 25<sup>th</sup> March 2015, in this regard, in which the Loss Adjuster explains that the Complainant had said that one of the broken padlocks was actually attached to the steel grate door to the back of the building unit. The email states that the Complainant had submitted that *"Although the door itself was open (not broken into) the steel external grate door had the padlock broken on it."* In light of this the Loss Adjuster re-attended at the property on the 20<sup>th</sup> March 2015 and interviewed the Complainant.

Having examined all of the evidence submitted in respect of this issue, in great detail, it is my position that, even accepting that the broken padlock in question was attached to the steel grate door to the back of the building unit, it is the case that there was a further, solid, door, located behind it. That door, according to the account of the employee who opened up the premises on the day in question, required keys in order to open it, and to access the building.

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The Complainant has pointed to the case of *Edinburgh University Court v Eagle Star Insurance Co Limited [2003] ScotCS 163 (04 June 2003)* in support of his position. The Provider has, in response to the Complainant's submission in this regard, asked that this office take into account the circumstances of the incident at Edinburgh University Court. I have considered this case.

The dispute between the parties in that case turned on whether an exclusion contained within the relevant policy of insurance, operated to exclude losses arising from a theft which occurred at a building on the University campus. The exclusion excluded, "*DAMAGE caused by or consisting of or CONSEQUENTIAL LOSSES arising directly from theft or attempted theft not involving breaking into or out of the buildings of the premise by forcible or violent means.*"

The particular circumstances of that case involved the theft of computer equipment from a room known as the "*machine room*", situated in the interior of a University building. Those responsible for the theft had not used force to gain entry to the building itself— they had entered the outside perimeter of the building without breaking in, but rather they broke into the room in question, using forcible/violent means, in order to carry out the theft.

The Complainant, has referred, in his further submissions, to the first line of Paragraph 13 of the judgment, "*that the material exclusion only requires that a thief should have been compelled to use force to overcome the security of some part of a building*" in support of his position. I note, however, that the Judge goes on to say, in the next line, that, "*That construction is, I think, fully compatible with the commercial purpose of the exclusion*", concluding, "*What was intended was to exclude thefts by persons who had legitimate access to the room containing the property stolen.*"

I believe it may be useful to bear in mind the commercial purpose of such an exclusion, as identified by the Scottish Court of Session, in the context of the complaint before me. As noted above, the employee who opened up the Complainant's premises, on the day in question, and discovered that items had been removed, required keys in order to access the building, after the "*theft*" had occurred. Further, I note that within a letter dated 29<sup>th</sup> June 2015, the Complainant's solicitors wrote to the Provider and stated "*As you are aware the damage caused to our client's property was perpetrated by our client's tenant and/or by persons associated with the tenant.*" Also, within the Loss Adjuster's Report dated 04<sup>th</sup> March 2015, under the heading "*Circumstances/Discovery*", it is stated "*we have been advised by your Insured that the tenant [tenant's name] allegedly carried out this act.*"

Taking this into account, as the Policy precludes cover for loss arising from theft where the theft does not involve entry to or exit from a building by forcible and violent means, I must conclude that the Provider was entitled to reach the decision it did, that no cover was available to the Complainant in the present instance, in respect of items removed. I have not been persuaded to change my position having considered the above case.

In all of the circumstances, I do not find that the Provider acted unreasonably in determining that there was no forcible entry.

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Further, and as identified above, I do not find that there is any provision in place for contents cover under the Policy, which term includes machinery, plant, trade fixtures and fittings. This was determined in circumstances where there was a dispute between the parties as to whether contents cover was in place under the relevant policy of insurance.

I note that the Complainant has, in his further submissions, submitted that there was a failure by this office to consider whether the Complainant was entitled to cover on the basis that the items taken from the unit fell within the definition of the property insured under the heading "*Building at the Premises*" and specifically, subsection (i) of same, "*landlords fixtures and fittings*", however, I considered that an examination of same was not necessary in circumstances where I have accepted that the exclusions relating to "*theft*", as detailed above, applied.

## 2. Property in the Open

The Policy excludes cover in respect of losses arising from the theft of property in the open or from any outbuilding.

The Complainant asserts that the petrol pumps and signage which due to their nature, and as they are embedded in concrete, constitute part of the building itself and should therefore be considered as part of the Building for the purpose of insurance cover. The Complainant has submitted that if damage is effected to the exterior of a building, this would not preclude the building being covered by the Policy of Insurance.

The Provider has clarified that the exclusion relating to "property in the open" only applies to theft. It has confirmed that there is, indeed, cover for damage caused to property in the open, such as petrol pumps, but that there is no theft cover in respect of property in the open. It submits that there would be cover, for example, for impact damage caused by a road vehicle which, it suggests, would be a far more likely occurrence. It rejects the Complainant's contention that it has equated these items to a movable display stand, or stock, and it submits that such items would instead be considered "contents".

In examining this issue, I note that "*Buildings at the Premises*" is described at Section 4(a), page 10, with the Material Damage Definitions section of the Policy. These are defined as follows:

*Buildings being built mainly of brick, stone or concrete and roofed with slates, non-combustible tiles, concrete, asphalt, metal or sheets or slabs composed entirely of non-combustible mineral ingredients including*

- (i) Landlord's fixtures and fittings*
- (ii) Outbuildings*
- (iii) Walls, gates and fences*
- (iv) Piping ducting cables wires...*
- (v) Yards car-parks and road pavement*

I accept that the items in question may be described as fixtures, which were anchored to the ground, and would fall within this definition. Indeed, if material damage had been caused to these items, this is something which would be covered.

However, on the basis of the exclusion within the Policy in respect of the theft of “*property in the open or from any outbuilding*”, I accept that there is no cover provided under the Policy in respect of the theft of property, including fixtures and fittings, which are located in the open. I would note, in this regard, that a policy of insurance is not all-encompassing in terms of all possible loss and there will be instances of loss which are not covered by a policy of insurance, arising from underwriting considerations.

The Complainant, in his further submissions, has submitted that there was no definition in the policy of “*property in the open*” and that there was therefore an ambiguity in this regard, which ought to have been interpreted *contra-proferentem*, so as to provide cover for the theft of the petrol pumps. However, I do not agree that there is any ambiguity as to the meaning of “*property in the open*”, on the basis of the foregoing considerations, and taking into account the words’ ordinary meaning.

#### Suitability of the Policy

The Complainant has submitted that the Policy put in place was supposed to cover a rented commercial property. He submits that the Provider was aware of the fact that the property comprised a garage and forecourt with petrol pumps.

In circumstances where the Complainant had engaged the services of Insurance Broker in submitting a proposal form and instituting the Policy, and who furnished the Complainant with policy documentation, schedules and endorsements, I believe it was more appropriately a matter for the Complainant, in conjunction with his Broker, to have satisfied himself, as to the appropriateness/sufficiency of the Policy, for his needs.

Overall, upon careful consideration of all of the evidence before me I accept that the Provider has dealt with the claim in line with the Policy wording which governed the Agreement between the parties. I accept that the Provider did not act wrongfully or unreasonably in declining the claim at issue.

Accordingly, on the basis of the evidence before me, it is my Decision that this complaint is not upheld.

#### Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected, on the grounds prescribed in **Section 60(2)**.

**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.**

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**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

26 January 2018

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) in accordance with the Data Protection Acts 1988 and 2003.