



<u>Decision Ref:</u>	2019-0260
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim - freezing or escape of or overflow of water or oil
<u>Outcome:</u>	Rejected

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

Background

The complaint relates to the repudiation of a claim for water damage on the Complainant's property in January 2015.

The Complainant's Case

The Complainant is unhappy that a claim he submitted for water damage to a rented property he owns, was rejected by the Provider on the grounds that the Complainant did not accede to the Provider's request for proof of occupancy of the rented house.

Following the water damage on **20/21 January 2015** to the Complainant's property, the Complainant appointed a loss assessor to manage his claim. The Complainant contends that, when the Provider requested proof of occupancy, the loss assessor supplied the Provider with a statement from the electricity provider showing recent usage in addition to a credit top-up on the electricity account. The Complainant also asserts that the letting agent of the property and the neighbours are willing to confirm to the Provider that there was someone living there at the time the damage occurred. In addition, it is the Complainant's contention that the tenants living in his rented property at the time, were using the property address with the Department of Social Protection, to claim their social welfare entitlements.

The Complainant would like the Provider to honour his claim in full for the water damage to his property. The Complainant has submitted a loss assessor's report which estimates the cost of repairs at €35,097.50, loss of content at €5,454 and loss of rent at €13,000.

The Provider's Case

The Provider maintains that the Complainant failed to provide documentation to prove occupancy despite repeated requests and reminders. The Provider asserts that it was entitled to decline to process the claim, by reference to these failures.

The Complaint for Adjudication

The complaint is that the Provider wrongfully refused to admit the Complainant's claim for payment based on, what the Provider alleges, was the non-provision of proof of occupancy.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 16 April 2019, 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.

On 3 May 2019, less than a week before that period expired, this office was advised that the Complainant was now represented by a newly appointed representative. The new

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representative advised that the Complainant was not in receipt of the complete documentation in respect of matters, and that the new representative itself had not had sight of the Complainant's complaint to the FSPO (made on his behalf by the previous representative) or of copies of any subsequent correspondence leading to the preliminary decision issued by this office.

In those circumstances, it was considered appropriate by this office to make a full copy of the large volume of papers on the FSPO file, available to the Complainant's new representative. In addition, the period to make submissions was also extended, to take account of this development.

Following the consideration of numerous additional submissions from the parties since April 2019, the final determination of this office is now set out below.

POLICY PROVISIONS AND CHRONOLOGY OF EVENTS

It is useful to reproduce certain of the terms and conditions of the policy as well as to set out a chronology of relevant developments quoting from relevant documentation.

Policy Terms and Conditions

The Provider relies upon the following terms of the policy:

Claims Conditions

You or any other person claiming under this ***policy*** must comply with the following claims conditions in order to avail of the cover provided by the ***policy***. ***You*** must not act fraudulently and must assist ***us*** to exercise ***our*** rights.

If ***you*** or anyone else claiming under the ***policy*** does not comply with these conditions or does not assist ***us***, we may at our option cancel the ***policy*** or refuse to deal with ***your claim*** or reduce the amount of any ***claim*** settlement.

1. Your obligations

B. Within 30 days after an ***event***, or within any further time period as ***we*** may allow in writing, ***you*** must give ***us*** at ***your*** own expense:

- Receipts, invoices and any further proof of ***your claim*** as ***we*** may reasonably require together with (if requested) a declaration of the truth of the ***claim*** and of any other matter related to it.

The Provider also relies upon an endorsement set out in the policy schedule issued on 29 July 2014

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When the building is unoccupied for over 30 consecutive days between tenancies, the cover provided by this policy is reduced to loss or damage caused by fire, lightning and explosion as noted under Item 1 of Section 1A- Buildings and 1B – Contents.

Chronology

01 November 2014	The date on which the Complainant’s tenants were stated to have begun their short-term tenancy by reference to a letter to the Department of Social Protection of 25 November 2014.
25 November 2014	Date of ‘Tenancy Agreement’ in the form of a letter written to the tenants marked for the attention of the Department of Social Protection. This letter refers to a <i>“probationary short-term agreement from the 1st November 2014 until 8th January 2015”</i> . The letter notes that rent in the amount of €750 is due by 5 th December 2014 and a deposit in the amount of €500 is due by 19 th December 2014. The letter states that if the rent is not paid as required, the tenants <i>“will be asked to vacate the property immediately”</i> . The letter also notes that the landlord <i>“requests vacant possession of the property from Monday 8th January 2015 at 1 PM to enable him to carry out major repairs and decorating. 2 weeks after, he will talk to previous and present tenants regarding a longer term agreement. We will collect the keys of [property address redacted] at 1 PM on 8th January 2015.”</i>
21 January 2015	Date of loss and date of registration of claim. (Note: email correspondence from the letting agent of 11 June 2015 mistakenly refers to the date of loss as being 15 January 2015)
27 January 2015	Date of Provider’s Loss Adjustor’s Site Inspection Report following inspection on the same day. This report notes that the tenants vacated the property following the leak.
27 January 2015	Letter from Provider’s Loss Adjustor to Complainant and to Complainant’s Loss Assessor seeking, <i>inter alia</i> , a copy of the lease agreement and copies of recent utility bills/statement from energy company advising usage in last 3 months. This letter warns that the provision of the requested information is a policy condition and that failure to provide the information within the timeframe outlined <i>“may result in a declination of your claim”</i> .
10 February 2015	Internal communication within the Provider’s Loss Adjustor indicating suspicion, on the basis of photographs, that the house <i>“has not been occupied for some time”</i> . It is clear from internal notes that there was also a view that the loss resulted from <i>“wear and tear”</i> and, as such, that there was <i>“No Recovery Prospect”</i> .
23 February 2015	Letter from Provider’s Loss Adjustor to Complainant’s Loss Assessor seeking documentation previously requested on 27 January 2015.

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03 March 2015	Letter from Provider's Loss Adjustor to Complainant citing policy terms and requesting outstanding information by 12 March 2015 failing which indemnity will be refused.
31 March 2015	Complainant's Loss Assessor furnishes Provider's Loss Adjustor with schedule of claim, signed claim form, signed schedule of claim and plumber's report.
01 April 2015	Email from Complainant's Loss Assessor to Provider's Loss Adjustor furnishing the 'lease agreement' in the form of the letter of 25 November 2014. The email also notes that the Complainant has been unable to obtain a " <i>copy of the electrical usage</i> " as the electricity supplier has refused same " <i>as the utilities are not in the Landlords name</i> ".
9 April 2015	Email from Complainant's Loss Assessor to Provider's Loss Adjustor furnishing a receipt from the electricity supplier addressed to the Complainant relating solely to a single payment made on 13 January 2015 in the amount of €10.00.
15 April 2015	Email from Provider's Loss Adjustor noting that the " <i>statement</i> " furnished was in the name of the Complainant and requesting " <i>a statement in relation to usage for the 3 months prior to the date of loss</i> ".
15 April 2015	Response from Complainant's Loss Assessor clarifying that the account is not in the landlord's name and that the statement already furnished was only secured following the threat of legal action. Complainant's Loss Assessor undertakes to request information again.
15 April 2015	Internal correspondence within Provider's Loss Adjustor adverting to possibility of referring matter to Provider's fraud handler.
28 April 2015	Email from Provider's Loss Adjustor to Provider seeking instructions. [It subsequently transpired that the recipient of this email was out of the office on sick leave for a number of weeks resulting in a delay in responding to same.]
18 May 2015	Provider's Loss Adjustor attempts to phone Complainant's Loss Assessor to explain delay and to ask whether the Complainant would like to lodge a complaint regarding same. Voicemail left. Complainant's Loss Assessor reverts on same day indicating that the Complainant did not wish to lodge a complaint.
18 May 2015	Provider's response to email of 28 April 2015 providing instructions and indicating the need " <i>to proceed and fully investigate the occupancy issue</i> ". The response states that a letter from the Letting Agent and a copy of the lease should be secured and queries should be made as to whether tenants vacated on 8 January 2015 as envisaged in the letter of 25 November 2014.
20 May 2015	Email from Provider's Loss Adjustor to Complainant's Loss Assessor requesting a letter from the letting agent, a copy of the lease, and details regarding whether the tenants vacated on 8 January 2015.

15 June 2015	Email from Complainant's Loss Assessor to Provider's Loss Adjustor indicating that the lease agreement " <i>is as previously sent</i> " (ie the letter of 25 November 2014) and providing an email from the Letting Agent dated 11 June 2015. This enclosed email states " <i>We had a few problems with these tenants such as late payments of rent but this was resolved prior to Christmas and they then informed us that they would be vacating the house on 18th January 2015.</i> " The email does not however confirm the date on which the tenants actually vacated but it does confirm that one of the tenants informed the Letting Agent about the leak on 15 January 2015. (The reference to 15 January 2015, as opposed to 21 January 2015, is described as a mistake in subsequent correspondence. The Complainant's Loss Assessor's email of 15 June 2015 did not address the query regarding the stated end date of the tenancy of 8 January 2015.)
22 June 2015	Email from Provider to Provider's Loss Adjustor instructing that the electricity company's terms visible on its website indicate that a statement is issued once per year " <i>therefore the insured should have a statement</i> ". The Provider also enquires whether the tenants can be contacted to verify the dates.
25 June 2015	Email from Provider's Loss Adjustor to Complainant's Loss Assessor querying the date of loss quoted by the Letting Agent, requesting details as regards the stated end date of the tenancy of 8 January 2015, requesting again a 3-month usage statement from the electricity company or a statement from it as to why it will not provide same, and requesting contact details for the tenants.
9 July 2015	Phone call from Complainant to Provider querying status of claim. The Complainant was advised that the Provider was still awaiting requested documentation and the Complainant stated that he would chase his Loss Assessor regarding same. This conversation is followed by an email from the Complainant to the Provider claiming that the Complainant's Loss Assessor has already been provided with " <i>all needed</i> " (which presumably will be sent on to the Provider's Loss Adjustor) and asserting that the electricity credit top-up on 13 January 2015 was not made by the Complainant. The Complainant speculates that a previous tenant may have put the Complainant's name on the account without his knowledge.
9 July 2015	Letter from Provider to Complainant indicating that it is " <i>not in a position to put forward renewal terms for this policy</i> ".
14 July 2015	Provider's Loss Adjustor phones the Complainant's Loss Assessor, the latter of whom advises that he is waiting on documentation from the Letting Agent and will revert. Followed up by way of email on the following day from the Provider's Loss Adjustor to the Complainant's Loss Assessor. The email points out that, if the

	electricity account is in the Insured's name, he should have no difficulty in getting a usage statement.
13 August 2015	Provider's Loss Adjustor emails a letter to the Complainant's Loss Assessor noting that the documentation requested and promised is still outstanding.
31 August 2015	Reminder email from Provider's Loss Adjustor
10 September 2015	Complainant's Loss Assessor reverts with contact details for the tenants and explains that the Letting Agent made a mistake with regard to the date of loss. Also included is further documentation from the electricity provider in the form of the receipt of 13 January 2015 previously furnished, plus a further receipt for a €10 top-up on 7 April 2015 (addressed to one of tenants the subject of the 25 November 2014 'tenancy agreement') as well as a " <i>Shortfall Invoice</i> " (addressed to someone other than the Complainant, possibly a previous tenant) relating to charges in the period of 20/07/2012 to 18/11/2014. The latter document provides no breakdown as to usage or top-ups and thus it is not possible to isolate the extent of usage or top-ups in the three months prior to the date of loss.
18 September 2015	Instruction from Provider to its Loss Adjustor to seek to make contact with the tenants and with the Letting Agent in order to verify the dates of occupancy.
22 September 2015	Provider's Loss Adjustor fails in efforts to contact each of the tenants on the phone numbers advised by the Complainant's Loss Assessor as none of the numbers ring.
30 September 2015	Provider's Loss Adjustor again fails in efforts to contact each of the tenants on the phone numbers advised by the Complainant's Loss Assessor as none of the numbers ring.
06 October 2015	Provider's Loss Adjustor again fails in efforts to contact each of the tenants on the phone numbers advised by the Complainant's Loss Assessor as none of the numbers ring.
06 October 2015	Provider's Loss Adjustor fails in efforts to contact Letting Agent as no answer and no voicemail set up.
13 October 2015	Email from Complainant's Loss Assessor to Provider's Loss Adjustor threatening the referral of the matter to legal advisors.
13 October 2015	Provider's Loss Adjustor fails in efforts to contact Letting Agent as no answer. Voicemail left.
21 October 2015	Provider's Loss Adjustor phones Letting Agent. Letting Agent confirms the tenants did not leave property on January 8 th 2015, confirms they were in the property at the time of the leak, but is unsure of the period/date when they left the property.
28 October 2015	Provider's Loss Adjustor again fails in efforts to contact each of the tenants on the phone numbers advised by the Complainant's Loss Assessor as none of the numbers ring.
03 November 2015	Further email from Provider's Loss Adjustor threatening the referral of the matter to legal advisors

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11 November 2015	Provider's Loss Adjustor phones Complainant's Loss Assessor. Queries whether electricity company will provide correspondence advising that they won't provide a statement in this instance and indicating the reason for same.
17 November 2015	Provider's Loss Adjustor seeks update from Complainant's Loss Assessor.
09 December 2015	Provider's Loss Adjustor seeks update from Complainant's Loss Assessor
21 December 2015	Complainant's Loss Assessor emails the Provider's Loss Adjustor a recording of a phone call between the Complainant and the electricity company. This recording (which the FSPO has not been furnished with) would seem to confirm that the account was in the name of the tenant and would further seem to reflect a discussion in which the Complainant was seeking a letter, confirming that the electricity company was not in a position to provide information in relation to energy usage at the risk address. No letter was subsequently made available.
08 January 2016	Provider's Loss Adjustor forwards the recording to the Provider following authorisation from the Complainant's Loss Assessor to do so.
20 January 2016	Provider's Loss Adjustor directs the Complainant's Loss Assessor to submit a copy of the lease agreement, a statement from the electricity company from November 2014 to January 2015 (obtaining authorisation from the tenant account-holder if necessary), and details in relation to the payment by the tenants of rent and the deposit as referenced in the letter of 25 November 2014: <i>Please confirm whether this money was paid and how. Please provide evidence of rental payments & deposit payments for the period representing 3 months prior to discovery, such as statements.</i>
20 January 2016	Response from Complainant's Loss Assessor: <i>I have forwarded same to [the Complainant], please note we have already tried to locate [tenant's name redacted] without any success, as we thought that we could get him to contact [the electricity company] directly. We have already been unsuccessful in this matter. A [name redacted] was in a head on collision on the*** Road out of **** some months ago. I don't know if this is the same [tenant's name redacted] or if this person is still alive. In respect to the rent I will look into this.</i>
10 February 2016	Phone call from Complainant's Loss Assessor to Provider's Loss Adjustor advising he would revert shortly in relation to outstanding matters.

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8 March 2016	Phone call from Complainant's Loss Assessor to Provider's Loss Adjustor advising he would revert shortly in relation to outstanding matters.
14 April 2016	Emailed letter from Provider's Loss Adjustor to Complainant's Loss Assessor requesting outstanding documentation within 14 days.
04 May 2016	Email from Complainant's Loss Assessor to Provider's Loss Adjustor stating Complainant has done all he can and offering to sign any mandate to allow the Provider to seek the information from the electricity company directly.
13 May 2016	Further emailed letter from Provider's Loss Adjustor to Complainant's Loss Assessor requesting outstanding documentation within 14 days.
20 June 2016	<p>Email from the Complainant's Loss Assessor to Provider's Loss Adjustor enclosing electricity company "<i>statement of electricity use</i>" dated 30 March 2016 for the period 01 January 2015 – 20 July 2015. The statement refers to an "<i>opening reading</i>" in respect of 01 January 2015 however it then refers to an "<i>Estimated reading</i>" in respect of 20 July 2015. Later in the document it becomes clear that the 01 January 2015 reading is also an "<i>Estimated reading</i>". The document also records total payments in the period in the amount of €32.</p> <p>The email from the Complainant's Loss Assessor of 20 June 2016 also states "<i>all payments made in relation to this property was made directly to Letting Agent, [the Complainant] has stated that he never received any payment directly and therefore has no proof of payment, first months rent is was taken by letting agent as a finders fee.</i>" [sic]</p>
04 July 2016	Further emailed letter from Provider's Loss Adjustor to Complainant's Loss Assessor requesting outstanding documentation within 14 days.
04 July 2016	Email from the Complainant's Loss Assessor to Provider's Loss Adjustor indicating that electricity company documents not forthcoming.
27 July 2016	<p>Provider's Loss Adjustor's "First & Final Report" dated 27 July 2016 (18 months after the date of loss) notes:</p> <p>Description of Premises:</p> <p>...</p> <p><i>The house in an investment property and we are advised that tenants [name redacted], [name redacted] and [name redacted] resided at the risk address from November 2014 up until the date of loss.</i></p> <p>Discovery:</p> <p><i>At the time of our inspection, we were advised that the damage was discovered on 21st January 2015. We were advised that the tenant, [name redacted], discovered the damage and he notified the letting agent, [name and company named redacted]. The</i></p>

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	<p><i>letting agent subsequently engaged a plumbing contractor who attended at the property and stopped the leak.</i></p> <p>...</p> <p><i>Policy Liability:</i> <i>Vouching documentation in relation to occupancy at the time of discovery was requested. We confirm that the Insured/Public Loss Assessor have not submitted documentation to support that the property was occupied during the period leading up to and at the time of discovery.</i></p> <p><i>Remarks:</i> <i>Further to our inspection, we requested particulars including documentation from the utility provider in order to vouch that the property was occupied during the period leading up to and at the time of loss. We confirm that documentation/evidence that supports that the property was occupied during this period not submitted. Several reminder letters were issued to the Insured's public loss assessor requesting same. A 14-day letter was recently issued to the Insured's public loss assessor requesting these particulars. We confirm that this timescale has now passed and we now assume that it is not the Insured's intention to pursue the matter.</i></p>
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Analysis

This complaint arises from the Provider's refusal to admit the Complainant's claim, following the Provider's request to the Complainant to supply it with documentation verifying the occupied status of the insured property in or around the date of loss. At the time when the Preliminary Decision of this office was issued on 16 April 2019, I noted that, contrary to the Complainant's contentions, there did not appear to have been a formal declinature of the claim. Rather, at that time, the Provider had simply ceased the process of dealing with the claim. Subsequently, on 29 April 2019, the Provider wrote to the Complainant's legal representatives, formally declining the claim. This letter was written in circumstances where the Provider was not then yet aware that the FSPO had received notification from the Complainant's new legal advisors regarding their involvement.

There are a number of observations to make before embarking on a consideration of the substance of the complaint, relating to the relevance of issue of occupancy and the Provider's entitlement to probe this matter in the process of the consideration of the claim.

The issue of occupancy is clearly relevant by reference to the terms and conditions of the policy and, specifically, by reference to Endorsement 398 which was included as an endorsement to the Complainant's policy which was in force in respect of the period when

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the loss occurred in January 2015. This endorsement significantly reduces the cover applicable in respect of a leased property in the event that the property is unoccupied for a period of greater than 30 days, in between different tenancies.

The result, in this case, is that the Complainant would not be in a position to recover his losses in the event that his tenants had vacated the property (and no new tenants occupied it) more than 30 days prior to the date of loss, which was notified to the Provider on 21 January 2015, and advised to have been discovered by the Complainant's tenants at that time. This fact alone would have entitled the Provider to probe this aspect of the matter however I am satisfied that there were several additional features of this claim which would also reasonably have prompted the Provider to take the course of action of investigating this matter further, including the following:

- The fact that the Complainant was not in a position to produce an orthodox lease agreement;
- The fact that the document produced by the Complainant as evidence of a lease agreement, namely the letter of 24 November 2014, referred to a lease end date of 8 January 2015, 13 days prior to the suggested date of loss;
- If the tenants vacated as required by the letter of 24 November 2014, they would not have been in occupation on the date of loss as subsequently suggested;
- The letter of 24 November 2014 also referred to a requirement to pay rent by a specified date (5 December 2015- more than 30 days prior to the date of loss) failing which the tenant would be required to vacate immediately (46/47 days prior to the suggested loss date).
- The Letting Agent's email of 11 June 2015 refers to problems with late payments of rent thereby potentially giving rise to an earlier cessation of occupation;
- The Letting Agent's email of 11 June 2015 refers to an incorrect date of loss;
- The Letting Agent's email of 11 June 2015 does not specify the date on which the tenants vacated the property;
- The Letting Agent's email of 11 June 2015 implies that the tenants may have left on 18 January 2015 however this is inconsistent with them still being in occupation on the suggested actual correct date of loss and thereby being in a position to notify the Letting Agent of the loss;
- The Complainant advised that the tenants vacated the property after the loss, however this is inconsistent with the Letting Agent's implication as to the date on which they left;
- The fact that the Complainant was not in position to provide a statement of usage from the electricity provider in respect of the 3 months prior to the loss (and despite eventually securing various other general statements covering the periods July 2012 – November 2014 and January 2015 - July 2015);

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- The anomaly regarding the fact that the receipt from the electricity provider in respect of the single payment made on 13 January 2015 in the amount of €10.00 was in the name of the Complainant and not in the name of any of the tenants, given that this was the reason provided for the inability to secure further information;
- The fact that a top-up receipt from the electricity provider appears to have issued in April 2015 in the name of one of the tenants the subject of the 25 November 2014 'tenancy agreement' even though the said tenant is supposed to have vacated no later than January 2015;
- The fact that the Provider was of the view that photographs of the property immediately following the loss, were inconsistent with the property having been recently occupied;
- Much later in the process, the fact that the Complainant was unable to produce proof of payment of, or receipt of, any rental payments.

I am thus entirely satisfied that the Provider was acting within its entitlements in seeking further information regarding the occupancy status of the property. I might add that the terms and conditions of the policy entitle the Provider to insist on the provision by a claimant of such "*further proof of your claim we may reasonably require*" and that a failure to provide this will entitle the Provider to cancel the policy or to "*refuse to deal with*" the claim. Insofar as it may not already be clear, I am satisfied that the Provider was acting reasonably in insisting on documentation to verify the occupancy status of the property at the date of the loss.

I must now turn to the material requested by the Provider and the Complainant's response. The Provider originally requested, amongst other things, occupancy verification documents, namely a copy of the lease agreement and "*copies of recent utility bills/statement from energy company advising usage in last 3 months*". In my opinion, this was a reasonable request. I might note that, though the request referenced utility companies generally (as well as the specific reference to an energy company statement) there does not seem to have been any effort made by any party at any point to look beyond the information obtainable from the energy company. The Complainant certainly does not appear to have proffered documentation from any other utility company at any point, as proof of occupancy, as I am satisfied would have been open to him to do.

Following the request for the verifying information in January 2015, there followed a painfully slow and at times confusing exchange of information. The Complainant was initially very dilatory in responding. When a response was finally made available on 31 March 2015, the response did not address the occupancy verification documents at all. The following day, on 1 April 2015, the 'lease agreement' in the form of the letter of 25 November 2014 was provided, as was an explanation that the Complainant was unable to obtain a "*copy of the electrical usage*".

Notwithstanding this, a little over one week later, a receipt from the electricity company was furnished apparently recording a payment made in the name of the Complainant on 13

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January 2015, one week prior to the date of loss. No satisfactory explanation has ever been offered for this. Following this, certain quite reasonable interaction ensued arising from the Provider's confusion as to how the Complainant could not secure a statement if the receipt relating to 13 January 2015 was in his name, thereby suggesting that the account was in his name.

It is clear that in or around this time, the Provider became suspicious about the Complainant's claim. I am satisfied that the requests for information prior to this point represented standard enquiries. Although I have noted that it is clear that the Provider became suspicious around this point, it is unclear as to whether those suspicions were well-founded (as it still remains unclear whether the property was or was not occupied in the period leading up to the date of loss).

After this point, the Provider sought different material that might shed light on the matter and requested a letter from the Letting Agent and the contact details of the tenants. In my opinion, these were both reasonable enquiries to make and represented an effort by the Provider to seek alternative means to verify the occupancy issue. Unfortunately, neither of these avenues served to clarify matters; quite the opposite ensued.

The tenants proved uncontactable on each of the 3 phone numbers supplied despite 4 efforts to do so. In addition, the email ultimately furnished by the Letting Agent was positively unhelpful insofar as it provided a date of loss inconsistent with the Complainant's claim (an explanation that this was an error on the part of the Letting Agent was not provided for 3 months) and insofar as it provided an implied date of departure of the tenants, which was inconsistent with the Complainant's account. The absence of a definitive statement as to when the tenants left, was remarkable, however this was explained somewhat in later correspondence when it became clear that the Letting Agent did not in fact know when the tenants left. Indeed, the reference to a planned departure on 18 January 2015 has also never been properly explained.

The upshot of the foregoing is that the provision of the tenants' contact details and the provision of the email from the Letting Agent did not advance matters at all and, in fact, arguably represented a regression in terms of the verification of occupancy. I am additionally satisfied that the interaction with the Letting Agent was of such a nature as would have entitled the Provider to question the reliability of his submissions (and any future submissions).

In and around this time, further material was procured from the electricity provider although there is no clear explanation as to how this was finally secured. The additional material included a receipt dated April 2015 in the name of one of the tenants who supposedly vacated in January 2015 (again no explanation is provided) and a statement covering 20/07/2012 to 18/11/2014. The second document is remarkable in that it relates to a period which includes a part of the 3-month period which the Provider required, ie 3 months prior to the date of loss (21 January 2015) which would date back to 21 October 2014. The second document also clearly relates in part to the period during which the relevant tenants were in occupation, given that the letter of 25 November 2014 notes the start date of the tenancy as 1 November 2014. In light of the fact that the Complainant was

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able to procure this statement, it is difficult to understand how the Complainant was unable to secure a usage statement referable to October 2014 - January 2015. It also bears mentioning that the statement relating to 20/07/2012 to 18/11/2014 is of questionable relevance from the point of view of establishing occupancy in the 3 months prior to the date of loss insofar as no breakdown at all is provided.

Several months later in the process, the Complainant provided a statement from the electricity supplier for the period 01 January 2015 – 20 July 2015. This statement also failed to establish occupancy insofar as it also contained no breakdown and insofar as it was based on estimated readings. Again, no satisfactory explanation was provided as to how the Complainant came to procure this and how, having done so, and having already secured a statement for July 2012 to November 2014, he could not procure a usage statement for the 3 relevant months. It may be that there is some explanation for this matter however the Complainant has omitted to provide any. In any event, I am entirely satisfied that the Provider was entitled to take the view that the entirety of the material provided from the electricity company, did not settle the occupancy issue at all.

Following the provision of the 07/2012 – 11/2014 electricity company statement, the Provider's Loss Adjustor finally managed to make direct contact with the Letting Agent who seemed to confirm that the tenants were in the property at the time of the leak. As outlined above, the Provider was entitled to view this individual's submissions as of questionable reliability. However, of equal relevance is the fact that the Letting Agent simply did not know the date on which the tenants left the property. I am satisfied therefore that the Provider was entitled to take the view that the Letting Agent's contribution did not settle the occupancy matter.

The final development of note in my opinion, was the Provider's request for documentation evidencing the payment of rent and/or the deposit. This request was made in January 2016. Again, I am of the view that this was a reasonable request and represented a *bona fide* effort on the part of the Provider to get to the bottom of the matter. The Complainant did not respond to this request in a substantive manner until June 2016 when it was simply stated that all payments were made to the Letting Agent and that the first month's rent was taken by the Letting Agent as a finder's fee.

I do not believe that it would have been unreasonable for the Provider to have had a number of difficulties with this very undetailed response. In the first instance, the fact that payments were made to the Letting Agent does not preclude the ability to prove the payments. The Letting Agent himself would presumably have had proof of receipt of payments and there may well have been proof of payment available from the tenants, such as receipts or cheque stubs. Secondly, the suggestion that the Complainant derived no financial benefit whatsoever from the entirety of a tenancy that, on the Complainant's account lasted at least 2 months and 21 days, is very surprising. Thirdly, the explanation that the Letting Agent kept one month's rent as payment, accounts for less than half of the length of the tenancy; no explanation is provided as to the second month's rent or any rent paid for the proportion of January during which the tenants are suggested to have been in occupation.

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More recently, the Complainant's new solicitors have referred to one additional piece of evidence comprising a letter addressed to the solicitors themselves from the Department of Employment Affairs and Social Protection dated 5 June 2019 which advises by way of response to a letter of 8 May 2019, that the Department "*can confirm that Supplemental Welfare Allowance Rent Supplement was in payment to a client at [the insured address] on 21 January 2015.*"

I note in that regard that the letter confirms that the benefit was in payment to a client referable to the address in question. This letter does not however, in my opinion establish any particular details regarding occupancy of the insured property, such that the clarifications required, as outlined above, have been resolved.

Two other matters merit comment. The Complainant suggested that he would sign a mandate to allow the Provider to pursue the required information itself. This would have been irregular in my view and it is clear that the onus lies on an insured to substantiate his claim when called upon to do so by the Provider. The Complainant has also suggested that he would be in a position to secure statements or affidavits from neighbours verifying that the property was occupied on the date of loss. The fact of the matter however is that it appears that even since the Preliminary Decision issued from this office in April 2019, the Complainant has not submitted any such documentation and thus there was nothing for the Provider to consider.

Finally, as adverted to in the opening paragraph of this 'Analysis' section, the Provider issued a formal repudiation of the claim on 29 April 2019 (which it is noted the Complainant's new legal representatives have suggested is defective). It is not a matter for this office to confirm whether or not the letter of repudiation of 29 April 2019 is defective in any particular manner. Rather, it is the role of this office to consider whether the conduct of the Provider in failing to admit the Complainant's claim in January 2015, for payment of benefit under the policy, was wrongful within the meaning of **Section 60** of the **Financial Services and Pensions Ombudsman Act 2017**.

In my opinion, bearing in mind the absence of any clarity surrounding the suggested occupancy of the premises on 20/21 January 2015, which is the suggested date of loss, I am satisfied that the Provider was entitled to maintain the position which it did and that it did not act wrongfully in refusing to admit the Complainant's claim for payment of benefits.

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
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

28 August 2019

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.