



<u>Decision Ref:</u>	2019-0282
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Other
<u>Conduct(s) complained of:</u>	Disagreement regarding Settlement amount offered
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to the failure of the Provider to fully reimburse the Complainant for a claim under its insurance policy. This claim related to a property owned by the Complainant, where remedial works were carried out following a water leak.

The Complainant's Case

The Complainant is a property company for a property and entered into an insurance policy with the Provider which began on **31 December 2013**. The Complainant states that it made a claim to the Provider on **30 January 2015** arising out of damage to the Complainant's property due to a water leak. A note from a plumber furnished to this office and dated **26 February 2015** states that he was called on to the property on **30 January 2015** and found extensive water damage to the interior. The plumber states that he turned off the water supply to prevent any further damage. He also states that when he returned to the property on **31 January 2015**, to check the leak source, he found a leak in the attic space which was a half inch connection which had the olive pulled on the joint due to freezing conditions. The plumber states that he repaired this and tested the water system which was then working fine. A supplemental report from the plumber dated **22 October 2018**, clarifies the exact position of water in the attic space. He states that the pipe in question was closely connected to the wall slabs in the bathroom and the hot-press. He further states in his supplemental report that on **31 January 2015** he noted that the wall slabs at the bathroom

and hot-press were damaged beyond repair. He also notes that the staircase which was made from MDF was saturated and the kitchen base units were soaked with water. He states that all downstairs rooms showed dampness up to about 12 inches on the walls.

The Complainant has furnished to this Office an engineer's report which sets out its position in relation to the extent of the damage to the property. The report is dated **2 June 2015** and relates to an inspection of the property which occurred on **22 May 2015**. This report states that the property had "*incurred extensive water damage*". The engineer conducted a number of moisture readings within the effected timber which show a number of readings on or above 20% moisture. The report states that normal moisture would be somewhere between 8-12%. The report also states that due to the long period of time that the timbers had been wet they posed a risk for wet rot. The report is accompanied by pictures of the property which show moisture samples taken from the timber joists, moisture readings from the back wall of the property, water stains on the timber joists within the centre of the room and a picture of the bathroom in the property wherein the leak arose. The report states that the bathroom has a downward pull to the left-hand side of the bathroom and given that this side of the bathroom is where the bath is positioned, the report states that this would create extra stress on the wet timbers. The report ultimately recommends that the timber joists in the ceiling need to be removed and replaced and that when those works are completed it will also be necessary to remove studding and other works within the upstairs bedroom and bathroom.

On **13 March 2015**, the Complainant submitted to the Provider an itemised, fully costed quotation for remedial works to the property which came to the figure of €42,331.62. The Complainant subsequently furnished two quotations, itemised in lesser detail and not individually costed for repair works to the property on **28 October 2015**, one of which quoted a price of €34,000 and the other of which quoted a price of €37,500. Despite the above quotations, it appears that the remedial works in the matter were carried out by a company who invoiced a total fee of €23,450 for work due to water damage. This invoice was sent by the Complainant to the Provider on **3 August 2016**. This remedial work involved extensive works to the upstairs bathroom, the hot press, the stairs & landing, the downstairs bathroom, the sitting room, the kitchen, the hall way, the interior timber work, the concrete floors and the timber floors. It also involved the supply of de-humidifiers to dry out the house, the supply of skips to remove all damaged materials & rubble, the supply and fitting of a new front door, the re-painting and decorating of walls, ceilings and timber work throughout the house, the supply and installation of storage heaters which were water damaged beyond repair. While the works carried out in the invoice were individually itemised, the cost of the works was presented as a composite figure on the invoice with no indication as to which aspects of the remedial work cost what.

On **26 June 2015**, the Complainant emailed the Provider to furnish the Provider with bank statements in respect of rental payments as well as to challenge a number of the findings in the report from the Provider's engineers. Specifically, the Complainant states that:

"the moisture readings taken by your appointed engineer are distorting what is the actual situation within the above property. He has taken readings from the 50mm section of the joist where the moisture would not be as evident as it is the furthest

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point away from the leak and has the most air circulation. He also took readings from a 19mm floor board which would have dried out a lot quicker than the 50mm joist.

I would advise that he should take readings from the water stains as shown within my report for his report to have any credibility. He should also be aware that normal moisture content within these timbers should be less than 12% and given the fact that these readings are now been taken some five months later and are reading 17% in the driest areas he could find within the structure are actually proving my point that the structure has endured a lot of moisture over a long period of time

Using a 600mm level over a span of 4200mm (circa) will produce an extremely poor and inaccurate reading regarding levels and cupping, when I was referring to the cupping it is clearly defined within the upstairs bathroom. I would suggest that your engineer should use a longer lever to ascertain an accurate reflection of the evident cupping within the building.

I note he goes as far as to state 'no evidence of twisting or warping of floor joists'. Perhaps he should comment on why there is a downward pressure on the bathroom upstairs as shown to an agent of your office, stated within my correspondents (sic) and why there is a gap between the skirting board in the upstairs hallway and floor joist.

Regarding his statement within the "Desk Study" of his report. I would encourage the writer to take true Bona Fide readings of the actual structure and complete some research into how wet rot occurs and then comment upon the property.

I am completely and utterly in disagreement with the writer of the report regarding his findings..."

The Complainant further states that the Provider did not inspect the property until **19 February 2016** and that at this point timbers within the first-floor ceiling of the property had become warped due to the heavy load bearing of the toilet and the bath being placed upon them.

The Complainant initially set out its position in a letter to this office dated **22 September 2016**. In that letter the Complainant states that it appointed a loss assessor on **6 March 2015** and made the loss adjustor for the Provider aware of this on **14 March 2015** via a full scope of works. An offer of €13,681.68 was made by the Provider on **18 April 2015** and the Complainant states that this offer fails to allow for the repair and replacement of damaged timbers and further fails to act upon a very important issue within a suitable time frame.

The Complainant also states that the engineering company appointed by the loss adjustor for the Provider failed to use correct methods to assess the damage to the property, in particular in relation to the timber joists in the property. The Complainant states that the level used by the engineering company to assess the timber joist was only 600mm in length

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and that given the span of the timbers reached over 3.6m, this did not show the warping present to the timber.

The Complainant also alleges that the Provider has failed to offer the rental loss of the property as per the lease and furnished letters from accountants displaying the loss to the Complainant in relation to rent.

The Complainant furnished a further letter to this office dated **7 April 2017**. In that letter the Complainant makes a number of clarifying comments intended to substantiate its complaint. In particular the Complainant states that the leak in question originated from the bath within the first-floor bathroom. The Complainant states that the leak occurred within a stud wall between the hot press and the bathroom. The Complainant asserts that the water system was pressurised with the leak occurring approximately one metre high on the wall and this substantiated the need for works to be completed within the bathroom.

In this letter of **7 April 2017** the Complainant also takes issue with the Provider's engineer's report which states that the floor boards within the bathroom could not have been damaged by the leak. The Complainant asserts that this engineering report fails to physically show the origin of the leak and relies on hearsay in relation to the location of the leak. The Complainant further states that the pictures of the bathroom show significant water damage which would not have occurred if the origin of the leak occurred at the location as claimed by the Provider's engineer.

The Complainant goes on to say that the Provider's engineer's report states that the upstairs bathroom did not warrant replacement. It states that this finding in relation to the bathroom brings into question the validity of the entire report. The Complainant also attached pictures of the level of moisture within the timbers taken in **June 2015**, nearly 6 months post loss. These readings show that the level of moisture within the timbers in the room was at or around 20% and the Complainant states that internal timbers within a property should be between 8-12%. The Complainant also repeats its assertion that use of a spirit level of 600mm to determine the level of the timber was inappropriate.

The Complainant further states that the Provider's offer of €1,000 to remove, supply and fit the kitchen is too low and attaches pictures of the new kitchen in support of this.

The Complainant points to the fact that no offer was made in respect of damage to the staircase despite the fact that it says that it is clearly self-evident that due to the staircase being made of MDF it was necessary to remove and replace it. The Complainant states that as the Provider has accepted that the kitchen and the bathroom were damaged to some extent and the staircase is in the middle of those two areas, it is therefore clear how the staircase became damaged.

The Complainant also states that the works carried out to the hot press were necessary due to the close proximity of the hot press to the leak.

The Complainant states that the works to the fireplace mainly consisted of wood and tiles that surrounded the fireplace.

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The Complainant states that the front door of the property had to be replaced after a break in to the property which occurred subsequent to the water leak. The Complainant claims that this break in would not have happened had the property been occupied

The Complainant also claims for rental loss on the basis that it had a lease agreement in place at the time of the leak and the failure to remedy the damage to the property with the attendant delay on the part of the Provider amounted to a loss of 12 months rent at a rate of €825 per month. The Complainant provided a lease agreement to the Provider in respect of rental loss and this was followed by bank statement sent to the Provider on **19 July 2015**. This bank statement revealed rental payments of €586.30 being paid to the Complainant. In an email to this office dated **7 November 2018**, the Complainant clarifies that the differential between the figure paid for monthly rent on the bank statement and the figure stated for monthly rent in the bank statement was bridged by monthly cash payments from the tenant for the property to the Complainant.

The Complainant also claims that the following section of the Consumer Protection Code have been breached:

- Section 1 of Chapter 1 of the Consumer Protection Code which requires entities to *“act honestly, fairly and professionally in the best interests of its customers”*;
- Section 2 of Chapter 1 of the Consumer Protection Code which requires regulated entities to *“act with due skill, care and diligence in the best interests of its customers”*;
- Section 3 of Chapter 1 of the Consumer Protection Code which requires that regulated entities do not act *“recklessly or negligently”*;
- Section 2 of Chapter 2 of the Consumer Protection Code which requires that *“all instructions are processed properly and promptly”*; and
- Section 16 of Chapter 5 of the Consumer Protection Code which requires that an Insurance Intermediary *“must upon receipt of the completed claims documentation transmit such documentation to the relevant regulated entity, without delay”*.

Ultimately, the Complainant wants the Provider to pay compensation of €23,450.00 building works as per the invoice furnished with the complaint, €9,900.00 rental loss, 8% interest on all sums from date paid to when payment should have been made, €2,000.00 extra loss assessor fees and compensation for undue hardship and stress.

The Provider's Case

The Provider states the claim in question was only notified to it via phone call on **3 February 2015**.

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The Provider states that it advised the broker making the claim of the documentation necessary, advised it of the details of the loss adjustor for the Provider, advised it to retain damaged goods and advised it to retain receipts.

The Provider states that it attempted to make contact with the third party who looks after the property on **3 February 2015** and **4 February 2015** but got no answer so left a message on his phone. The Provider states that it eventually made contact with an agent of the Complainant on **12 February 2015** who advised that the Complainant would revert to arrange an appointment to view the property. A site inspection was then arranged for and carried out on **24 February 2015**.

The Provider states that claim documentation was received from the loss assessor for the Complainant on **13 March 2015** seeking a sum of €42,331.62. This was followed by an offer from the Provider on **18 April 2015** of €13,681.68.

The Provider states that a re-inspection of the property was carried out on **22 May 2015** to view the joists and the flooring as the loss adjustor could not identify reasons for including these due to the escape of water event. The Provider notes that at this stage no clean-up work or drying out had yet been completed/attempted.

On **16 June 2015**, the Provider's engineer carried out an inspection of the property. The report was comprehensive and was undertaken with the aim of determining the extent of the damage that occurred to the property as a result of the water leak. The Provider's engineer prepared the report with the benefit of having read the report from the Complainant's engineer. Following an external and internal inspection of the property, the Complainant's engineer noted:

“that the damage caused as a result of the leak is located primarily on the ground floor but is in the main confined to finishes. From a structural point of view there is no damage which would require the removal of any structural members of the property.

In the sitting room, located on the ground floor of the two storey extension to the rear, and directly below the location of the leak, the ceiling has been damaged over the left hand side of the room. It would also appear that some additional plasterboard has been removed from the ceiling, most likely to allow access to the bathroom floor above.

The following photograph shows the pipework in which the leak was found. As can be seen the pipe is located outside the line of the stud wall of the bathroom in an area where there is no timber flooring. (as outlined earlier). The last floor board located to the right hand side of the picture is located directly adjacent to the sole plate of the timber stud wall (which forms the left hand side of the bathroom as viewed looking towards the rear of the property). It can also be seen that the section of qualpex pipework which is connected to the copper piping runs beneath the floorboards of the bathroom, as one would expect.

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This photograph clearly shows that there is no pathway for water leaking from the copper pipes across the floor of the bathroom on the first floor as the water would fall onto the ceiling below the floor in the first instance."

The report goes on to state that the level of floor joists running across the ceiling of the sitting room are level and exhibits a number of photographs showing a spirit level running across the underside of the joists. The report also states that a number of moisture readings were taken on the joists in the area beneath the leak and the bathroom floor above and that these readings were between 17% and 17.7%. The report goes on to say that as the timbers had been exposed since January 2015 with no heating in the property throughout the winter this would not be seen as an excessive moisture count. Moisture content readings were also taken on the underside of the floorboards of the bathroom, which as outlined earlier, would not have been subjected to water from the identified leak. These readings ranged from 16.6% to 17.6%. These readings are very similar to those found in the floor joists. The report states that at the time of the inspection there was no evidence of twisting or warping of the floor joists. The report further states that there is a significant amount of mould growth on the walls in the ground floor WC at both low and high levels. There is also mould/dampness on the internal walls in the hallway, above the skirting board. The report exhibits a photograph of the first floor bathroom and states that the bathroom floor shows signs of prolonged water staining concentrated in the areas around the bath, sink and the toilet. The report states that the water has not penetrated through to the underside of the timbers to any great extent. The report also states that the moisture content readings taken on the top of the floor match those readings obtained on the underside of the floorboards. Furthermore, the report shows the floor of the cupboard on the first floor, adjacent to the bathroom. The rear wall of this cupboard is in the same line as the left-hand side wall of the bathroom, behind which the leak was located; despite this the report states that there is no evidence of water damage to the floor of the cupboard. Similarly the report states that the landing situated in the rear two storey extension, situated at the junction of the bathroom, cupboard and rear bedroom doors, similarly does not exhibit any signs of water damage/staining to the floor boards.

In conclusion the report states that:

"it is clear the pathway for the water which escaped from the pipework in question was directly onto the ceiling of the sitting room. This water could not have made its way across the floor of the bathroom as the ceiling is obviously below this level. This is borne out by the fact that there is no water staining on the floor of either the cupboard or landing adjacent to the location of the leak.

Whilst the ceiling joists would have been subjected to a certain amount of water running across and down them, they would not have been submerged in water for any significant period of time. The moisture readings taken in the property are very similar in all of the timber tested, even in timbers that were not subjected to any water as a result of the leak. There is no requirement to undertake any structural works such as removal of stud walls, removal of entire plaster finish to walls in the hallway, re-skim concrete floors.

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Further to the foregoing we are of the following Professional Opinions and recommendations with regard to the required remediation on foot of the identified leak at this time. I will refer to the rooms as laid out in the claim document. The following does not provide for any comment on the costs of the works required.

1. *Upstairs bathroom – no damage or consequential works required*
2. *Bedroom 1 – no damage or consequential works required*
3. *Landing – no damage or consequential works required*
4. *Bedroom 2 – no damage or consequential works required*
5. *Kitchen – as per claim offer document*
6. *Hallway – as per claim offer document*
7. *Downstairs W.C. – as per claim offer document*
8. *Sitting Room – as per claim offer document*
9. *General Items – as per claim offer document*

As outlined above, from our visual inspection of the property there is no necessity to undertake any major structural works. The water from the leak would have made its way onto the ceiling of the sitting room before it created a hole in same/caused a collapse which lead to water travelling throughout the ground floor of the sitting room before it created a hole in same/caused a collapse which lead to water travelling throughout the ground floor of the property. Accordingly, the damage to the property is all located on the ground floor and should be remediated.

The Provider made an offer of €15,285.78 on **11 August 2015** and after further correspondence between the parties this offer was maintained on **27 January 2016, 22 June 2016** and **23 August 2016**. This is comprised of compensation for remedial work to the property of €13,681.68 in addition to €4,104.10 in lost rental income (equating to 7 months lost rent at €586.30 per month) minus the policy excess of €2,500.

In relation to the Consumer Protection Code, the Provider states that it is in compliance with its terms. It states that it has a written complaints procedure in place, that the complaint was acknowledged the day it was received, that an update letter was issued on the 20th working day from receipt, that the response was issued on the 28th working day from receipt and that it notified the complainant of its right to escalate the matter to this office and provided contact details of this office. It further states that it endeavoured to verify the validity of the claim by appointing a loss assessor to go onsite and inspect the damage, by requesting a plumber's report, by requesting the tenancy agreement and by appointing an engineer to verify the works required following disagreement in scope. The Provider also states that it has a claims procedure in place and a leaflet advising of next steps issued at claim registration. It states that all calls made directly to it are recorded and that as the adjustor's calls were made on a mobile phone these conversations were noted on the loss adjustor's file. The Provider states that it issued a letter to the claimant's broker on **4 February 2015** which contained all relevant details pursuant to clause 7.9 of the Consumer Protection Code. The Provider further stated that it had conducted all dealings via the Complainant's loss adjustor pursuant to the mandate received by it and that the Provider's loss adjustor was available for contact at all times and for updates.

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Furthermore, the Provider states that the settlement offer made was fair and reasonable based on the documentation provided by the Complainant and validated by the Provider's engineer. The Provider noted that it included a 10-day consideration period in all of its settlement offers and offered an appeals mechanism to its offer. Finally, the Provider states that it provided all policy documentation at inception and renewal of the policy pursuant to clause 4.1 of the Consumer Protection Code.

The Complaint for Adjudication

The complaint for adjudication is that the Provider has wrongfully refused to fully reimburse the Complainant for remedial works and loss of rental income under its insurance policy.

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 12 July 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.

Following the issue of my Preliminary Decision, the Provider made a further submission to this office by e-mail dated 31 July 2019, a copy of which was transmitted to the Complainant for his consideration.

The Complainant has not made a further submission.

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Following the consideration of the Provider's additional submission, together with all of the evidence submitted, I set out below my final determination.

I note that while both parties are in agreement that a water leak occurred at the property and are in agreement that there was damage to the property at the centre of the complaint, there is a clear conflict of opinions between the engineers engaged for the Complainant and the engineers engaged for the Provider as to the extent of the damage suffered. This Office wishes to make clear that it is not an engineering expert and its function is not to adjudicate on conflicts of engineering opinion. The function of this Office in considering this complaint *"in general terms, is to assess whether or not the Provider acted reasonably, properly and lawfully"* (*Baskaran v Financial Services* [2019] IEHC 167) in declining to reimburse the Complainant for the full amount of the remedial works it states it incurred in remedying the defects caused to the property by the water leak. In that regard, considering the detailed engineering report of the Provider, the less detailed engineering report of the Complainant, the further statements furnished by the Complainant in respect of the damage, the plumber's two reports and the photographs accompanying the reports of the damage, I accept that the Provider had sufficient evidence before it to come to the decision that the damage to the property was in the main confined to finishes on the ground floor of the property (kitchen, hallway, downstairs W.C. and the sitting room) and the property did not require major structural work. I also accept that the Provider acted reasonably in finding that any work required to the two upstairs bedrooms and the landing was very minor.

There were a number of specific issues raised by the Complainant with the Provider's engineers' report and I will now address each of these in turn:

The Upstairs Bathroom

I accept that the Provider has failed to adequately compensate the Complainant for the damage incurred in the upstairs bathroom. The Provider's engineer's report states that there is *"heavy water staining to bathroom floor adjacent to bath, toilet and sink"* and the photographic evidence at Figure 6.2.10a clearly demonstrates this. This finding is further supported by the report of the plumber who stated that the location of the pipe where the leak occurred was closely connected to the wall slabs in the upstairs bathroom. I therefore, accept the contention of the Complainant that the floor of the upstairs bathroom warrants replacement due to the water damage suffered.

Timber joists

I note that moisture readings taken at the property of the timber joists by both the Provider and the Complainant show moisture levels significantly above the 8-12% (Provider's readings: 16%- 17%; Complainant's readings: circa 20%) that internal timbers should contain.

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However, I also note that the report of the Provider's engineer states that the moisture content readings taken on the top of the floor match those readings obtained on the underside of the floorboards and further that the reports assert that as the timbers have been exposed since **January 2015** with no heating in the property throughout the winter, this would not be seen as an excessive moisture count. I note that the Complainant took issue with the section of the joist where the Provider's engineers took moisture readings from and I accept that a moisture reading taken from a section of the joist closer to the leak may have resulted in a higher moisture reading.

I also note that the Complainant asserted that the use of a spirit level of 600mm to determine the level of the timber was inappropriate given the 4200mm (circa) span of the joist. The Complainant asserted that use of this size spirit level would produce an extremely poor and inaccurate reading and suggested the use of a longer lever.

The Provider's engineer states that there was no evidence of twisting or warping of the floor joists at the time of the inspection and the Complainant challenges this on the basis that there is downward pressure on the bathroom upstairs and there is also a gap between the skirting board in the upstairs hallway and the floor joist. It is the Complainant's contention that these timber joists needed to be replaced.

I accept that the Provider was entitled to come to the decision that the timber joists did not need to be replaced as the timber joists were not submerged in water for any significant amount of time. This seems a reasonable decision of the Provider based on its engineer's report, the moisture readings it was furnished with and most crucially, the lack of evidence of any twisting or warping to the timber joists at the time of inspection.

The Kitchen

The Complainant states that the Provider's offer of €1,000 to remove, supply and fit the kitchen is too low and attaches pictures of the new kitchen in support of this. While I accept that the Complainant installed a new kitchen at significant expense, I note that the leak occurred in the first-floor bathroom, on the other side of the house from the kitchen, and therefore note that any damage to the kitchen from the leak was minimal. Consequently, the offer of €1,000 from the Provider to the Complainant is reasonable in relation to any damage which occurred in the kitchen.

The Staircase

I do not accept the Complainant's logic that the staircase must have been damaged by the leak, lying as it does between the kitchen and the bathroom. The bathroom is located on the first floor and the kitchen on the ground floor and the Provider's engineer's report puts forward the contention that the water from the leak made its way onto the ceiling of the sitting room, before it created a hole which led to the water travelling throughout the ground floor of the property.

Therefore, it was reasonable for the Provider to make an offer for remedial works based on the explanation in the Provider's engineer's report that the water leaked down onto the ground floor before spreading and therefore did not damage the staircase.

The Hot Press

I accept that the works carried out to the hot press by the Complainant was necessary due to the close proximity of the hot press to the leak. All engineers and plumber's reports are in agreement that the pipe in question was closely connected to the wall slabs in the bathroom and the hot-press and therefore it is reasonable to assume that water damage was sustained to the hot press area.

The Fireplace

The Complainant states that the works to the fireplace mainly consisted of wood and tiles that surrounded the fireplace, however, apart from the Complainant's statement in relation to this, there is no evidence before me of any damage to the fireplace and therefore I do not accept that the Provider is obliged to compensate the Complainant for this.

The Front Door

I do not accept that the Complainant is entitled to recover the value of purchasing and installing a new front door for the property due to damage being sustained to the original front door following a break in to the property which occurred subsequent to the water leak. The Complainant's claim that this break in would not have happened had the property been occupied cannot be substantiated.

In relation to rental loss, I accept that the bank statements of the Complainant revealed rental payments of €586.30 being paid per month to the Complainant in respect of the property. I accept that the lease documentation disclosed a rental figure of €825 per month but am satisfied that there was no evidence given to this Office of payments being made to the Complainant (in cash or otherwise) in respect of rent, over and beyond that €586.30 figure. I further accept that the Provider's offer of 7 months rental payments at €586.30 per month is a fair and reasonable figure in that the Complainant was under an obligation to mitigate its loss and 7 months was a reasonable time period within which to expect that remedial works would be carried out on the property and the property would be restored to a condition where it was fit for re-entry onto the rental market.

Furthermore, I note that the terms and conditions of the insurance policy clearly state that *"an excess of €2500 applies to every claim under Section A Buildings and Section B Loss or Rent/Alternative Accommodation (as ascertained after the application of average) unless a higher excess applies under another endorsement of the policy."*

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Finally, in relation to the Consumer Protection Code, I accept that the Provider was in compliance with the applicable provisions. In relation to Section 1, Chapter 1 of the Consumer Protection Code, I accept that the Provider acted *“honestly, fairly and professionally in the best interests of its customers”* when assessing the claim brought before it. In respect of Section 2 of Chapter 1 of the Consumer Protection Code, I accept that the Provider acted *“with due skill, care and diligence in the best interests of its customers”* when dealing with the Complainant. I further note that there is no evidence that the Provider acted *“recklessly or negligently”* pursuant to Section 3 of Chapter 1 of the Consumer Protection Code. The evidence before this office is also that *“all instructions”* in this matter were *“processed properly and promptly”* by the Provider in compliance with Section 2 of Chapter 2 of the Consumer Protection Code. Finally, Section 16 of Chapter 5 of the Consumer Protection Code which requires that an Insurance Intermediary *“must upon receipt of the completed claims documentation transmit such documentation to the relevant regulated entity, without delay”* was clearly complied with by the Provider. The Provider had a written complaints procedure in place, the complaint was acknowledged the day it was received, an update letter was issued on the 20th working day from receipt, the response was issued on the 28th working day from receipt and the Complainant was notified of its right to escalate the matter to this Office and provided contact details of this Office.

I note in a post Preliminary Decision submission received from the Provider on 31 July 2019, it has asserted an error of fact in my Preliminary Decision, arguing insufficient credence has been given to its Engineering expert report of 24 June 2015. I do not concur, this material was considered by me in arriving at my Preliminary Decision. The Provider does not however agree with my conclusions based on the material. This does not make it an error fact. Rather, it is a difference of opinion.

With respect to the hot press, the Provider considers that no evidence has been provided to this Office of damage and that I made an error in directing it to pay based on the assumption that the cupboard in question is in proximity to the leak rather than any evidence to support the theory that the water leak caused detectable damage in this location.

The Provider’s post Preliminary Decision submission contains no additional evidence but rather, is a re-statement of the previous engineer’s report. This goes back to the interpretation of the conflicting expert reports which lies at the centre of the different opinions by the parties. I considered all of this material in arriving at my Preliminary Decision.

The Provider offered the Complainant €15,285.78 comprising of compensation for remedial work to the property of €13,681.68 in addition to €4,104.10 in lost rental income (equating to 7 months lost rent at €586.30 per month) minus the policy excess of €2,500. However, I believe the Provider should also have made provision for remedial works to the upstairs bathroom and the hot press, which were two areas adjacent to the location of the leak and which clearly suffered water damage as a result of this.

Therefore, in light of the shortcomings identified above in not compensating the Complainant for the remedial works to the upstairs bathroom and the hot press, I partially uphold this complaint and, taking into account the policy excess, I direct the Provider to pay the Complainant the sum of €15,285.78 (already offered), in compensation for remedial work to the property and lost rental income plus a sum to compensate the Complainant for the remedial works to the upstairs bathroom and the hot press. I direct a payment of €4,500 in respect of these works bringing the total sum to €19,785.78.

Conclusion

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

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a total compensatory payment to the Complainant in the sum of €19,785.78, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

2 September 2019

/Cont'd...

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.

