



<b><u>Decision Ref:</u></b>	2020-0133
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - freezing or escape of or overflow of water or oil
<b><u>Outcome:</u></b>	Rejected

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

The complaint relates to the Complainants' claim under their house insurance policy arising from damage caused by a leak in a bathroom.

**The Complainants' Case**

The Complainants, both in the legal profession, held a home insurance policy with the Provider since May 2014 in respect of a property which was let to tenants. The Complainants state that, "[i]n or about July/August of 2015", a leak which had occurred in the shower of a bathroom of the insured property was brought to their attention by the tenants. The Complainants state that they immediately made contact with a plumber who carried out certain works at a cost of €1,950. These works did not however fix the problem and further works were required which again failed to remedy the issue.

The Complainants state that they then made a claim on the policy on 14 September 2015 but that no response was received prompting a further letter dated 28 October 2015. The Complainants assert that the Provider failed to make contact with them on the mobile phone number provided in the claim form. Thereafter, the Complainants maintain that they had some difficulty securing an engineering report but eventually furnished the Provider with a report in September 2016. The claim was formally declined on 19 December 2016. The Complainants claim that there was unreasonable delay by the Provider in dealing with their claim.

The Complainants appear to accept that the policy does not cover damage of the type suffered but the Complainants maintain that they have suffered loss owing to the manner in which the Provider engaged with them and, specifically, owing to the delay on the part of the Provider in engaging with them.

The Complainants maintain that the leak caused the tenants to bring the Complainants before the Private Residential Tenancies Board (PRTB) which made a finding in favour of the tenants and which required the Complainants to pay a penalty to the tenants. The Complainants maintain that a second complaint was also brought before the PRTB by the tenants regarding the Complainants' efforts to terminate the tenancy which again resulted in a finding in favour of the tenants. The Complainants maintain that they have suffered a significant loss of rental income arising from the entire process.

The complaint is that the Complainants made a claim on their insurance policy which, they maintain, was improperly declined by the Provider. The Complainants seek "*payment of loss of rent & payment for damage to house plus costs of defending PRTB proceedings*". The Complainant refers to costs of repairs "*in the region of €40,000.00*", loss of rental income in the amount of €18,000.00, plus a separate figure of €4,000 "*spent on remedial repairs*".

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

The Provider maintains that it was entitled to decline the claim by reference to the terms of the policy on the basis that the damage occurred by virtue of the occurrence of a peril that was specifically excluded under the policy. The Provider notes that the loss was first discovered in April/May 2015.

### **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 Complainants were 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.

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A Preliminary Decision was issued to the parties on 24 March 2020, outlining my preliminary determination 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

### **Policy Terms and Conditions**

The Provider has identified Clause 4 of 'Section 1 – Buildings – Exclusions' on page 8 of the policy in support of its decision to decline the Complainants' claim. This section expressly provides that the policy does not cover:

- (i) *Loss or damage caused by water leaking from shower units or baths*
- (ii) *Loss or damage to the component or appliance from which the water escapes*  
...
- (v) *Loss or damage arising from any gradually operating cause*

Section 9 of the policy deals with claims. At page 56 of the policy, the following is set out:

#### **MAKING A CLAIM**

##### ***"WHAT DO I DO OF MY PROPERTY IS LOST OR DAMAGED?"***

...

- *Take any emergency action which may be necessary to protect Your property from further damage e.g. switch off the gas, electricity and water....*
- *Telephone Us immediately for advice on Policy cover and how to proceed with Your claim*
- *Check Your Policy wording carefully, to see if the loss or damage is covered. Your Policy lists the events (e.g. storm or stealing) which are covered and not covered and also any general exclusions or conditions which apply to Your whole Policy.*

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## Analysis

This is a somewhat convoluted complaint. The complaint ostensibly relates to the Provider's decision made in December 2016 to decline the claim made on the policy. However, the Complainants do not seem to advance a claim that the damage should have been compensated under the policy. In her letter to this office dated 9 February 2017 which accompanied the complaint form, the First Complainant states as follows:

*[The Provider] state that they do not cover leaks and without prejudice I am willing to accept this having the paragraph only being recently brought o me attention. [sic] I may not have read the policy correctly as I have suffered [injuries] and given that I was not in a flood plain or any such matter I assumed that the [The Provider's] policy was a standard policy which would cover water leaking...*

Later in the same letter, the following is stated:

*I accept that there is an obligation on me to read the contract of insurance but I think the vast majority of Irish people do not do so ..."*

It is clear that the policy does not cover damage of the nature suffered by the Complainants in circumstances where the damage in this case was caused by a leak to a shower unit and in circumstances where that precise peril is explicitly excluded in the terms of the policy as reproduced above. Damage occurring from a gradually operating cause, as appears to have been the case in this instance, is also expressly excluded. In the circumstances, I accept that the Provider was entitled to decline the Complainants' claim on the policy by reference to the terms of that policy.

This conclusion leads me to what is perhaps the substance of the Complainants' complaint, namely the manner in which their claim was dealt with by the Provider. Prior to addressing this issue, it will be useful to set out a chronology of developments as follows:

Date	Event
May 2014	Policy incepted
April/May 2015	Date on which Provider states that damage was first noticed by the Complainants' tenant as stated by the tenant to the Provider's loss adjustor during meeting of 26 April 2016.
July/August 2015	Date on which Complainants state that damage occurred.
14 September 2015	Letter from Complainants to Provider's agent providing first notification of damage and requesting attendance of assessor. This letter does not include the First Complainant's mobile phone number as asserted by the Complainant.

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15 September 2015	Date on which Provider states it left a message with the First Complainant's office telephone receptionist
28 October 2015	Further letter from Complainants to Provider's agent referring to damage and requesting attendance of assessor. This letter does not include the First Complainant's mobile phone number as asserted by the Complainant.
30 October 2015	Date on which Provider states it left a message with the First Complainant's office telephone receptionist.
08 April 2016	Letter from Complainants to Provider.
11 April 2016	Phone call from Provider to the Complainant.
12 April 2016	Claim registered.
26 April 2016	Attendance at insured property by Provider's loss adjustor. Report produced same day recommending the claim be declined.
5 September 2016	Date of Complainants' engineer's report concluding that " <i>the source of the leaks is the defective condition of the showers in both the main and ancillary bedrooms</i> " and recommending the replacement of both shower units.
20 October 2016	Date of email from Complainants' engineer, responding to queries raised by the Provider, stating " <i>not sure if its poor detailing or the weathering around the shower tray or the tiles</i> ".
19 December 2016	Claimed declined in letter from Provider's loss adjustor.
22 December 2016	Letter of complaint from Complainants sent to Provider's loss adjustor.
20 January 2017	Letter from Provider acknowledging receipt of the letter of complaint which had been provided to the Provider by its loss adjustor.
30 January 2017	Final Response Letter from the Provider to the Complainants.

The essence of the Complainants' complaint is set out in the letter of 22 December 2016 which states as follows:

*On a strictly without prejudice basis and regardless of what you say in your letter of the 19<sup>th</sup> of December that it is excluded under the policy, had your clients acted in a timely manner and had I known (as is alleged by you) that the water damage was not covered then I would have had no alternative that (sic) to bite the bullet and do the works myself. Instead I wait for [the Provider] to come back to me and during this time I was fined a huge fine for allowing the house to have a water escape by the tenancies board and they are now bring court proceedings against me.*

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With regard to the manner in which the Provider dealt with the Complainants' claim generally, I am not satisfied that the Complainants have substantiated the allegation that the service provided was substandard. The Complainants allege that a mobile phone number was provided in the letters of 14 September 2015 and 28 October 2015. This is not so. The only phone numbers visible on the letters are the landline phone numbers of the First Complainant's office. There is a dispute as to whether the phone calls to the office number claimed by the Provider to have been made on 15 September 2015 and 30 October 2015 were in fact made. However, I am satisfied that I do not need to resolve this dispute to come to a decision on this aspect of the complaint.

The terms of the policy directed the Complainants to telephone the Provider in the event of a claim. The Complainants did not do so.

The first phone contact occurred on 11 April 2016 and I am satisfied that all significant delays from that point forward was on the part of the Complainants. This was manifested in the delay on the part of the Complainants submitting an engineering report substantiating that the damage suffered was a result of an insured peril, a matter which was never in fact substantiated.

There is a further flaw with the Complainants' reasoning as follows. The Complainants essentially take issue with the delay in notification to them about the fact that the damage suffered by them would not be covered by the policy. However, it is self-evident and abundantly clear that the peril suffered was not covered and this would have been apparent on any reading of the policy. Section 9 of the policy in fact exhorts policy holders to check the wording of the policy to see if the loss or damage is covered. This was clearly not done by the Complainants. Had the Complainants taken the time to do this, they would have quickly realised that the policy did not cover the damage.


The Provider, in its submission to this Office, accepts that there were delays in dealing with the claim and accepts that the claim should have been declined in a more timely manner. The Provider has apologised for this and offered the Complainants a customer service offer of €500 in respect of these issues.

For the reasons set out above, I do not uphold this complaint.

### **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.



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 April 2020

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.**