



<u>Decision Ref:</u>	2020-0348
<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

The Complainant holds a home insurance policy with the Provider that provides her with Contents and All Risks cover in respect of her apartment.

The Complainant's Case

The Complainant *"got an infestation of silverfish in my apartment early last summer [2018] which cost me a lot of expense in pest control and loss of furniture and possessions"* and she submitted a claim to the Provider.

Having reviewed the matter, the Provider wrote to the Complainant on **15 February 2019** to advise that it had declined her claim, a decision it upheld upon review the following month, by way of letter dated **15 March 2019**.

In this regard, the Provider advised the Complainant that her home insurance policy did not include Buildings cover, which might have covered the cost of damage to the bathroom ceiling and tiles. It also declined to cover the cost of pest control services in order to eradicate the infestation and the damage to her contents as a result of the infestation, as her policy did not provide cover for losses caused by vermin.

The Complainant considers that the Provider ought to cover the cost of pest control services and the damage to her contents as a result of the infestation as the infestation itself occurred due to an escape of water, *"the proximate cause was the water damage and as soon as the cause was identified I took action"*.

The Provider, however, deemed such losses to be a consequence of the escape of water, insofar as an escape of water on its own, does not bring a silverfish infestation with it. Rather, the silverfish would have thrived over time in damp conditions caused by an ongoing escape of water, and the Provider maintains that the Complainant's policy expressly excludes cover for any such consequential losses.

In this regard, the Complainant sets out her complaint in the Complaint Form she completed, as follows:

"I got an infestation of silverfish in my apartment early last summer [2018] which cost me a lot of expense in pest control and loss of furniture and possessions. I found out in October [2018] that the cause was a leak from the plumbing of the apartment above me. When the leak was fixed the problem stopped. I found out that the problem was a leak when the apartments' managing company director contacted me regarding damp in the apartment below me and after investigation found the problem to be above me and water had been slowly seeping into my apartment over time. This directly caused the infestation. My insurance company says "an escape of water on its own does not bring a silverfish infestation with it". This is untrue, it does and did. Not just according to me but to the experts. There may be one or two silverfish or any insect in many households unseen but an infestation is different. As soon as I realised the cause I took action. This is water damage".

As a result, the Complainant seeks for the Provider to admit her home insurance claim in the amount of €3,278 (comprising the costs of the Building Surveyor €420, Pest Control €660, Tiler €100 and damaged/destroyed personal items €2,098).

In addition, whilst the Provider states that the Complainant first notified it of the claim by telephone on **11 February 2019** despite her becoming aware of the silverfish infestation as early as the Summer of 2018, in her email to this Office on **1 April 2020** the Complainant advises that *"some of the dates regarding me putting in the claim look wrong"* and submits that *"I did mention silverfish"* in earlier calls to the Provider, making particular reference to a telephone call to the Provider's number listed in her mobile phone records at 14:19 on 20 August 2018.

The Provider's Case

Provider records indicate that the Complainant telephoned the Provider on **11 February 2019** to advise that the previous year the apartment above hers had suffered a leak, causing water damage to the ceiling and tiles in her bathroom, and that the water dripping down from above had brought silverfish with it. Upon realising the extent of the infestation, the Complainant engaged the services of an exterminator in July 2018 and again in August 2018 and advised that the infestation and the extermination process damaged a list of contents in her apartment.

/Cont'd...

At the claim notification stage, the Provider gathered details from the Complainant regarding the nature of the claim and the circumstances of the loss. The Agent advised the Complainant that there was no cover in place for the damage to the bathroom ceiling and tiles, as there was no Buildings cover included on her policy. The Complainant was also advised that there was no cover in place for the damage suffered to the contents, as a result of the silverfish infestation, though she suggested that this ought to be covered as it occurred after an escape of water.

After analysing the details provided and reviewing the cover on the Complainant's policy, it was concluded that the policy would not provide indemnity in this case. In this regard, the Provider wrote to the Complainant on 15 February 2019 to confirm that it had declined her claim, a decision it later upheld upon review by way of letter dated 15 March 2019.

The Provider says that in relation to the damage to the bathroom ceiling and tiles, the Complainant's home insurance policy provides Contents and All Risks cover at the risk address. The Provider notes that the bathroom ceiling and tiles do not fall within the remit of the contents but instead does normally be covered under the Buildings section of a home insurance policy, which covers damage to the structure of a home such as the ceilings, the walls and the fixtures and fittings. As her home insurance policy does not include Buildings cover, the Provider is satisfied that the claim for the damage to the bathroom ceiling and the tiles was correctly declined.

The Provider says, in relation to the works carried out by the Complainant's Building Surveyor, that in his Report dated **28 November 2018**, the Building Surveyor advises, *inter alia*, as follows:

"I was contacted to investigate where this leak originated. At the end of October [2018] I inspected [the Complainant's] apartment and noticed dead remains of silverfish and small insects in every room ...

[The Complainant's] expenses are as follows:

- 1. Inspection of [the risk address]. Removal of last Marble tiles to gain full access after one tile damaged. Impossible to remove without damage due to nature of the position to bath and they were fixed abutting the floor pipes and gold trim holding them in place. Final spraying of internal opened area not completed by [Pest Control] and spraying of selected areas under some floorboards where dead insects proliferate. Removal of dead insects and infected rubble inside opening. Cleaning of all visible areas and organising a tiler and other activities named in this report".*

In this regard, the Provider notes that the nature of the works carried out by the Building Surveyor would attach to works in connection with the Buildings section of a home insurance policy and that the costs associated with identifying the source of a water leak, would also not be covered by the Complainant's Contents and All Risks cover.

/Cont'd...

The Provider says that in relation to her personal belongings listed as damaged or destroyed either by the infestation and/or by the works carried out by the pest control services in order to eradicate the infestation, the Complainant's policy provides cover in relation to damage which results from one of the causes of loss or events outlined in the policy document, known as an insured peril.

The Provider says that like all insurance policies, the Complainant's home insurance policy does not provide cover for all eventualities. Instead, the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, the Provider refers to the 'General Exclusions' section of the applicable Home Insurance Policy Document which provides, *inter alia*, at pg. 39:

"We shall not be liable for ...

Wear, Tear and as undernoted ...

- *... vermin".*

The Provider notes that not every word is defined in the policy booklet and that where a term is not defined, the ordinary dictionary meaning of that word applies. The Provider says that the term "*vermin*" is defined in the Cambridge English Dictionary as "*Small animals and insects that are harmful or annoying and are often difficult to control*". The Provider notes that synonyms for vermin includes animals, insects, bugs and pests. The Complainant's policy does not therefore indemnify for damage caused by any vermin or pests identified in her apartment, such as silverfish, bedbugs, mosquitoes and small insects, including the fees to eradicate same.

In addition, the Provider notes that the Complainant's home insurance policy indemnifies by payment, or at the Provider's option, by reinstatement, replacement or repair for damage to the Contents that were destroyed directly by an Escape of Water. However, based on the information provided, the Provider notes that the Complainant's personal belongings were not damaged by water, but by different infestations (silverfish, bedbugs, small insects etc.) as noted in the reports she submitted. This is specifically excluded under the policy.

The Provider says that silverfish are small pest insects that thrive in moist humid and dark places. They are often found in basements, bathrooms, and even kitchens. Silverfish feed on carbohydrates, particularly sugars and starches. Cellulose, shampoos, glue in books, linen and silk are some of the food sources for the silverfish.

In general, the Provider considers that a silverfish infestation would be a strong indicator of a damp problem. Whilst the direct result of an escape of water would be the water damage to the items affected, the Provider notes that the possible secondary effects of water damage, such as damp, rot and vermin, are specifically excluded under the Complainant's policy.

The Provider points in this regard, to the '**General Exclusions**' section of the applicable Home Insurance Policy Document which provides, *inter alia*, at pg. 39:

/Cont'd...

“We shall not be liable for ...

Consequential Loss

Consequential loss or damage of any kind except as set out in this Policy”.

Furthermore, in the event of a claim, the ‘**Claims - Your Duties and Our Rights**’ section of the Home Insurance Policy Document provides, *inter alia*, at pg. 36:

“What You must do

Tell Us IMMEDIATELY of any loss, damage or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to Us, together with a completed Claim Form, within 30 days of first notifying Us of the incident”.

The Provider says, in that regard, that the Complainant became aware of the silverfish infestation as early as the Summer of 2018, whereas she only first notified the Provider of the loss in February 2019.

In relation to the Complainant’s comment that *“some of the dates regarding me putting in the claim look wrong”*, the Provider is satisfied from its records that the claim notification date of 11 February 2019 is correct. In addition, in relation to her comment that *“I did mention silverfish”* in earlier calls to the Provider, the Provider has identified recordings of three telephone calls that the Complainant made to the Provider during 2018, namely,

12:43 on 3 May 2018 (in which she requested for the policy documents to be sent to her),

10:34 on 14 May 2018 (in which, after having been sent the policy schedule for 2016/2017, she requested the most recent policy schedule to be sent) and

10:20 on 1 October 2018 (in which she queried her 2018 renewal premium and a reduction was applied).

The Provider notes that the Complainant makes particular reference to a telephone call listed in her mobile phone records at 14:19 on 20 August 2018 and in this regard it notes from its own records that this call was directed to its Instalment Billing Team, although its I.T. Department has been unable to trace a recording of the call.

Accordingly, the Provider is satisfied that it declined the Complainant’s claim in accordance with the terms and conditions of her home insurance policy.

/Cont’d...

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainant's home insurance claim.

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 September 2020**, 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant holds a home insurance policy with the Provider that provides her with **Contents and All Risks** cover in respect of her apartment.

In this regard, I note that the **'Definitions'** section of the applicable Home Insurance Policy Document provides, *inter alia*, at pg. 3:

"Contents

Household goods and Personal Effects belonging to You (or for which You are legally responsible) or belonging to members of your Household and Domestic Employees permanently residing with You, all in the Private House and domestic outbuildings.

Money is included up to a maximum of €650.

/Cont'd...

Any one High Value item is covered for not more than 10% of the Contents sum insured and the total of these items is covered for not more than 50% of the Contents sum insured unless details have been advised to Us and are listed on the Schedule.

Home office equipment i.e. personal computers, printers, facsimile, telephone answering machines and the like, is included for an amount of €3,810 in any one Period of Insurance”.

In addition I note that **Section 3, ‘All Risks Cover’**, of this Policy Document sets out the All Risks cover at pg. 28, as follows:

“The cover

We will indemnify You by payment or, at our option, by reinstatement, replacement or repair, for loss or damage caused to:

- (1) Any item specified in the Schedule up to a maximum of the sum insured shown against the item*
- (2) Jewellery, Photographic Equipment, Personal Effects, Clothing and Sports Equipment up to a maximum of the Unspecified All Risks sum insured shown on the Schedule (limit €2,000 any one item) including Personal Money up to a limit of €650 and Bicycles up to a limit of €320 in any one Period of Insurance”.*

I note that the Complainant *“got an infestation of silverfish in my apartment early last summer [2018] which cost me a lot of expense in pest control and loss of furniture and possessions”* and she submitted a claim to the Provider in the amount of €3,278 (comprising the costs of the Building Surveyor €420, Pest Control €660, Tiler €100 and damaged/destroyed personal items €2,098).

Following its assessment, the Provider wrote to the Complainant on 15 February 2019 to advise that it had declined her claim, a decision it upheld upon review by way of letter the following month, dated 15 March 2019.

The Complainant’s home insurance policy, like all insurance policies, does not provide cover for every eventuality. Rather the cover was subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In addition, I note that the Complainant’s policy provides **Contents** and **All Risks** cover only, insofar as she did not include Buildings cover on her policy.

I note from the documentary evidence before me that in his Report to the Complainant and the Property Management Services dated **28 November 2018**, the Building Surveyor stated, *inter alia*, as follows:

/Cont’d...

"I inspected [the Complainant's] apartment on the 3rd floor. Please note that the communal pipe / soil stack area had been the problem from the beginning of the summer 2018.

Earlier in the year [the Complainant] had to hire [a named Pest Control firm] and it...called and sprayed the bathroom area for silver fish which had spread from the bathroom amongst other infestations...work completed on 20/07/2018.

The apartment also had other infestations and although [the named Pest Control firm] identified the source he did not have access to the pipe stack area which is situated behind the bath and further behind heavy Marble beige tiles which adorn the bathroom ...

[The Complainant] then noticed that the silver fish returned gradually (as [the named Pest Control firm] did not have access to the opening) and 2 weeks later...she called [a different named Pest Control firm] on the 10.08.2018 who re-sprayed the bathroom with a full spray and fogging treating and which is defined in their summary of work (including removing mosquitoes and in one of their 3 invoices as also bedbugs as well as silverfish) ...

The problem began in the months of May / June 2018 for [the Complainant], during the protracted very hot summer. Please note photographs...which show the splashing stains on the black soil stack pipe within the opening in [the Complainant's] bathroom which had been hidden by the Marble tiles. This hidden area now open, gave comfort for insects and silverfish into the wider apartment through pipe cavities, over the concrete floor but under the floorboards into the rooms. This drip splashing which caused the stains...must have continued for some time (unknown) but before and after June 2018 until recently.

Following [the Property Management Services'] phone call to [the Complainant] advising her of the leak, I was contacted to investigate where this leak originated. At the end of October [2018] I inspected [the Complainant's] apartment and noticed dead remains of silverfish and small insects in every room. They increased in number the nearer I came to the bathroom.

Later the opening also revealed the source of the problems. [The Complainant] mentioned that at times the apartment was swarming. I also inspected [the apartment below] on the 2nd floor and took photographs of her bathroom below the opening of [the Complainant's apartment] which showed heavy damp and condensation stains.

I subsequently also spoke to [the apartment above] on the 4th floor and the occupier...said...the plumber and the management company had fixed the holes in the U-bends in the pipes to correct the defects which may indicate more than one pipe and bathroom services and fittings were at fault.

/Cont'd...

Silver fish (and other bugs) enjoy damp warm spaces which are not accessible by humans and they also breed very quickly and can spread throughout an apartment. They are nocturnal and will eat or try to eat wicker and cloth, textiles, leather, books, paper and cardboard etc as well as starchy foods. Dead silverfish were discovered in every room (6 rooms and a cupboard) and the kitchen, as well as bedbugs and other insects.

I was present when...the plumber did his inspection, and we both identified the drop from the level above which caused the splashing on the black pipe ...

In conclusion [the Complainant] has suffered extreme discomfort from at least June 2018, and had to destroy or throw out many personal items some of which had longstanding personal value as well as the financial loss these infestations would incur. Dublin City Council environmental health were contacted in case this was a problem throughout the apartment blocks, although it now seems to be localised ...

[The Complainant's] expenses are as follows:

1. *Inspection of [the risk address]. Removal of last Marble tiles to gain full access after one tile damaged. Impossible to remove without damage due to nature of the position to bath and they were fixed abutting the floor pipes and gold trim holding them in place. Final spraying of internal opened area not completed by [Pest Control] and spraying of selected areas under some floorboards where dead insects proliferate. Removal of dead insects and infected rubble inside opening. Cleaning of all visible areas and organising a tiler and other activities named in this report. Final report and collection of items for the report. **Cost €420 ...***
2. [Pest Control] **Cost €180 ...**
3. [Pest Control] **Cost €480 ...**
4. *Tiler...(please note that re-fixing these Marble tiles in the awkward space behind the bath is time consuming and Marble tiles are harder to cut) **Cost/estimate on his inspection 29.11.2018 = €100***
5. *List of damaged / destroyed items...**Cost €2,098***

Total €3,278.00

[The Complainant] has also suffered stress, annoyance and ill health due to the infestations".

I note that the damage to the Complainant's bathroom ceiling and tiles does not fall under the Contents and All Risks cover of her policy, as such damage falls to be covered by the Buildings section of a home insurance policy, which provides cover for damage to the structure of a home, like the ceilings, the walls and the various fixtures and fittings.

/Cont'd...

In addition, I note that the nature of the works carried out by the Building Surveyor, which includes the costs associated with identifying the source of the water leak, would also be covered under the Buildings section of a home insurance policy.

As the Complainant's policy is limited to **Contents** and **All Risks**, and does not include Buildings cover, I am satisfied that the Provider was entitled to decline this element of the Complainant's claim, in accordance with the terms and conditions of her home insurance policy.

In relation to the damage to the Complainant's personal belongings caused by the infestation and the cost of the works carried out by the pest control services in order to eradicate this infestation, I note that the 'General Exclusions' section of the applicable Home Insurance Policy Document provides, *inter alia*, at pg. 39:

"We shall not be liable for

Wear, Tear and as undernoted

- *Wear, tear, rust or corrosion.*
- *Gradual deterioration or any gradually operating cause.*
- *The cost of maintenance.*
- *Mildew, rising damp, dry/wet rot, moth, **vermin**, atmospheric or climatic conditions.*
- *Damage caused by any process of cleaning, dyeing, repairing or restoring any article.*
- *Mechanical, electrical or electronic defects, breakdown or malfunction".*

[Emphasis added]

I am of the opinion that it was reasonable for the Provider to regard the infestation identified in the Complainant's apartment, as an infestation of vermin which, although not defined within the policy, by any dictionary definition I accept extends to include insects, in addition to small animals.

As the Complainant's policy does not provide cover for loss or damage caused by vermin, I am satisfied that the Provider was also entitled to decline cover in respect of the damage to the Complainant's personal belongings caused by the infestation and the cost of the works carried out by the pest control services in order to eradicate this infestation, in accordance with the terms and conditions of her home insurance policy.

I am also of the opinion that it was reasonable for the Provider to conclude from the information before it that the Complainant's personal belongings were not damaged or destroyed directly by water, and that rather that they were damaged by the infestations that arose as a consequence of the ongoing effects of water damage.

/Cont'd...

In this regard, I note that the **'General Exclusions'** section of the Policy Document provides, *inter alia*, at pg. 39:

"We shall not be liable for ...

Consequential Loss

Consequential loss or damage of any kind except as set out in this Policy".

As a result, although I am conscious that the Complainant will be very disappointed with this, I am satisfied that her home insurance policy does not provide cover for the secondary effects of water damage, such as damp, rot and vermin.

Furthermore, in addition to the fact that the Complainant's home insurance policy provides her with no cover for the particular circumstances of the loss at hand, I note from the documentary evidence before me that the Complainant became aware of the silverfish infestation as early as the Summer of 2018, whereas the Provider notes that she only first notified it of the loss in February 2019.

In this regard, in the event of a claim, the **'Claims - Your Duties and Our Rights'** section of the Policy Document provides, *inter alia*, at pg. 36:

"What You must do

Tell Us IMMEDIATELY of any loss, damage or accident and give details of how the loss, damage or accident occurred. You will be required to produce, at your own expense, all necessary documents and information to support any loss and forward these to Us, together with a completed Claim Form, within 30 days of first notifying Us of the incident".

In the context of the Complainant's comment that *"some of the dates regarding me putting in the claim look wrong"*, I note that the Provider is satisfied from its records that the claim notification date of 11 February 2019 is correct. Having listened to the recording of the telephone call on 11 February 2019 between the Complainant and the Provider, it is notable that the Complainant herself makes no direct reference to any earlier claim notification.

In addition, in relation to her comment that *"I did mention silverfish"* in earlier calls to the Provider, I note that the Provider has identified recordings of three telephone calls that the Complainant made to the Provider during 2018, namely, 12:43 on 3 May 2018, 10:34 on 14 May 2018 and 10:20 on 1 October 2018. Having also listened to these recordings I note that the conversations concerned administrative matters, such as policy documents and premium, and that the Complainant made no reference to the water leak, the infestation or of a possible claim, throughout.

/Cont'd...

I note that the Complainant makes particular reference to a telephone call listed in her mobile phone records at 14:19 on 20 August 2018. In this regard, the Provider has advised that its records indicate that this call was directed to its Instalment Billing Team, although its I.T. Department has been unable to trace a recording of the call. Nevertheless, having listened to the recording of the later call the Complainant made to the Provider on 1 October 2018, I note that she made no reference throughout this call to a water leak, an infestation or of a possible claim, and that rather she was seeking a reduction in her annual premium.

This experience has no doubt been a very stressful one for the Complainant, giving rise to such difficulties for her in occupying her own property. For the reasons outlined above however, the Complainant's policy did not cover her for the losses she incurred and accordingly, I am satisfied that there is no reasonable basis upon which it would be appropriate to 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 October 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

ensures compliance with the Data Protection Regulation and the Data Protection Act 201