



<u>Decision Ref:</u>	2020-0372
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Service
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants hold a **Property Owners** insurance policy with the Provider.

The Complainants' Case

Following initial queries in **April 2020**, the Complainants submitted a claim to the Provider on **11 May 2020**, for loss of rent as their tenant, which trades as a charity shop, was unable to pay the monthly rent in full, due to its temporary closure arising from the outbreak of coronavirus (COVID-19).

The Provider declined this claim on **29 May 2020** as it concluded that the outbreak of a disease is not listed as an insured peril in the **Property Owners** insurance policy and that cover for loss of rent only arises in circumstances where there is actual damage to the property arising from an insured peril.

The Complainants set out their complaint in the Complaint Form, as follows:

“We own the premises...The premises is occupied by [a named tenant trading as a charity shop] and the rental income helps provide us (my family and I) with a living. Since 15 April 2020 we have been advised that [the tenant] are only able to pay 50% of the rental + insurance and that this will be the situation for the foreseeable future. The full monthly amount for rent + insurance is €2,791.66 and so far we are at a loss of €1,395.83. This situation is likely to continue in the months ahead. For us, this is the equivalent to losing a job as [the rent] is our main income”.

In addition, in his letter to this Office dated **10 June 2020**, the First Complainant submits, as follows:

“In March of this year, our tenant...advised us that in keeping with government regulations, it had to cease trading for the foreseeable future.

This meant that it was only able to pay us (the landlords) 50% of the usual monthly figure of €2,790 which comes to €1,395 per month. The usual figure of €2,790 is made up of €2,592 rent and €197.50 insurance. This has been the case for April, May and June [2020], and will most likely extend further until the retail sector returns to some sort of normality.

What [the Provider] should understand is that the income from [our insured premises] is how we make our living and that is the reason we have a loss of earnings clause in our policy: to protect us. We have no claims on our policy and yet the first time we need support from our insurers, we have met with an entirely negative response”.

The Provider’s Case

Provider records indicate that the First Complainant telephoned the Underwriters on **17 April 2020** with questions about the Complainants’ property owners insurance policy with regard to the outbreak of coronavirus (COVID-19) and that he was advised to correspond by email outlining the specific questions, for clarity.

In this regard, an email response from the Underwriters to the First Complainant on **20 April 2020** answered his query *“Am I, the landlord, covered for loss of earnings as in loss of rent until the crisis is over?”*, as follows:

“For cover to operate under the Infectious Diseases extension of business interruption/Loss of rent there must be an outbreak of the disease at the Insured’s premises and as a result of the outbreak there is an order / advice to close the premises by the relevant authority”.

The Provider notes that this was not correct for the **Property Owners** insurance policy and that the Underwriters instead ought to have advised the Complainants that the loss of rent cover only applies in circumstances where there is actual damage to the property, arising from an insured peril.

The Provider says that the Complainants responded to the email of **20 April 2020** stating that they were unhappy with the scope of cover provided by the property owners insurance policy and would like to make a complaint. This complaint was escalated to Commercial Complaints, which spoke with the Complainants by telephone on **24 April 2020**. At this point, the Complainants seemed to accept the limitation of the policy wording as explained to them but were annoyed that the cover was not broader. Whilst the Complainants indicated that they would likely pursue this further, the Provider notes that they made no request to register a claim or speak with a claims representative at that time.

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The Provider says that the Complainants subsequently contacted the Provider on **5 May 2020** seeking a Final Response Letter, which the Provider notes was when its Claims Team was notified.

In this regard, a Senior Complaints Handler wrote to the Complainants on **8 May 2020**, as follows:

“I acknowledge that your initial query surrounding cover should have been passed to our Claims Team for consideration in order for you to be afforded the opportunity to present your claim and to have it investigated thoroughly prior to a decision being made.

Therefore, with a view to considering the matter further and to enable us to make an informed and definitive decision surrounding cover under the Policy we require confirmation from you that you wish to formally proceed with a claim under the Policy and upon receipt of same together with details pertaining to your loss we will have our Claims Team register the matter and appoint a Loss Adjuster in the normal manner on a without prejudice basis, to investigate this claim on our behalf ...

In the interim and as a gesture of goodwill, we are prepared to offer you €250 by way of a Customer Service Award as a result of our delay in registering your claim and assessing it. Should you wish to accept same at this juncture please contact me on the number below/email me to confirm your acceptance whereupon I will arrange the immediate payment of same”.

The Provider says that the Complaints Handler returned the First Complainant’s telephone call on **11 May 2020** as he had rang in response to the letter of 8 May 2020. The First Complainant agreed to have a claim registered for assessment and he also accepted the €250 redress for the delay and furnished his bank account details. This customer service payment was raised and authorised the same day and in addition, a claim was also registered.

The Provider also says that following its assessment of this claim, the Provider wrote to the Complainants on **29 May 2020**, as follows:

“We wish to confirm that the Property Damage section of the Policy provides for cover in the following terms:

“Item on Rent

The Company will pay in respect of buildings which have suffered Damage

*A the loss of rent being
The actual amount of the reduction in the rent receivable by the Insured during the Indemnity Period solely in consequence of the Damage*

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*B the additional expenditure being
The expenditure necessarily and reasonably incurred in consequence
of the Damage solely to avoid or minimise the loss of rent during the
Indemnity Period but not exceeding the amount of the reduction
avoided by such expenditure*

*Except in the event of underinsurance the amount payable shall be
adjusted in accordance with special provision 4".*

*We have carefully considered the Policy and in view of there being no Damage
suffered to the buildings, we regret to advise that we do not consider that the claim
is covered".*

The Provider notes that the **Property Owners** policy only covers loss arising from the perils that are specifically listed in the Schedule. The outbreak of a disease is not listed as an insured peril and cover for the loss of rent only arises where there is actual damage to the property arising from an insured peril. As no insured peril operated, the policy cannot respond and thus the Provider declined the Complainants' claim as it did not fall within the remit of the cover which is clearly set out within the terms of the **Property Owners** policy.

Accordingly, the Provider is satisfied that it declined the Complainants' claim in respect of a shortfall in rent received as a result of their tenant's temporary closure arising from the outbreak of coronavirus (COVID-19), in accordance with the terms and conditions of the Complainants' **Property Owners** insurance policy.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainants' claim in respect of a shortfall in rent received as a result of their tenant's temporary closure arising from the outbreak of coronavirus (COVID-19).

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.

A Preliminary Decision was issued to the parties 1 October 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.

I note that the Complainants hold a **Property Owners** insurance policy with the Provider. The Complainants submitted a claim to the Provider on **11 May 2020** for loss of rent when their tenant, which trades as a charity shop, was unable to pay the Complainants the monthly rent in full, due to its temporary closure arising from the outbreak of coronavirus (COVID-19).

Following its assessment, the Provider declined this claim on **29 May 2020** as it concluded that the outbreak of a disease is not listed as an insured peril in the Complainants' **Property Owners** insurance policy and that cover for loss of rent only arises where there is actual damage to the property arising from an insured peril.

Like all insurance policies, the Complainant's **Property Owners** 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, I note that the '**Insurance Provided**' section of the applicable **Property Owners** policy document provides, *inter alia*, at pg. 10, as follows:

"Item on Rent

The Company will pay in respect of buildings which have suffered Damage

- A *the loss of rent being
the actual amount of the reduction in the rent receivable by the Insured during the Indemnity Period solely in consequence of the Damage*

- B *the additional expenditure being
the expenditure necessarily and reasonably incurred in consequence of the Damage solely to avoid or minimise the loss of rent during the Indemnity Period but not exceeding the amount of the reduction avoided by such expenditure*

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except that in the event of underinsurance the amount payable shall be adjusted in accordance with special provision 4 [‘Underinsurance’]”.

[Underlining added for emphasis]

I am therefore satisfied that the Complainants’ insurance policy only provides cover for loss of rent, where that loss of rent has occurred as a result of damage to the building rented, and that such damage falls under one of the twelve insured perils listed in the **‘Property Damage Insurance - Covers’** section of the policy document at pgs. 5-7.

In this instance, the loss of rent suffered by the Complainants, was not as a result of any damage to the buildings, but instead was as a result of their tenant being unable to pay the monthly rent in full, due to the tenant’s temporary closure arising from the outbreak of Coronavirus (COVID-19). In this regard, I note that the outbreak of a disease does not fall under one of the twelve insured perils listed in the **‘Property Damage Insurance - Covers’** section of the policy document at pgs. 5-7.

As a result, although I appreciate that this will be very disappointing to the Complainants, I am satisfied that the Provider was entitled to decline their claim (in respect of their losses arising from a shortfall in rent following their tenant’s temporary closure arising from the outbreak of COVID-19) in accordance with the terms and conditions of the Complainants’ insurance policy.

I am mindful in this regard that, of the 12 insured perils specified at Pages 5 – 7 of the insurance policy in question, there is a broad range of cover made available, including for fire/explosion, earthquake, riot, storm, impact by a road vehicle, escape of water, subsidence. Nevertheless, the circumstances which led to the Complainants sustaining losses in this instance, quite apart from the fact that those circumstances did arise from damage to the building, were not anticipated in any way by any of the insured perils in question. Accordingly, I can find no evidence of wrongful conduct on the part of the Provider and for those reasons, I do not consider it 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.

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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

23 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

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.