



<u>Decision Ref:</u>	2021-0155
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim Complaint handling (Consumer Protection Code) Poor wording/ambiguity of policy
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a home insurance policy.

The Complainant's Case

The Complainant through his Loss Assessor contacted the Provider on **11 September 2019** to advise that, having noticed that a bedroom ceiling was caving and seeping, opened up the ceiling thinking it to be an escape of water, only to find a bee-hive. The Loss Assessor advised that [pest control] had been called out and that the bees were now gone, but there was damage to the walls and ceilings.

The Provider-appointed Loss Adjuster, later ascertained that it had in fact been a wasp's nest above the ceiling, and emailed the Loss Assessor on **30 September 2019** to advise that as wasps are considered vermin, the damage to the Complainant's property was excluded by the policy terms and conditions and the claim was therefore declined.

The Complainant's Loss Assessor wrote to the Provider on **11 October 2019**, and said:

"Insurers have yet to specify precisely that wasps are vermin. The definition of Wasps and Vermin are outlined below.

A wasp is any insect of the order of Hymenoptera and suborder Apocrita that is neither a bee nor an ant. The Apocrita have a common voluntary ancestor and form a clade; wasps as a group do not form a clade, but are paraphyletic with respect to bees and ants.

Vermin are pests or nuisance that spread diseases or destroy crops or livestock since the term is defined in relation to human activities, which species are included vary from area to area and person to person.

The term "vermin" is used to refer to a wide scope of organisms, including rodents, cockroaches, termites, bed bugs, mosquitoes, ferrets, stoats, sables, rats and occasionally foxes.

Please state... specifically how wasps are vermin, they do not spread disease or destroy crops [or] livestock. Wasps save crops by removing [insects] and they also are valuable pollinators".

We consider clearly that wasps are not vermin".

The Provider wrote to the Loss Assessor on **8 November 2019** to advise that it was satisfied that wasps were vermin and that its position remained that it was declining indemnity.

In this regard, the Complainant contends in the Complaint Form he completed on **15 January 2020**, that the:

"Claim declined by Insurers on the basis that wasps are vermin. Wasps caused considerable damage to our house. The word vermin in [the Provider's] policy should be outlined to what vermin are, otherwise insurers can classify any animal as vermin. Vermin to me are rats and mice, not wasps".

The Provider's Case

The Provider wrote to the Complainant's Loss Assessor on **8 November 2019** to advise that it was satisfied that wasps were vermin and that its position remained that it was declining indemnity. In its Final Response Letter of **8 November 2019**, directed to the Complainant's Loss Assessor, the Provider has said that:

"Your complaint, made on behalf of [the Complainant], concerns our decision to decline liability based on an exclusion for damage caused by Vermin. You note that you are unhappy with this decision as you do not believe wasps should fall under the classification of Vermin.

In addressing your complaint I think that it is helpful in the first instance to summarise the key events as the claim progressed and I have set these out below-

*On the **11th of September 2019** you contacted our office to advise that [the Complainant] had appointed you to act on his behalf. You advised that it had been noticed that the bedroom ceiling was caving and seeping. The insured had opened up the ceiling thinking it was an escape of water and a bee hive was located. [Pest control] had been out, the bees were gone and there was damage to the walls and ceilings.*

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*In Line with standard procedures we appointed [name] loss adjusters to deal with the claim on our behalf. Contact was made with you and an appointment was arranged and carried out on the **24th of September 2019** in the company of the insured.*

During this inspection the adjuster was advised that a bulge and crack had been noticed in the ceiling, when it was touched it was damp. On further investigation the ceiling gave way and a wasp's nest not a bee hive was found. The insured then engaged [pest control] to remove the wasps.

*On the **30th September** the adjuster emailed you to advise that as wasps are considered vermin the damage is excluded by the policy and there would be no cover.*

....

I confirm that I have now completed my review of this file and your complaint

The insurance policy booklet sets out the detailed terms and conditions of the insurance. The insurance policy provides cover when damage occurs to the property, but only in specific circumstances. It will not cover every possible cause of loss or damage and will only do so within the terms and conditions of the policy and where a loss is not excluded by those terms.

Under the General Exclusions, page 32 of the policy booklet Wear, Tear and as undernoted it notes the following:

- 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 climate conditions.*
- Damage caused by any process of cleaning, dyeing, repairing or restoring any article.*
- Mechanical, electrical or electronic defects, breakdown or malfunction.*

We are advised that a bulge was noticed on the ceiling and on investigation it was discovered that a wasp's nest had been lying in the ceiling and the ceiling was cracked and wet with sap".

The Provider has also addressed the Complainant's Loss Assessor's questions advising that:

*"A **Wasp** is defined as a social winged insect which has a narrow waist and a sting and is typically yellow with black stripes. It constructs a paper nest from wood pulp and raises the larvae on a diet of insects. Wasp, any member of a group of insects in the order Hymenoptera, suborder Apocrita, some of which are stinging.*

The Cambridge English dictionary defines vermin as follows:

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Vermin

Small animals and insects that can be harmful and are difficult to control when they appear in large numbers:

Flies, lice, and cockroaches can all be described as vermin.

Source www.dictionary.cambridge.org/dictionary/english/vermin

It is also known that wasps build their nests in dead tree trunks, hollows in walls, attics and air bricks. A wasps nest can sometimes cause damage to a plasterboard ceiling as the nest overtime can become damp thus causing the plasterboard to soften. Wasps can also chew material in close proximity to the nest. Wasp control services are offered by pest control companies across the country. I note on this occasion the insured obtained the services of [pest control] and the wasps were removed.

In response to your comments that wasps do not spread disease or destroy crops or livestock, wasps are known to cause damage to horticultural crops like grapes and stones fruits and predate on bees in managed apiaries impacting home gardeners and industry alike.

Based on the above information I am satisfied that wasps are vermin and the damage caused by them is excluded by the policy....”.

The Provider, in its submissions to this Office dated **17 June 2020**, contends that:

“A wasp is defined as a “social winged insect which has a narrow waist and a sting and is typically yellow with black stripes. It constructs a paper nest from wood pulp and raises the larvae on a diet of insects. Wasp, any member of a group of insects in the order Hymenoptera, suborder Apocrita, some of which are stinging” (Source www.Britannica.com/animal/wasp).

It is also known that wasps build their nests in dead tree trunks, hollows in walls, attics, and air bricks. A wasps nest can sometimes cause damage to a plasterboard ceiling, as the nest overtime can become damp thus causing the plasterboard to soften. Wasps can also chew material in close proximity to the nest.

Although it is not contested the role, wasps play in the environment, when they form sudden infestations in homeowners properties they are classified as vermin, due to the damage that they can cause and due to the aggressive nature they have when disturbed or threatened.

Wasp control services are offered by all pest control companies across the country. I note that the Complainant obtained the services of a pest control company in order to have the wasps removed from the property.

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Our policy does not define every word in the policy booklet. While we do provide a number of definitions relating to policy cover on pages 3-4 of the Policy Document, 'vermin' is not one of them. It would not be feasible to define every term in our policy booklet and we do not believe it was necessary to define this term.

When a term is not defined, the ordinary dictionary meaning of that word applies. The term "vermin" as defined in the Cambridge English Dictionary is:

"Small animals and insects that are harmful or annoying and are often difficult to control"

(Source www.dictionary.cambridge.org/dictionary/english/vermin)

Based on the above information I am satisfied that wasps are vermin and that the damage caused by them is excluded by the policy".

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly declined the Complainant's house insurance claim. The Complainant wants the Provider to "pay the 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 **19 January 2021**, 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.

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Following the consideration of additional submissions from the parties, the final determination of this office is set out below. The Complainant incepted a home insurance policy with the Provider in **2003**, which was thereafter renewed periodically. It is the policy which was in place during 2019 which is relevant to this complaint, and I have included a chronology of events giving rise to this complaint, as follows:-

- **24 August 2019:** The Provider sent the Complainant his renewal documents.
- **10 September 2019:** The Provider wrote to the Complainant and told him that it had amended his policy as requested, and enclosed the renewal documents. (The amendment made has not been specified).
- **10 September 2019:** This is the date of loss as reported by the Complainant's Loss Assessor.
- **11 September 2019:** The Complainant's Loss Assessor telephoned the Provider to report the claim. The Provider's agent took the details of the claim from the Loss Assessor who told the Provider's agent that it would be covered under "*Accidental Damage*". The Provider's agent put the Loss Assessor on hold so that it could look at the policy documentation to see if the Complainant was covered.

The Provider's agent advised that it would send out its Loss Adjuster to view the damage and that it could not confirm cover until then. The Provider's agent also told the Loss Assessor that there was an excess on the policy of €250 and that it would affect the Complainant's No Claim Discount.

- **18 September 2019:** The Complainant's Loss Assessor contacted the Provider-appointed Loss Adjuster to arrange a date for an on-site inspection.
- **24 September 2019:** The Loss Adjuster carried out an on-site inspection, and wrote to the Loss Assessor and told him that it carried out the inspection and sought claim presentation, including mandate and claim papers to progress the claim. The Loss Adjuster also sent this letter to the Complainant.
- **27 September 2019:** The Loss Adjuster wrote to the Provider's Claims Handler seeking clarification from its underwriters as to whether Wasps are deemed Vermin under the "*General Exclusions – Wear/Tear*" heading.
- **30 September 2019:** The Loss Assessor emailed the Loss Adjuster asking if the Provider had given approval for the claim.
- **30 September 2019:** The Provider emailed the Loss Adjuster to advise it "*would consider this bee hive Vermin and it is therefore in order to decline this claim under the Vermin exclusion*".

/Cont'd...

The Loss Adjuster then emailed the Complainant's Loss Assessor to say that the underwriter got back to him saying that *"wasp hive is considered Vermin and therefore excluded! Formal Letter will issue tomorrow"*.

- **30 September 2019:** The Loss Assessor asked the Loss Adjuster to send on the letter that declined the claim so he could challenge it.
- **3 October 2019:** The Loss Adjuster wrote to the Loss Assessor and the Complainant to advise that

"We refer to your recent claim submitted under Accidental Damage. As discussed, your client's claim has been declined and therefore we are unable to progress payment to them by their insurer [the Provider]. The reason for declinature is that damage due to vermin is excluded under the General Exclusions wording of the Policy"

- **11 October 2019:** The Loss Assessor wrote to the Loss Adjuster and asked if he would forward the complaint letter to the Provider, due to its decision to decline liability based on the exclusion caused by Vermin. The Loss Assessor said that the Provider had yet to specify that wasps were considered vermin. The Loss Assessor asked the Loss Adjuster to issue its Final Response Letter and asked for the Provider's procedure for a data access request if it refused to accept liability.
- **15 October 2019:** The Loss Adjuster acknowledged the complaint and told the Loss Assessor that he had referred the matter to the Provider for investigation.
- **18 October 2019:** The Provider wrote to its Loss Adjuster confirming that it would be maintaining the declinature.
- **29 October 2019:** The Loss Adjuster sent its report to the Provider.
- **8 November 2019:** The Provider issued its Final Response Letter noting the Complainant's complaint concerning the Provider's decision *"to decline liability based on an exclusion for damage caused by vermin."*

Policy Terms and Conditions

I note from the terms and conditions of the policy, that the following is specified in relation to the General Exclusions of the policy:

"General Exclusions

We shall not be liable for

Wear, Tear as undernoted

- *Wear, tear, rust or corrosion.*
- *Gradual deterioration or any gradually operating cause.*

/Cont'd...

- *The cost of maintenance.*
- *Mildew, rising damp, dry/wet rot, moth, vermin, atmospheric or climate conditions.*
- *Damage caused by any process of cleaning, dyeing, repairing or restoring any article.*
- *Mechanical, electrical or electronic defects, breakdown or malfunction”.*

I note that the Complainant’s claim was initially assessed by the Provider for specified events as defined in **“Section 1”** and **“Section 2”** of the Policy Document.

The claim was declined based under **“General Exclusions”**, **“Wear, Tear and as undernoted”** within the Policy Document.

The term **“vermin”** is not defined within the policy.

The Complainant, in his submissions to this Office, has submitted that his:

“Claim [was] declined by Insurers on the basis that wasps are vermin, wasps caused considerable damage to our house, the word vermin in their policy should be outlined [as] to what vermin are, otherwise Insurers can classify any animal as vermin. Vermin to me are rats and mice not wasps.”

Home insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In applying the terms and conditions to this complaint, I note that the Complainant’s claim was declined under the following term of the policy:

“General Exclusions
We shall not be liable for:
Wear, Tear and as undernoted

- *Mildew, rising damp, dry/wet rot, moth, vermin, atmospheric or climate conditions”.*

I note that the Complainant appointed Loss Assessor wrote to the Provider on **11 October 2019**, and contends that:

“We refer to the above matter and insurers decision to decline liability based on an exclusion for damage caused by Vermin.

Insurers have yet to specify precisely that wasps are vermin. The definition of Wasps and Vermin are outlined below.

A **wasp** is any insect of the order Hymenoptera and suborder Apocrita that is neither a bee nor an ant. The Apocrita have a common evolutionary ancestor and form a clade; wasps as a group do not form a clade, but are paraphyletic with respect to bees and ants.

Vermin (colloquially varmint or varmit) are pests or nuisance animals that spread diseases or destroy crops or livestock. Since the term is defined in relation to human activities, which species are included vary from area to area and person to person.

The term “vermin” is used to refer to a wide scope of organisms, including rodents, cockroaches, termites, bed bugs, mosquitoes, ferrets, stoats, sables, rats, and occasionally foxes

Please state specifically how wasps are vermin, they do not spread disease or destroy crops or livestock. Wasps save crops by removing insects and they are also valuable pollinators.

We consider clearly that wasps are not vermin and should insurers seek utilize this to escape liability we expect the regulator and a judge would all be equally dismayed by categorizing wasps as vermin”.

I note from the Provider’s Loss Adjuster’s Report dated **29 October 2019**, the following:

“We confirm having review [the Complainant’s Loss Assessor’s] observations and have carried out further research which we outline hereunder.

Wasp, any member of a group of insects in the order Hymenoptera, suborder Apocrita, some of which are stinging. Wasps are distinguished from the ants and bees of Apocrita by various behavioral and physical characteristics, particularly their possession of a slender, smooth body and legs with relatively few hairs. Wasps also generally are predatory or parasitic and have stingers with few barbs that can be removed easily from their victims. Similar to other members of Apocrita, wasps have a narrow petiole, or “waist” which attaches the abdomen to the thorax.

Source www.britannica.com/animal/wasp

The Cambridge English dictionary defines vermin as follows:

Vermin

Small animals and insects that can be harmful and are difficult to control when they appear in large numbers:

Flies, lice, and cockroaches can all be described as vermin.

Source www.dictionary.cambridge.org/dictionary/english/vermin

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The Department of Primary Industries and Regional Development of Western Australia has declared the European wasp a pest due to the damage it causes.

European wasp: declared pest

Page last updated: Thursday, 6 August 2019 – 10.54 am

The European wasp is considered one of the worst wasps in the world – harmful to people, our outdoor lifestyles and to our horticultural and agricultural industries. Suspect European wasp sightings must be reported to our department...

Source www.agric.wa.gov.au/biosecurity-quarantine/european-wasp-declared-pest

It is clear from our investigations that wasps can be classified as vermin as they are an insect that can be harmful and are difficult to control when they appear in large numbers. Which is evidenced by the damage they have caused to the property of the policyholder."

I have considered the respective opinions of the Complainant's Loss Assessor and the Provider's Loss Adjuster. I have also thoroughly examined the policy exclusion, and the various definitions available of vermin and the meaning of the word "insect". Having done so, I take the view that the Provider was entitled, as a matter of contractual interpretation, to decline the claim, on the basis of the "Vermin" policy exclusion.

Nevertheless, in considering this complaint, I am cognisant of the provisions of the **Financial Services and Pensions Ombudsman Act 2017** ("the Act") which prescribes at **section 12(11)** that

"... the Ombudsman, when dealing with a particular complaint, shall act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality or legal form."

I am also conscious that in considering whether this complaint should be upheld, pursuant to the provisions of **section 60(2)** of the Act, I should be mindful that those provisions are identical to the then equivalent provisions of **s.57CI(2)** of the **Central Bank and Financial Services Authority of Ireland Act 2004**, which was the governing legislation of the Financial Services Ombudsman, details of which came under the scrutiny of Mr. Justice Hogan (of the High Court at the time) in *Koczan v FSO [2010] IEHC 407*. Hogan J., having referred to the powers given to the Financial Services Ombudsman, and in advance of quoting from those same provisions, observed:-

"The Ombudsman's task, therefore, runs well beyond that of the resolution of contract disputes in the manner traditionally performed by the Courts. It is clear from the terms of s.57BK(4) that the Ombudsman must, utilising his or her specialist skill and expertise, resolve such complaints according to wider conceptions of ex aequo et bono which go beyond the traditional limitations of the law of contract. This is further reflected by the terms of s.57CI(2) ..."

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Likewise, some time later Hogan J. in *Lyons and Murray v FSO and Bank of Scotland plc, Notice Party HC[2011/22MCA]* commented upon the decision of McMahon J. in *Square Capital Limited v FSO [2009] IEHC407, [2010] 2I.R.514*, noting that:-

“One may venture the suggestion that Koszan and Square Capital represent classic examples of the kind of complaints which the Oireachtas intended would be investigated by the Ombudsman, since they relate to instances of unfair dealing and perhaps even forms of sharp practice for which the ordinary judicial system and the law of contract may provide no adequate remedy.”

I am also conscious of the recent comments of Hyland J. of the High Court on **19 February 2021**, in ***Danske Bank A/S v FSPO and Moore, [2020 121 MCA]***, when she addressed an argument from the Appellant Bank to the effect that, where there was no illegality identified by the FSPO in the conduct of the Appellant, this Office was not entitled to uphold the complaint which had been made. I note that in dismissing that argument, Hyland J. concluded that:

“... this argument fails to recognise the import of the jurisdiction being exercised by the respondent under s.60(2)(b) and (g) of the 2017 Act, which respectively permit him to uphold a complaint on the basis that the conduct was unreasonable, unjust, oppressive, or improperly discriminatory in its application to the complainant or that the conduct complained of was otherwise improper. Having regard to this jurisdiction, it was open to the respondent to uphold the complaint under s.60(2)(b) and (g), irrespective of whether the appellant had acted in accordance with law.

Even where the complainants had signed up to the mortgage documentation and where the appellant had no black letter duty under statute, or “soft” law obligation under a regulatory standard, to give information in a specific form as to the redemption of the tracker mortgage and the inability to return to a tracker rate under the new mortgage, the respondent was still entitled to find an ambiguity and lack of clarity in the information provided. In short, the statutory scheme and the case law on same make clear that the mere absence of a breach of law does not immunise a financial services provider from a finding of unreasonable and improper conduct under s.60(2)(b) and (g).”

Although I have accepted that on a strict contractual interpretation of the policy provisions, the Provider was entitled to decline the claim, I take the view that it was at all times highly unlikely that a policyholder, when reading the policy, whether at the time of inception or at renewal each year, would have formed the opinion that damage caused to the fabric of the building by wasps, would be excluded on the basis of a reference to “vermin”.

Indeed, I am conscious that the Provider’s own Loss Adjuster found it appropriate to write to the Provider seeking guidance as to whether or not the damage caused by wasps, was captured by the exclusion in question under “Vermin”.

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I note that when it wrote to the Provider on 27 September 2019, it raised a query as follows:-

*“Vermin is not specifically mentions (sic) under the AD Exclusions.
We would consider that insurers are looking to exclude on-going damage from woodworm, beetles etc. with the vermin wording.
However, “Vermin” is a catch all definition for all pests.
We would appreciate if Underwriters deem Wasps to be Vermin under this heading?
Thank you.”*

It is noteworthy in my opinion, that notwithstanding the Loss Adjuster’s industry experience, it found it necessary to seek clarification from the Provider on the interpretation of the policy wording. In my opinion, this was not at all unreasonable, given the “catch all” terms in use within the policy exclusions, as a result of which the position was anything but clear. It certainly begs the question as to how a policyholder, with no equivalent industry experience could be expected to understand the exclusion in question.

In my opinion, if the Provider intended to apply such a wide-ranging exclusion to the cover in place, it would have been more appropriate to define the word “Vermin” in a manner which would give a policyholder a better understanding of the limits of the cover in place. The Provider however, failed to provide such information.

In those circumstances, I take the view that it was unreasonable of the Provider to expect the Complainant, as policyholder, to understand the limits of the cover which would be made available by the Provider in the event of a claim, and in that regard, I believe that the Provider has a case to answer to the Complainant.

I am conscious in this regard of the regulatory requirements placed on the Provider by the **Consumer Protection Code 2012** and, in particular, the requirement under Chapter 4 to ensure that all information it provides to a consumer is clear, accurate, up to date and written in plain English, with key information brought to the attention of the consumer in a manner which does not disguise, diminish or obscure important information.

Accordingly, taking into account the Provider’s regulatory obligations, the wording utilised within the policy, the absence of a policy definition to explain the meaning of “vermin” within that context, and the absence of ensuing clarity concerning the extent and limitations of cover, I take the view that it is appropriate to uphold this complaint against the Provider, that it wrongfully declined to admit and pay the Complainant’s claim for benefits, because I take the view that the absence of clarity within the policy conditions, was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Since the Preliminary Decision was issued by this Office on **19 January 2021**, the Provider has pointed to the website of a pest control service used by the Complainant, noting that:

“on the company’s website wasps are noted as one of the “pests” they deal with.”

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The Provider also advised as follows:-

“...we believe that, before contacting us to claim under the insurance policy, the Complainant was made aware of the fact that the wasps that caused damage (sic) his properties were classified as vermin / pest. By contacting the pest control company to remove the wasps from within the property, the Complainant proved to be a reasonable consumer, defined as one who is reasonably well informed and reasonably observant and circumspect, who should expect wasps to be included as vermin.”

I am conscious in this regard that the reference by the Provider to “vermin/pest” is a conflation of what are two different terms. The policy exclusion which had led to this complaint, refers to “vermin” but does not make reference to pests. It is unclear accordingly, as to why the information concerning pest control is sought to be relied on by the Provider, when the phrase at issue between the parties in respect of cover, concerns the word “vermin” only.

The Provider has also sought to challenge the Preliminary Decision of this Office as follows:-

“However, regardless of any party’s judgement as to whether or not a reasonable person would consider wasps to be vermin, we respectfully assert that it is an error of fact to equate a determination that a reasonable customer would not consider wasps to be vermin, with an automatic assumption that the loss caused by them would therefore be covered. As previously advised, the Complainant’s house insurance policy provides cover in relation to loss, damage or legal liabilities which result from one of the insured events as detailed in the policy document, i.e. defined peril. Like most insurance policies, it does not provide cover for all eventualities:...”

The Provider in its submission has listed the defined perils identified at Pages 5 – 9 of its policy together with the additional benefits identified on Pages 10 – 17 of the policy document.

It has concluded that:-

“The damage caused by the nest of wasps to the insured property would not fall under any of the above perils or additional benefits the complainant’s policy offers cover for and therefore the claim cannot be admitted under any of the headings of the policy.”

The Provider added that:-

*“Notwithstanding the vermin exclusion, we would like to highlight the fact that the loss to the Complainant’s property arose and can be classified under the **gradually operating cause** exclusion noted... The building of a wasp’s nest starts in the Spring and it is a progressive process until the end of June, when a nest can contain around 3,000 – 5,000 wasps.*

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The Loss Adjuster noted that the damage to the Complainant's policy ceiling in September was due to the dampness seeping from the nest, allowing moisture to get in, causing the ceiling to give way with a sizeable hole being created. This demonstrates the gradual operating effect of the nest being present in the Complainant's attic for a considerable amount of time, causing the damage as presented in September 2019."

The Provider's submissions in this regard, concluded by asserting that an error of fact had been made by this Office when it overlooked the following:-

- The Complainant was aware before submitting the claim that wasps that cause damage to property are classified as vermin;
- The loss that occurred did not arise from any of the defined perils covered by the policy,
- The loss that occurred that arose from a gradually operating cause which is excluded by the policy.

I note that one of the defined perils at pages 5-9 of the policy, which are listed by the Provider in its recent submission to this office after the Preliminary Decision had been issued, is the insured peril of ***"Accidental Damage (where indicated as covered in the Schedule)"***

I also note that when the Loss Adjuster assessed the claim and replied to the Complainant's representative on **3 October 2019**, it specifically addressed the claim submitted for Accidental damage. I note that in responding to that claim the Provider's Loss Adjuster confirmed that

"the reason for declinature is that damage due to vermin is excluded under the General Exclusions wording of the policy... vermin."

In that regard, I further note that it was not suggested at that point by the Provider's loss adjuster, that the loss which occurred did not arise from any of the defined perils covered by the policy. Neither was it indicated to the Complainant at that juncture, that the loss that occurred, had arisen from a gradually operating cause.

I have also had regard to the Provider's Final Response Letter issued to the Complainant's representative on **8 November 2019** which addressed the Complainant's complaint concerning:-

"Our decision to decline liability based on an exclusion for damage caused by vermin..."

I am satisfied that again, within the Provider's Final Response Letter, it did not suggest that the claim had been declined for reasons of a gradually operating clause. Neither was it suggested at that time that the loss which occurred, did not arise from any of the defined perils covered by the policy.

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As noted above, the Policy Document includes cover provided under **Section 1 “Premises and Contents”** which identifies **“Accidental Damage (where indicated as covered in the Schedule)”** as an insured peril. This peril excludes any loss of damage to the premises other than to the private house and there are a number of other specific exclusions to a claim for accidental damage, including any damage:

“which comes within the terms of any exclusion or limitation set out in this policy including, but not limited to, Paragraphs (1) to (11).”

It would appear to me from the evidence that the Provider assessed the Complainant’s claim under the insured peril of Accidental damage, and having done so, it formed the opinion that it was appropriate to decline the claim because of the General Exclusions within the policy which make it clear that the Provider will not be liable for

“wear, tear and as undernoted... mildew, rising damp, dry/web rot, moth, vermin, atmospheric or climatic conditions....”

Whilst the Provider now seeks to introduce other reasons why the claim ought to have been declined, I note that when the claim was originally declined, these were not the reasons relied upon by the Provider. Rather, I am satisfied that the Provider assessed the claim under the heading of Accidental Damage and determined that it was appropriate to decline the claim relying on the exclusion identified, on the basis that wasps are vermin. This is the conduct of the Provider that gave rise to the complaint to this Office, and which is the subject of this investigation.

As outlined above, I am satisfied that as a matter of strict contractual interpretation, on the terms and conditions of the policy, the Provider was entitled to decline the claim in question on the basis of the *“vermin”* policy exclusion referred to. For the reasons explained however, I take the view that the absence of a definition of the word *“vermin”* is very confusing and is likely to lead to an absence of understanding by a policyholder as to the damage which will or will not be excluded by the policy exclusion in question.

The Provider indeed has pointed to a previous published decision of this Office (2020 – 0348) where it was accepted by the FSPO that a claim arising from an infestation of silverfish, was excluded by the policy exclusion in question for *“vermin”* and therefore the complaint was not upheld. It is clear accordingly that the Complainant in this current matter, is not the only policyholder who has had cause to question the Provider’s interpretation of the word *“vermin”*.

In my opinion, it is quite possible that any number of individuals would have varying and different understandings as to what is, and what is not, included in the term *“vermin”*; the Provider’s own Loss Adjusters sought clarity as to whether wasps should fall within that term. It is notable indeed that in responding to the Preliminary Decision the Provider has considered it appropriate to introduce the word *“pest”* notwithstanding that it does not appear in the relevant exclusionary clause.

/Cont’d...

Taking all of these submissions into account, and mindful of the absence of a clear definition to the word “*vermin*”, giving the policyholder clear and accurate information as to what will and what will not be considered to be “*vermin*”, I take the view that this policy wording has led to very considerable confusion. I am satisfied that at the time of renewal of this policy it was unlikely that the policyholder will have understood that the exclusionary clause relied upon by the Provider at the time when the Complainant’s claim was declined, excluded damage caused by wasps. I consider that the absence of clarity within the Policy Document as to the meaning of the word “*vermin*” was unfair, as it failed to give the policyholder an ability to clearly understand the limits of the cover being purchased at the time of renewal. In my opinion, the manner in which the exclusion was drafted was unreasonable and unjust in the manner anticipated by **Section 60(2)(b)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

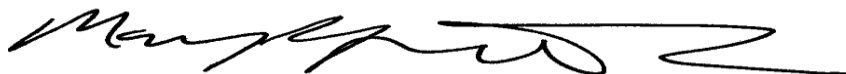
I am firmly of the opinion that it will be appropriate for the Provider to review its policy wording with a view to amending this particular exclusionary clause, to ensure that its policyholders can form a more clear understanding of the extent and the limitations of cover offered by the policy, in the type of circumstances which have given rise to this complaint. It would be useful in that regard, for the Provider to clarify precisely what is, and what is not, included by the word “*vermin*”, whether or not such species would also be identifiable as pests.

In all of the circumstances, I find that it is appropriate to uphold this complaint that the Provider wrongfully declined the Complainant’s claim in reliance on the particular exclusionary clause. To mark that finding, I consider it appropriate to direct the Provider to admit the claim for assessment of benefit on the basis that the loss is not excluded from cover by the clause referring to “*vermin*” as suggested by the Provider when the claim was originally declined in October 2019, and at the time that the Final Response Letter issued in November 2019.

Conclusion

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b), (c) and (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the ***Financial Services and Pensions Ombudsman Act 2017***, I direct the Respondent Provider to rectify the conduct complained of, by admitting the claim on the basis that the loss is not excluded from cover, and assessing the claim for payment of benefit as soon as possible.
- 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.



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

19 May 2021

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.