



<u>Decision Ref:</u>	2022-0074
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants hold a mortgage payment protection policy with an insurance company (the “**Provider**”).

The Complainants’ Case

The Complainants incepted the policy in **2003**. They assert that in **March 2020** the First Complainant was self-employed “*when suddenly the country was placed into lockdown ...[and] business literally fell off a cliff overnight.*” The First Complainant says that he “*suddenly had no income.*” The Complainants assert that they availed of the Pandemic Unemployment Payment and a mortgage payment break from their mortgage provider. The Complainants state that they contacted the Provider to make a claim under their mortgage payment protection policy but were advised that it was “*extremely busy with claims and this would take a considerable amount of time to process.*” The Complainants contend that they completed forms and uploaded them to the Provider's website.

The Complainants say that they received correspondence from the Provider dated **10 June 2020**, stating that due to their failure to reply to their letter dated **6 May 2020**, it was withdrawing the claim unless [the Complainants] contacted them within 7 days.

The Complainants contend that they did not receive the Provider's email dated **6 May 2020**. They submit that upon receipt of the letter of **10 June 2020** they logged on to the Provider's website but their claim had "*vanished*." The Complainants says that at this point the Provider advised them that "*it could not proceed with the claim because [it] did not have all the necessary documents*."

The Complainants assert that the requested information was obtained from their accountant and emailed to the Provider but that they were advised by the Provider that further evidence was required in order to proceed with the claim - they "*had to prove [The First Complainant] had Permanently ceased trading*."

The Complainants further assert that the Provider's "*claims process is vague and their lack of communication with clients seems very underhand and nebulous. The missing email and letter date 26th May and the taking down of my claim from their website felt like a deliberate stalling tactic*."

The Complainants submit that they:

"tried to explain how I could possibly know if the business had 'permanently ceased as we were in the middle of a national lockdown, where trading for me was impossible. Getting no satisfaction I asked to speak to someone more senior. I was passed on to a more senior person and they repeated the same requirements. They were asking me to 'permanently' cease trading as [Business Name] Sole Trader. The request made no sense. I had to prove that I would never work again as a sole trader? My accountant agreed this made no sense at all. I would think it was in their interest that I would start working again as soon as the lockdown was lifted."

The First Complainant further contends that:

"They also alluded that I did not supply them with all the documents that were requested. From my point of view I supplied them with the document that they asked for at the time. I supplied letters from my accountant, filled in their Employers Statement form, signed and stamped by my accountant and the local social welfare office. I also supplied the Income Tax Cessation of Business Notice at their request... They claim the forms details were never removed from their website. I still stand by that, however I cannot prove that as the time has lapsed and I have no evidence to share. I tried to log on to the site on 19.06.20 but my details were gone. They also claim that they sent an email (06.05.20) reminding me that my claim will be withdrawn if certain documents were not provided. Again this is something I cannot provide any evidence for. The only documents I didn't or could not supply is the evidence that my business ceased trading 'permanently' and that it was overseen by a liquidator."

The Complainants are seeking a resolution to this complaint.

The Provider's Case

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The Complainants inception their mortgage payment protection in 2003 and the Provider has owned the Complainants' mortgage payment protection policy since **1 December 2015**.

The Provider submits that *"the policy does not cover self-employed persons for being temporarily out of work."* It relies on its **Terms & Conditions** and says that:

"The customer does not fulfil the criteria of the wording highlighted as he is not under any insolvency and he has not stopped trading due to inability to pay its debts, he is unable to work due to Covid restrictions."

The Provider, in its **Final Response Letter**, wrote to the Complainant on **29 July 2020** and said as follows:

*"Your Unemployment Claim Form was received by [Provider] on 28th April 2020 and upon review, we contacted you via e-mail on 6th May 2020 to advise that we require evidence to confirm as per the terms & conditions, that your business had permanently ceased trading. On 11th June 2020, you contacted our office for an update on your claim and a claims administrator advised you of that evidence that was required in order to fully assess your claim. You advised that you did not receive any correspondence from us. Our records show that an e-mail was issued to you from our office on 6th May 2020 requesting the further information
On 22nd June 2020, you contacted our office and you advised that your business has not ceased trading completely."*

The Provider submits that:

"The policy does cover self-employed persons, however the success of a claim is dependent on whether or not the customer meets the terms and conditions of the policy in the circumstances giving rise to the claim. The onus is on the customer to familiarise themselves with the policy terms and conditions provided to them at the policy inception. Yearly renewal letters are sent to the customer and in the event that the customer requires a copy of the policy terms and conditions, these can be provided upon request either by email or by post."

and

"[Provider] does not accept that it proffered poor customer service, claims handling or communications to the customer. All correspondence received by [Provider] was assessed within 5 working days of receipt and in line with the terms and conditions of the customers' policy. The appropriate chase letter was sent to the customer when a reply was not received from the customer to our email of 06.05.2020. [Provider] can confirm that the letter of 10.06.2020 did not state that the claim would be withdrawn within 7 days.

At no point was the customer advised that it would take a considerable amount of time to process the claim. Claims forms are standard part of claims assessment

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procedure and are a requirement for [Provider] to process claims in-line with the policy terms and conditions. The customer was advised that [Provider] required evidence that he had permanently ceased trading as required by the policy terms and conditions."

The Provider rejects the Complainants' suggestion that "it proffered poor customer service, claims handling or communications to the customer" and states that it abided by its **Terms and Conditions** in refusing to cover the Complainants' claim.

The Complaint for Adjudication

The complaint is that the Provider provided poor customer service to the Complainants from **May 2020** onwards, including poor provision of information, poor communication and poor claims handling.

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 on **8 February 2022**, 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 have noted the **Terms and Conditions** of the policy. At **Section 4 "Involuntary Unemployment Cover"** on page 16 of the document, it contains a number of sub-headings, one of which is headed "**Self-Employed**", and provides as follows:

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“Self-employed

You are eligible to make an involuntary unemployment claim if you have involuntarily stopped trading because your business's assets cannot pay its debts, other liabilities and expenses, and you have told the Irish Revenue Commissioners or the HM Revenue and Customs about this.

You must provide us with written confirmation from a certified auditor confirming that the business involuntarily stopped trading through no fault of yours. You will not be able to make an involuntary unemployment claim unless your business:

- has stopped trading or is in the process of being wound up (or both); and*
- is under the control of an insolvency practitioner; or*
- is a partnership which has been or is in the process of being dissolved.”*

I also note the Provider’s renewal notice which advised the Complainants:

“With [Mortgage Provider’s] Repayment Cover, you can be confident that your monthly mortgage repayments will be paid should you be absent from work due to Disability or Involuntary Unemployment. Even if you are paid from work while you are out sick, we still pay your monthly benefit, subject to the terms and conditions of the policy”

[My underlining for emphasis]

The Provider’s yearly renewal letter states:

"We've enclosed the details of what's covered on the attached policy schedule. We would ask that you read the documents carefully to make sure that you're happy with your cover and store them in a safe place."

I am satisfied on an assessment of the evidence that the Complainants were on notice of the Terms **and Conditions** attached to the policy and that they were reminded to ensure that they were happy with the cover in their yearly renewal letter from the Provider.

I note from the audio evidence that the following conversation took place during a telephone call of **11 June 2020**:

First Complainant: *“once the lockdown is open, I hope to get up and running again, to resume trading, it is almost virtually impossible for me to trade at the moment or it is very difficult....”*

Provider Agent 1: *“it would have to be received in writing from the revenue.”*

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First Complainant: *"I would need a letter or a correspondence from the revenue commissioner to say that the business has ceased trading."*

Provider Agent 1: *"yeah."*

In addition, I note that the following conversation took part during a telephone call of **19 June 2020**:

First Complainant: *"what I have here is an income registration form here with a number beside it, from the revenue, effectively a stamp, you are looking for a letter, an actual written letter from the revenue commissioner."*

Provider Agent 2: *"or your accountant, to state that you have permanently ceased trading."*

[My underlining for emphasis]

First Complainant: *"now, I have uploaded a letter from my accountant, dated 16 April...you need a further letter from my accountant saying I have ceased trading..."*

...

Provider Agent 2: *"as you can imagine, we are getting hundreds of these forms on a daily basis, the covid claims have put us to our limit for these claims, it's a national emergency, no one expected this level of paperwork to come through."*

The First Complainant submitted the following (in bold as noted below) in relation to the Provider's **Terms and Conditions**:

"you must provide us with written confirmation from a certified auditor confirming that the business involuntarily stopped trading through no fault of yours. You will not be able to make an involuntary unemployment claim unless your business...

- has stopped trading - **Yes because of a Government Enforced Lockdown***
- or is in the process of being wound up (or both) - **At the time yes, there was no revenue or cash flow***
- is under the control of an insolvency practitioner - **Why? I'm a sole trader, no debts, no assets - the Income Tax. Cessation of Business Notice should have sufficed.***
- is a partnership which has been or is in the process of being dissolved - **It's not a partnership.**"*

The First Complainant added that:

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"They wanted me to prove that the business as "permanently" wound up and would never operate again. That was something that was impossible for me to prove in the middle of a government enforced lockdown of the economy. There is no mention of the word 'permanent' in the terms above."

I note that the hurdle the Complainant had to overcome to avail of the mortgage protection insurance benefit under the policy, was that he had to have "*involuntarily stopped trading **because your business's assets cannot pay its debts, other liabilities and expenses***".

Additionally, the Complainant had to prove that the business "*told the Irish Revenue Commissioners or the HM Revenue and Customs about this.*" He was also required to "*provide [the Provider] with **written confirmation from a certified auditor confirming that the business involuntarily stopped trading through no fault of yours.***" The test was therefore for the Complainant to show that *he "has stopped trading or is in the process of being wound up (or both); **and** is under the control of an insolvency practitioner."*

I note that an income tax registration form has been submitted which is dated **17 March 2020** and which notes that "*reason for cessation: ceased trading*" and "*current means of livelihood: Covid payments....Status: Success.*"

I note that the Provider informed the First Complainant by telephone call on **11 June 2020** that "*it would have to be received in writing from the revenue*" but no such letter is noted from the evidence made available to this Office. I note the contents of the **Employer's Statement**, completed by the Complainant's Accountants.

I am conscious that the word *permanent* does not appear in the Provider's **Terms and Conditions** to describe the status of the cessation of trading. Whatever the consequences of that word not being used, there is, however, no evidence available either of a **temporary** cessation in trading by the Complainant.

By telephone call of **11 June 2020**, the Complainant told the Provider that "*it is almost virtually impossible for me to trade at the moment or it is very difficult.*" I note that the Complainants submit that "*there was no revenue or cash flow*" but there is no evidence of this having been submitted to the Provider, nor does any statement from the accountant regarding cash flow, appear in the evidence submitted to the provider, or to this Office. There is no evidence regarding losses or periods of loss to quantify any potential loss, for the purpose of a claim.

I do not accept that there was any evidence submitted to the Provider, in support of the claim, beyond the Complainant's own assertions, that he "*involuntarily stopped trading.*" I also note that there is no evidence (beyond an **Employer's Statement** from his Accountant) that an Auditor confirmed that "*the business involuntarily stopped trading through no fault of yours.*"

The test to be met under the policy, is that the Complainant must prove that *he “has stopped trading or is in the process of being wound up (or both); **and** is under the control of an insolvency practitioner.”* There is no evidence that the Complainant’s business was under the control of an insolvency practitioner. In my opinion, therefore, the Provider was entitled to decline the claim on the basis that there was no evidence to show that the criteria laid down in the policy had been met.

It is unusual and unfortunate that the Complainants advise that they received correspondence on **10 June 2020** but didn’t receive correspondence in the month before (on the **6 May 2020**) sent to the same address.

I do not accept that the Provider erased an online claim form, to prevent the Complainants from claiming. Although the Provider *states that “at no point was the customer advised that it would take a considerable amount of time to process the claim Claims forms”* I note that the Complainant was also informed by telephone call on **19 June 2020** that *“as you can imagine, we are getting hundreds of these forms on a daily basis, the covid claims have put us to our limit for these claims.”* Nevertheless, it seems that no actual delay occurred in the Provider’s customer service and I am satisfied that the Provider acted with *due skill, care and diligence in the best interests of its customers* and that the Provider was not in breach of its obligations pursuant to Sections 2.2 of the **Central Bank’s Consumer Protection Code, 2012 (as amended)**.

In summary, I accept that the Provider acted in accordance with the **Terms and Conditions** and its obligations pursuant to the **Central Bank’s Consumer Protection Code, 2012 (as amended)** when it declined to admit and pay out the Complainants’ mortgage protection claim. The evidence available does not support the suggestion that the Complainant had met the policy criteria for benefit to be paid.

In reviewing the evidence before me however, I have noted what I consider to be poor policy wording liable to cause confusion to policyholders when they were seeking to make their claim. For that reason, I wrote to the Provider by letter dated **13 December 2021** referring specifically to the *“At a glance”* provisions of the policy which do not include any reference to the very specific requirements to be met for self-employed individuals seeking to claim benefits.

I pointed out that benefit for involuntary unemployment is payable to a self-employed individual only in the event of that person’s business being effectively wound up and that the terms and conditions on Page 16, referred to benefit becoming payable in the event of a policyholder’s *“business involuntarily stopped trading through no fault of yours”*.

In those circumstances, I put the following matters to the Provider seeking the Provider’s response and comments:-

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- (i) *the policy provisions at Pages 3 – 5 of the policy document, fail to adequately alert a self-employed policyholder to the very specific policy conditions to be met for benefit to become payable in the event of a claim under the heading “Involuntary Unemployment” and*
- (ii) *the inclusion of three bullet points in the policy provisions at page 16, quoted above creates the impression that benefit will be payable to a policyholder in three different sets of circumstances, including a policyholder who is self-employed if that person’s business “has stopped trading or ...”.*
- (iii) *The absence of the word “permanently” within the policy provisions creates the impression that benefit will be payable in the event of the cessation of trade on a temporary basis.”*

I drew the Provider’s attention to its obligations under Chapter 4 of the CPC to ensure that all information provided to a consumer is “clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.”

I put it to the Provider that the manner in which the information regarding cover for **Involuntary Unemployment** for a self-employed individual, is not adequately drawn to the policyholder’s attention and that the format of the policy conditions work to obscure critical information regarding the very specific criteria to be met, to be eligible for payment of benefits for “Involuntary Unemployment” in the event of being self-employed.

The Provider responded the following day indicating disagreement with the suggestion that Pages 3 – 5 of the policy failed to alert a policyholder to the very specific policy conditions, because, it pointed out, it states at the bottom of Pages 1, 2, 3 and 4 that “Full details of terms, conditions and exclusions are contained in the document”. The Provider was satisfied that Page 16 of the policy document correctly outlines the situations in which a self-employed customer can make an involuntary unemployment claim on the policy.

The Provider also pointed out that although the word “permanently” was not used in the policy document, it relied on the actual words used within the policy document at Page 16.

In my opinion however, the policy wording is written in a way which will potentially cause confusion to a self-employed policyholder. I also take the view that the manner in which the policy wording is set out lacks clarity, and could cause misunderstanding to such a policyholder.

In my opinion, if the Provider is of the position that a cessation of trade on a **permanent** basis is required to qualify for benefit, the use of the word “permanently” within the policy terms and conditions would be useful and helpful to its policyholders, and I would urge the Provider to review its policy wording with a view to making the criteria for cover more clear in that respect to its self-employed policyholders.

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I note that page 18 of the Terms and conditions anticipates the potential implementation of amended policy wording, to make the provisions clearer, and I would therefore urge the Provider to give consideration to making suitable amendments to address those provisions that I sought clarification and commentary on, in the course of this investigation.

Insofar as the Complainants' complaint is concerned however, bearing in mind the limits of the evidence which the Complainants made available to the Provider in support of the claim made on the policy, I am satisfied that the Provider was entitled to maintain the position which it did. In those circumstances, and as I do not accept that there was poor customer service to the Complainants, 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.

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
Financial Services and Pensions Ombudsman (Acting)

2 March 2022

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.