An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0155
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Rejection of claim - storm Claim handling delays or issues Disagreement regarding Settlement amount offered
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant holds an insurance policy with the Provider and this complaint arises out of a claim made by the Complainant, following loss sustained at his premises, arising from a storm in January 2019.

The Complainant's Case

On **13 March 2015,** the Complainant incepted a policy with the Provider through a Broker. The policy covers the following: material damage; business interruption; glass; employer's liability and public liability.

Under the material damage section of the policy, the following perils are covered: fire, lightening, explosion, earthquake, riot, storm, flood, water, impact, sprinkler, accidental damage, subsidence and theft.

The Complainant says that on **26 January 2019**, a storm occurred which he says caused damage to his commercial premises' signage. The Complainant advises that it is *"clearly written*" on his insurance policy that he is covered for storm damage, sign damage and interruptions. The Complainant submits that his tenants carried out some work on his property, which "*was nothing to do with the claim.*" The Complainant further submits that the Provider's loss adjuster ("**LA**") requires the receipt for this work and a copy of the

agreement he has with his tenants, but the Complainant contends that this "*does not concern*" the LA.

The Complainant asserts the following:

> "*[Provider] should honour their policy that covers for storm damage, I own the property and any damage caused by storm or other is my responsibility and my insurance should cover the cost. The tenants carried out work that has nothing to do with the claim and the loss adjustor is looking for the receipt. He also wants my agreement with the tenant that does not concern him. It is clearly written on my policy that I am covered for storm damage, plus signs, plus interruptions and [Provider] should honour same*."

The Complainant submits, by letter to his Broker dated **21 November 2019**, the following :

> "*I found it impossible to deal with [LA]. [LA] is saying that the lettering does not belong to me. In 2015 the restaurant was transferred from retail to restaurant and is registered to [Complainant] as owner of same. The present tenant is the second tenant to rent the restaurant. When I rented the premises to the present tenant the sign was in place so the sign is part of the rented agreement from me.*
> *So that should not be a problem for [LA]. My insurance covers the sign and loss of revenue, I'm only claiming revenue for duration of the work been carried out.*
> *My policy states that I am covered as a restaurant & 2 apts overhead.*
> *My agreement with the tenant is to insure internal own equipment and public liability….*
>
> *it was a month after I reported it to [Broker] when [LA] came on site during that time it rained very heavy. He then went on holidays for another month giving no instruction what to do. I then got a builder to price the work his estimate was keen and I told them to go ahead and he did a very good job. Then [LA] made their own estimate which is not acceptable. And when I refused same they are threatening to hike up my insurance."*

The Complainant states that he has found the process "*very stressf*ul." The Complainant asserts that the Provider should pay his claim for the total sum of **€5,453.30** (five thousand, four hundred and fifty three euro and thirty cents).

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The Provider's Case

In its **Final Response Letter,** dated **20 March 2020,** the Provider advises that a site inspection took place between the LA and the Complainant's public loss assessor on **7 February 2019**. The Provider states that "*the damage sustained included signage and lettering to the shop front.*" The Provider contends that as the "*lettering aspect is typically deemed a tenant improvement item*" and that its LA requested a copy of the lease agreement held between the Complainant and the tenants. The Provider advises that this would "*confirm if the lettering was [the Complainant's] responsibility and therefore, needed to be included in the scope of works of the settlement offer*."

The Provider submits that the amount of €750.00 (seven hundred and fifty euro) included as part of the claim, was for compensation for the Complainant's tenants' "*loss of business incurred, when repair work was carried out."* The Provider advises that the Complainant's tenants must claim this under their own insurance policy and noted that there was "*no loss of rental income*" for the Complainant.

The Provider submits that its settlement offer of **€3,000.00** (three thousand euro) covers the sign frame only and associated repair costs. The Provider further submits that the decoration of the external shop front, was excluded from the settlement offer, as it was not damaged. The Provider contends that it is unable to validate the Complainant's incurred costs of €5,653.80, as the invoices and contact numbers requested by the LA, had not been forthcoming. The Provider asserts that:

> "*As per the policy document the policy holder is covered for the loss of rent receivable however in this instance there has been no loss of rental income by the insured for which to claim for. There is no provision under this policy to cover any loss of business for the tenant who occupies the premises. They would be required to have their own insurances in place and would need to contact their own Insurer in relation to any Business interruption claim they may have*."

The Provider says that "*the policyholder has not fulfilled their obligations with respect to the claims condition of furnishing the relevant documentation and evidence to support his claimed loss*." The Provider also notes that the claim is now closed, as the settlement offer was not accepted but should the insured wish to accept the offer, the claim can be re-opened and payment can be issued.

The Complaint for Adjudication

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The complaint is that the Provider wrongfully declined full payment of the Complainant's claim for storm damage to his property in **January 2019**.

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 **11 April 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.

The Provider relies on the following provisions of its terms & conditions housed in its **Policy Document**. I note that Page 32 of the **Policy Document** states:

> "***Business Interruption***
> *"if damage occurs at the premises to property used by you for the purpose of the business and causes interruption of or interference with your business at the premises we will pay for loss of rent receivable defined in the cover details schedule resulting from interruption or interference caused by the damage provided that:*
> ** at the time of the damage there is an insurance policy in force covering your interest in the property at the premises against such damage and that payment shall have been made or liability admitted under that policy or payment would have been made or liability admitted had it not been for operation of a proviso in such insurance excluding losses below a specified amount."*
>
> [My emphasis]

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Page 13 of the **Policy Document** states:

> "*Claims Conditions:*
> *2 Non- Liability Claims - in the event of damage you shall…. deliver to us at your Expense….*
> ** all such proofs and information relating to the claim as may reasonably be required*."

Further provisions at Page 7 of the **Policy Document** sets out the definition of "BUILDING(S)" as follows:

> "*the BUILDING(S) of the PREMISES being built of bricks, stone or concrete and roofed slated, non-combustible tiles, concrete, asphalt, metal or sheets of slabs composed entirely of non-combustible mineral ingredients including:*
> • *residential accommodation and outbuildings used in connection with the business or for domestic purposes*
> • *walls, gates, fences and hedges around the BUILDINGS(S) and belonging to them*
> • *tanks, drains, pipes and cables servicing the PREMISES*
> • *landlords fixtures and fittings.*"

I have also considered the General Conditions of the policy at page 9 of the **Policy Document** which make clear that:

> *"8. Other Insurances*
> *If at the time of the claim there is any other policy covering the same property or occurrences insured by this policy, we will be liable only for our proportionate share. If any other such policy has a provision preventing it from contributing in the like manner, our share of the claim shall be limited to the proportion that the sum insured bares to the value of the property insured."*

Pages 26 - 31 of the **Policy Document** set out the "***MATERIAL DAMAGE CLAUSES***" and this includes, at Page 30:-

> "***25. Reinstatement Clause***
> *In the event of DAMAGE to BUILDING(S) and PLANT AND MACHINERY FIXTURES AND FITTINGS (other than Motor Vehicles, Employees, Pedal cycles*
> *and other Personal Effects) insured the amount payable is calculated on the reinstatement costs of the individual items of property destroyed or DAMAGED. For*

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the purpose of insurance under this clause Reinstatement shall mean the carrying out of the following work:-
…
Where property is DAMAGED:

* *The repair of the DAMAGE and the restoration of the DAMAGED property to a condition substantially the same but not better or more extensive than its condition when new.*"

I am also conscious that the Central Bank of Ireland's Consumer Protection Code, 2012 (as amended) ("CPC") is relevant and provisions 4.1 and 4.21 of the **CPC**, at page 21 and page 24, says as follows:

"*4.1 A regulated entity must ensure that all information it provides 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.*

4.21 Prior to offering, recommending, arranging or providing a product, a regulated entity must provide information, on paper or on another durable medium, to the consumer about the main features and restrictions of the product to assist the consumer in understanding the product.."

Provisions 7.6, 7.15, 7.16. 7.19 and 7.20 of the **CPC**, at page 49 - page 52, say as follows:

"*7.6 A regulated entity must endeavour to verify the validity of a claim received from a claimant prior to making a decision on its outcome.*
…

7.15 A regulated entity must ensure that any claim settlement offer made to a claimant is fair, taking into account all relevant factors, and represents the regulated entity's best estimate of the claimant's reasonable entitlement under the policy.

7.16 A regulated entity must, within ten business days of making a decision in respect of a claim, inform the claimant, on paper or on another durable medium, of the outcome of the investigation explaining the terms of any offer of settlement.
When making an offer of settlement, the regulated entity must ensure that the following conditions have been satisfied:
a) the insured event has been proven, or accepted by the regulated entity;
b) all specified documentation has been received by the regulated entity from the claimant; and

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c) the entitlement of the claimant to receive payment under the policy has been established.

…

7 .19 If the regulated entity decides to decline the claim, the reasons for that decision must be provided to the claimant on paper or on another durable medium.

7.20 A regulated entity must provide a claimant with written details of any internal appeals mechanisms available to the claimant."

I note that under the material damage and the business interruption sections of the policy the insured has cover for storm damage. I note that the **Policy Document** covers a scenario where "*damage occurs at the premises to property* ***used by you*** *for the purpose of the business and causes* ***interruption of or interference with your business*** *at the premises*." Consequently, I am satisfied that the **Policy Document** does not cover interruption or interference with the business of anyone other than the Complainant i.e. it excludes losses of that nature experienced by the tenants and in any event does not cover gestures of goodwill such as the payment made by the Complainant to his tenants, for interruption due to works.

The insurance policy notes that the building is used as a restaurant but nevertheless it excludes those occupiers under the heading "*business interruption*." The attached **Schedule of Cover** says as follows:

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MATERIAL DAMAGE ALL RISKS
BUILDINGS €300,000
FIRE BRIGADE CHARGES €6,500

BUSINESS INTERRUPTION
LOSS OF RENT RECEIVABLE €45,000
12 MONTHS INDEMNITY PERIOD

PUBLIC LIABILITY
LIMIT OF INDEMNITY €6,500,000 ANY ONE EVENT

EMPLOYERS LIABILITY
COVERING CASUAL AT OWN PROPERTY REPAIRS
LIMIT OF INDEMNITY €13,000,000

POLICY EXCESS: €250

PLEASE CHECK THE ABOVE DETAILS FULLY AND ENSURE THAT SAME MEETS YOUR INSURANCE REQUIREMENTS. SHOULD THERE BE ANY ALTERATION TO THE OCCUPANCY OF THE PROPERTY. PLEASE CONTACT US IMMEDIATELY.

PLEASE NOTE SHOULD YOU ENGAGE ANY CONTRACTOR TO CARRY OUT WORK ON THE PREMISES, YOU MUST ENSURE THAT SUCH A CONTRACTOR HOLDS THEIR OWN EMPLOYERS/PUBLIC LIABILITY INSURANCE

I am satisfied that the Provider's payment to his tenants does not fall under the Business Interruption provision in the **Policy Document** and I accept that the Provider acted reasonably in declining this aspect of the claim. If the Complainant elected to make a payment of that nature of his tenants, this was not something covered by his policy of insurance, and I am satisfied that the Provider's position in that regard was an appropriate one to take.

I note that the **Policy Document** refers to "*the BUILDING(S) of the PREMISES*" including "*walls*" and "*landlords fixtures and fittings*." I am satisfied that the signage falls under the heading "*landlords fixtures and fittings*."

I note that the Landlord says "*the present Tenant is the second Tenant to rent the restaurant. When I rented the premises to the present tenant the sign was in place so the sign is part of the rented agreement from me."* I note that the Provider submits that "*should a tenant leave the building (lease expired etc.) then that tenant improvement becomes part of the building owner's property and would be covered under the building definition*." It seems, on the Complainant's evidence, that the signage therefore falls under the Provider's definition which says that "***landlords*** *fixtures and fittings*" are covered.

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I note that the Complainant submits that his tenancy agreement does not form part of his insurance and shouldn't concern the LA. I also note the Complainant's submission that *"[LA] has ignored all receipts for work carried out and made his own estimate when the work was complete. He did not give any advice as regards who would do the work for his price and I don't know any builder who would do work on the front of a shop on a main street in the middle of a city for his price."*

I note that the Provider also sought "*details of the handyman the insured has advised completed work upgrading the shop front*" so that they can ensure that this work has been excluded from the claim and it requires a more detailed invoice from the contractor who completed the main works, so that it can confirm that they did not re-decorate the front of the shop (out of scope of the **Terms & Conditions**). I note that the Second Contractor's invoice includes reference to "*removal of damaged signage, **shop front and replace***."

I am therefore satisfied that these Provider requests were a reasonable attempt to validate the claim. I note the Provider's concern that the Complainant's claim included non-related works to the shop front *and "the photographs of the completed works showed that the entire shop front had been upgraded."* I note that Provision 25 of the **Policy Document** says that the reinstatement is covered to include "*the repair of the damage and the restoration of the damaged property to a condition substantially the same but not better or more extensive than its condition when new*."

The Provider submits that the Complainant advised that additional works to the shop front, not related to the storm damage, were completed by a handyman for the tenant, but were not included in the claim. I note the before and after photographs of the shop front and I note that new panelling has been added separate from the signage restoration. I also note that a separate quote of the Complainant's, dated **4 June 2019** and addressed to the loss assessor, says "*I also had to compensate the tenants for inconvenience and for loss of business when work was being carried out*."

I note in particular that Provision 8 of the **Policy Document** says that *"if at the time of the claim there is any other policy covering the same property or occurrences insured by this policy, we will be liable only for our proportionate share."* I take the view that it is reasonable that the Provider made enquiries to establish if the damage was covered by the Complainant's tenants' insurance and that this is anticipated by Provision 8 of the **Policy Document**. I am satisfied that it is for the Complainant to produce evidence that the landlord owns the signage, through receipt, dated photograph, previous tenancy agreement or current tenancy agreement in accordance with the **Policy Document,** which says that he shall deliver "*all such proofs and information relating to the claim as may reasonably be require*d."

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I am satisfied that the Provider attempted to verify the validity of the claim received and so acted in accordance with Provision 7.6 **CPC**. I also note the Provider's submission that it will consider the inclusion of the signage, should the tenancy agreement demonstrate that the Complainant is legally liable for same. I am satisfied that in circumstances where efforts were made to verify the claim to bring it within the terms of the **Policy Document,** but where invoice and contact numbers for the contractors have not been supplied to the Provider, that the Provider has acted appropriately in accordance with Provision 7.15 to "*ensure that any claim settlement offer made to a claimant is fair, taking into account all relevant factors, and represents the regulated entity's best estimate of the claimant's reasonable entitlement under the policy*."

I note the Provider's submission that "*a copy of the policy terms and conditions were issued to the insured at new business stage and at each subsequent renewal*." I am satisfied that the Complainant was given the **Policy Document** and so was furnished with the exclusions included in the policy including in relation to business interruption cover. In terms of furnishing the Complainant with the **Policy Document** I am satisfied that in accordance with Provision 2.3 **CPC** the Provider did *"not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service."* I also note that the Broker was in fact the party which sold the insurance product to the Complainant and that the Broker is not a party to this complaint.

I note that the Complainant wrote to the Provider, by letter dated **10 February 2020**, and estimated the storm damage claim as follows:

"*Builder cost of replacing the damage*	*€3,972.00*
Cost of replacing sign	*€431.30*
Secure on night of storm and dispose of debris	*€300.00*
Interruption for 6.5 days while work was being carried out.	*€750.00*
Total amount	*€5,653.80*"

[In fact, the total of the above amounts is €5,453.30]

The Provider has submitted a breakdown of its settlement offer as follows:

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Description	Qty	Unit	Rate	Amount	Qty	Unit	Rate	Amount	Comment
Removal of signage / Shop front and replace				3,972.00	1.00	item	1,000.00	1,000.00	Damaged frame only
Health & safety / Site protection				incl	1.00	item	1,260.00	1,260.00	Includes low level scaffolding, hoarding and permit
Electrical				incl	1.00	item	300.00	300.00	
Temporary repairs and debris removal				300.00	1.00	item	300.00	300.00	
Sign Zone lettering				687.00				-	Tenant's are responsible for lettering - lease required
Interruption for 6.5 days while reapirs being carried out				750.00					No cover for tenants loss of business as a result of this incident
Subtotal				5,709.00				2,860.00	
VAT		13.50%					13.50%	386.10	
Total				5,709.00				3,246.10	
								3,250.00	Rounded
								250.00	Less Excess
								3,000.00	Total Payable

I note that the settlement figure of €3,000.00 (three thousand euro) was communicated to the Complainant by letter from the LA dated **27 September 2019**. I note the contents of the invoice from a Contractor for the sign amounts to €431.30 and the contents of the invoice from a second Contractor for the removal of damaged signage, shop front and replace, health and safety site protections, electrical and debris removal in the amount of €3,972.50.

The Provider's submits that it received a claim notification from the Broker on **4 February 2019** and wrote to the Complainant with a **Step by Step Guide** on the **5 February 2019** and that a site inspection occurred on **7 February 2019**. I note that on **7 May 2019** the Provider's underwriter's review was completed and the LA issued a settlement offer by email on **16 May 2019** to the loss assessor.

I am satisfied that the steps taken in that regard by the Provider met its obligation under Provision 7.16 **CPC** to inform the claimant within ten business days of the outcome of the investigation explaining the terms of any offer of settlement.

I also note that provision 7.19 **CPC** requires that:

> "*if the regulated entity decides to decline the claim, the reasons for that decision must be provided to the claimant on paper or on another durable medium*."

I note that the Provider states that with regard to the aspects of the claim that could not be considered, emails issued on **16 May 2019** and **27 June 2019** to the LA, outlined that the tenants' improvements would not fall for cover under the policy. I also note that the Provider submits that "*as an element of the claim submission, namely the payment the*

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insured made to the tenants was not covered under this policy, we accept that this could have been communicated in a clearer manner to the policy holder."

In relation to the Provider's obligations under provision 7.20 **CPC,** to provide a claimant with written details of any internal appeals mechanisms available to the claimant, I note that it submits that "*at claim notification stage a Property Claim Step by Step Guide was issued by [Provider] to insured via his broker. Within this document it advises 'during the claims process you have the right to appeal decisions made by [Provider]. Should you wish to do so, please contact your claims handler to discuss the matter further*.'"

I note the contents of the **Property Claim Step by Step Guide** and that this makes clear that there is a right to appeal decisions of the Provider.

Insofar as the claim itself it concerned, I am satisfied on the evidence, for the reasons outlined above, that the Provider has adopted a reasonable position, and there is no reasonable basis, in my opinion, on which to uphold the complaint. It will be a matter for the Complainant to supply the outstanding evidence to the Provider if it wishes to further explore the additional claim benefit which may be recoverable by the Complainant under the terms of the policy, subject to the necessary production of proofs.

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)

6 May 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.