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| <u>Decision Ref:</u> | 2022-0245 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Household Buildings |
| <u>Conduct(s) complained of:</u> | Rejection of claim - freezing or escape of or overflow of water or oil |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a home insurance policy.

The Complainant's Case

The Complainant is the Legal Personal Representative of the deceased's Estate and was the policyholder of the home insurance policy which is the subject of this complaint.

The home insurance policy, held with the Provider, was first incepted in November **2016**.

The Complainant states that she became aware of water damage to the property in or around **9 March 2018**. She states that the Provider was informed of the property damage on **12 March 2018** and it then appointed a Loss Adjuster to handle the claim on its behalf with an inspection arranged for **14 March 2018** attended by the Provider's Loss Adjuster and a representative of the Complainant.

The Complainant states that she received a letter dated **23 April 2018** declining the claim on the basis that the damage was the result of "*gradual leakage or seepage of water*" from a fixed sanitary ware unit, which is excluded by the policy. The Public Loss Assessor acting on behalf of the Complainant rejected the conclusion by the Provider's Loss Adjuster and states instead that the damage was due "*to a sudden and severe escape of water due to a plumbing failure*" and that the "*pattern and extent of the water damage ...[was] wholly inconsistent*

with it arising from a gradual cause". However, in spite of this the Provider confirmed its declinature in its Final Response Letter of **27 July 2018**.

The Provider's Case

The Provider confirms that there was a policy of insurance in place at the time of the damage and states that the claim was declined on the basis that the damage was not insured under the policy because it was damage *"to tiles, walls, floors and ceilings caused by the gradual leakage or seepage of water from all fixed sanitary ware units including baths and shower units"*.

The Provider further states that there *"is an onus on the insured to prove the loss"*.

The Provider states that its Loss Adjuster attended the property on **14 March 2018** and met with the tenant of the property and the plumber. The Provider states that the Loss Adjuster was told by the tenant that *"they did not believe the water was still leaking once the shower was turned off and advises it was only dripping when damage was discovered"*.

The Provider states that this would *"indicate that the water damage related to the use of the shower and not a pipe that would be leaking when the shower was not directly in use."* It further states that the plumber advised that the leak arose from a *"fitting inside the shower mixer itself"*. In its response the Provider summarises the findings of the Loss Adjuster on his inspection; the Loss Adjuster states that he noted the *"origin of the damage as from the shower enclosure on the 1st floor bathroom. Damage was visible in boasted tiles on flooring and within the shower enclosure. Water staining to the ceiling in ground floor bedroom and damage to wooden floor was also noted."*

The Provider states that subsequent to the inspection of the property, on 8 May 2018, the Loss Adjuster was given an email from the plumber by the Complainant's Public Loss Assessor. The email noted that upon investigation *"he discovered a fitting behind the wall of the shower had become faulty"*. The Provider states that it requested clarification from the Public Loss Assessor along with photographs *"identifying the failed fitting and origin of the leak"*. The Provider states that no photograph of the actual fitting was provided but that a photograph was sent of a *"similar plumbing fixing from another property in attempt to depict the joint fitting that had leaked"*. The Provider states that it was informed that no photographs were taken during the replacement works on the property and points out that *"a photograph from another property has no relevance"*. The Provider further questions how *"a fitting could be replaced behind the block wall if no opening works were carried out"*

The Provider states that a second inspection was arranged whereby the Provider's Loss Adjuster and the Complainant's Public Loss Assessor attended jointly but that this did not change the opinion of the Loss Adjuster.

In relation to the cause suggested by the Complainant's Public Loss Assessor the Provider states:

"If the feed pipe was leaking, it would have continued to leak even if the shower was turned off and until such time as the pipe was repaired. The pipe in question was a feed pipe that would have held water under a certain amount of pressure. The fact that the leak happened when the shower was in use and appears to have ceased when the shower was turned off is not consistent with a leaking feed pipe. If for example, the tenants said they discovered a leak and that it only stopped when the plumber repaired a leaking pipe, then that would certainly support a scenario of a leaking feed pipe."

The Complaint for Adjudication

The complaint is that in **2018** the Provider wrongfully declined the Complainant's household insurance claim. The Complainant says in that regard that the Provider failed to properly classify the nature of the damage to the Complainant's property.

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.

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A Preliminary Decision was issued to the parties on **1 July 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 note that the policy of insurance held by the Complainant has the following relevant provisions:

Section A Clause 7

“What is insured: *Escape of water from or the bursting of any fixed domestic water or heating installation...*

What is not insured: *Loss or damage... to tiles, walls, floors and ceilings caused by the gradual leakage or seepage of water from all fixed sanitary ware units including baths and shower units.”*

Policy Conditions

7. Upon learning of any circumstances likely to give rise to a claim **you** must:

- give **us** all the help and information that **we** may reasonably require
- give full details within 30 days of the incident together with any supporting evidence that **we** require”

I note that on or around **9 March 2018** water damage occurred to the property which was covered by the policy of insurance which is the subject of this complaint. The Provider was informed on **12 March 2018** and on **14 March 2018** that its appointed Loss Adjuster attended the property and met with the tenant and the plumber hired to remedy the damage. The ‘**Preliminary Inspection Form**’ completed by the Loss Adjuster provides a record as to what the tenant stated to the Loss Adjuster on **14 March 2018**:

“Tenant advised shower was in use and it was then discovered water was pouring through ceiling in bedroom below.

Tenant does not believe the water was still leaking once shower was turned off and advises that it was only dripping when damage discovered.”

The report includes a description of the damage as *“Tiles boast on floor + walls in bathroom water staining on ground floor bedroom ceiling and damage to solid wood floor”*. There are a number of photographs included within the report which show tiles within the shower which appear to be coming away from the wall and are cracked in places.

Further it seems to show the seals connecting the shower tray to the first line of tiles to be in a state of disrepair. There is also a photograph of a hole in a ceiling which is in the room directly below the bathroom; there is also a photograph of a wood floor but the quality of the photograph makes the image difficult to discern.

The plumber hired by the Complainant also provided a report which is undated, but was emailed to the Loss Adjuster on **13 March 2018**. This report describes the fault as follows:

“The fitting that was connecting the cold water feed to the power shower started leaking. This caused the water to flow down the wall on both sides of the tiles and into the bedroom below.”

I note an email from the son of the late insured on **20 March 2018** where he states *“Was speaking to the plumber there and he has re-assured me that the leakage was coming from the fitting outside of the shower. He is going to send me a letter on this evening, and I will forward on to you when I get it.”*

A reply from the Loss Adjuster requested the letter from the plumber and a photograph of the joint which leaked. The Complainant’s Public Loss Assessor was then appointed, and a re-inspection of the property occurs on **11 April 2018**. There are no notes included as to this re-inspection, from either party. The Loss Adjuster provided a declinature letter dated **23 April 2018** which set out the following:

“During our initial inspection, we were advised that a fitting inside the shower mixer was found to be leaking and was replaced. It is alleged that the water escaped from the fitting inside the mixer and made its way along the feed pipe out of the shower enclosure, allowing water to run down the wall and onto a ground floor ceiling. During our inspection we could find no evidence that this was the case.

It is clear to us, from the presence of loose and cracked tiles in the shower enclosure, combined with failed/defective seals around the shower tray, that water has been ingressing gradually, over a sustained period while the shower was in use.”

The next piece of correspondence was a letter from the Complainant’s Public Loss Assessor dated **16 May 2018** which disputed the declinature, for a list of reasons. This letter included a letter from the plumber dated **8 May 2018** to the Public Loss Assessor, in which he stated that when he attended the property *“to investigate the leak being the shower, the fitting had become faulty behind the wall of the shower”* and the Public Loss Assessor offered his opinion that if the water had been escaping inside the shower, it *“would have simply flowed down the tiled wall of the shower and drained into the shower outlet.”*

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The Public Loss Assessor went on to state:

“Your assertion that the damage claimed arose from the fact “that water has been ingressing gradually, over a sustain period while the shower is in use” is totally at variance with the evidence. For sure there were “bossed” tiles and poor sealant around the tray but these did not contribute to this loss and do not form part of the claim.”

The Public Loss Assessor went on to proffer the following, as evidence against the loss having arisen from a gradual ingress:

- a. *“The house was only fitfully occupied by the late insured’s widow during the 2 months prior to the date of loss.*
- b. *The house was decorated several weeks before the date of loss and this would be unlikely to have been done over a damp ceiling.*
- c. *The tenants had only moved into the house 2 days before the date of loss.”*

The Public Loss Assessor stated that the above *“must surely refute your hypothesis as to a gradually operating cause. Leakage from 2 days shower usage would not be enough to collapse a ceiling and cause extensive water damage... remote from the shower unit”*. The letter went on to state that after the joint inspection, the Complainant’s Public Loss Assessor re-inspected the property and discovered *“escaping water from the loss had damaged plaster and decorations in the hallway, where it was still damp, in locations behind the shower tray”* and stated that this *“totally rebuts your theories as to gradual leakage and verifies the cause of loss as a sudden escape of water due to failure of a plumbing fitting and therefore admissible.”*

I note that two photographs were included purporting to show *“water staining at ceiling in hallway”* and *“water drained down electrical conduits in hallway”* the quality of all versions of which are poor.

There followed a back and forth of correspondence between the Provider’s Loss Adjuster and the Complainant’s Public Loss Assessor; on **31 May 2018** the Loss Adjuster stated that there was some confusion between the plumber’s correspondence and that *“In his email dated 08 May 2018 he advises that the fitting behind the wall of the shower had become faulty, while his initial report (Document A) advises that the fitting connecting the cold water feed to the shower had been the origin of the leak”*.

The Loss Adjuster requested photographs of the fitting in question. The Complainant’s Public Loss Assessor responded on **14 June 2018** in which he states

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“the plumber is a relatively young man and did not anticipate having the semantics of his report analysed so rigorously... I deemed it appropriate to interview him in person. I attach a rough sketch of the plumbing set up concerned. The fitting referred to by the plumber is the “copper elbow” and the crack in it occurred behind the wall. This resulted in some escaping water following the pipe into the shower but the most of it draining down behind the wall.

The Complainant’s Public Loss Assessor went on to state that no photographs were taken by the plumber *“as he had no reason to”* but that the Public Loss Assessor took a photo of a *“fitting similar to that involved in this claim”*. Further photographs are sent of the hallway, of somewhat better quality.

The Provider’s Loss Adjuster responded on **21 June 2018** stating the following:

“I attach to this email a photograph taken during one of my inspections, which shows, I believe, the joint you are referring to. As advised during our joint inspection, I could find no evidence of water having escaped in the built-in unit where this joint is located.

I am fully satisfied that the damage in this case is as a result of seepage from within the shower enclosure which is excluded under the policy terms and conditions”

The photograph attached shows two joints coming through and going back into a wall. The Complainant’s Public Loss Assessor responded on **3 July 2018** stating first that the photograph included by the Loss Adjuster *“is irrelevant as it was taken in the wardrobe separated from the shower by a void and block wall.”*

This letter went on to accuse the Loss Adjuster of *“studiously avoiding answering my query... as to whether you are disputing that there was a sudden & unforeseen failure of the fitting on the cold water feed to the shower”* and that he had *“also avoided responding to all the circumstantial factors which contradict your assertion that the damage being claimed arose”* from gradual water ingress while the shower was in use.

The Complainant’s Public Loss Assessor stated that *“the pattern and extent of the water damage being claimed is wholly inconsistent with it arising from a gradual cause”* and stated that the Provider’s Loss Adjuster had *“become fixated with the signs of previous gradual leakages and water damage”*. A final response letter was then sent by the Provider on **27 July 2018** maintaining the declinature decision.

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It is accepted between the parties that there was a valid policy of insurance containing an exception to cover for gradual leakage from fixed sanitary ware units. The Loss Adjuster appointed by the Provider declined the claim on the basis that, in his opinion, the damage fell within that exception. The issue for this investigation is whether that decision was an unreasonable one.

I note that the Provider's Loss Adjuster inspected the property and spoke with the tenant, the plumber, and the Complainant's son. The Complainant then appointed a Public Loss Assessor who arranged for the Loss Adjuster to reinspect the property in a joint inspection. Prior to the issuing of the declinature letter, I find no fault with these steps taken by the Provider.

The Loss Adjuster then determined that, in his opinion, the damage was caused by gradual leakage from the shower unit and that his conclusion is based on the presence of "*boast and cracked tiles*" and "*failed/defective seals*" around the shower tray.

It is accepted by the Public Loss Assessor that there were boasted and cracked tiles within the shower and that the seals were in poor condition. The Loss Adjuster also states within his declinature letter that he was initially informed by the tenant that the leak occurred while the shower was in use, and that the tenant did not believe the leak continued when the shower was turned off. This was not disputed by the Complainant.

Finally, the Loss Adjuster had the evidence of the plumber who performed the repairs; he provided a report which stated that the "*fitting that was connecting the cold water feed to the power shower started leaking*". The Loss Adjuster states in his letter that he saw no evidence supporting this during his inspection and requested further information from the plumber along with photographs of the fitting; these were not provided before the letter issued declining the claim. None of these details are in fact disputed and I am satisfied that the Provider's initial decision to decline the claim was based on the expert opinion of the appointed Loss Adjuster and I accept that it was a reasonable decision to make.

Following the involvement of the Complainant's Public Loss Assessor, the following pieces of evidence were brought to the attention of the Provider's Loss Adjuster;

- (1) a further email from the plumber,
- (2) a photograph of the type of fitting but from a different property,
- (3) a sketch, and
- (4) several photographs which are referenced above.

I do not accept that the further email from the plumber added anything new to the claim nor did the sketch or photograph of the type of fitting.

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Furthermore, in my opinion, there was no evidence submitted to support the contention that the property was only fitfully occupied or had been recently redecorated, and I am not satisfied that the evidence of boasted tiles and damaged seals was in any way invalidated, as a result.

I note the photograph of water damage to the light switch, and it is the expert opinion of the Complainant's Public Loss Assessor that this indicated a level of escape of water in excess of "gradual leakage". However, it is not the role of this investigation to determine which expert opinion is 'correct' but whether or not, when presented with all of the information, it was unreasonable or otherwise improper for the Provider to maintain its decision to decline the claim.

It is regrettable that the plumber failed to photograph the damaged fitting when repairing it. Under the terms and conditions of the policy of insurance the Provider was entitled to request this supporting evidence, but it was not supplied.

What was left then, setting aside the correspondence between the two experts, was the evidence of gradual leakage noted by the Provider's Loss Adjuster and the evidence of water damage to the light switch in the hallway, noted by the Complainant's Public Loss Assessor but, for whatever reason, not referenced during the joint inspection. The Complainant's Public Loss Assessor, in his letter of **3 July 2018**, also refers to there being "previous gradual leakages" and it does not appear that the seals were then repaired. Consequently, I am not satisfied that there was any new evidence which was strong enough to make it unreasonable for the Provider to maintain its decision that the claim should be rejected.

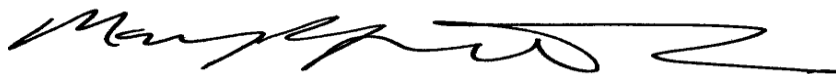
In my opinion, the Complainant has provided no adequate evidence to illustrate that a conclusion by the provider of the cause gradual leakage, was an unreasonable or otherwise improper conclusion for it to make.

Accordingly, 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)

25 July 2022

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.