



<u>Decision Ref:</u>	2022-0291
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Maladministration Rejection of claim - self-employed
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a mortgage repayment protection policy.

The Complainant's Case

The Complainant purchased the insurance policy in **2009** and states:

"I purchased it on the basis that I was self-employed, and, if my company folded, that the insurance company would cover my Mortgage Repayments until such time as I would get another job"

The Complainant states that after entering the contract he was informed by the original provider [Company A] that the policy had been sold to him in error, given that he was self-employed. Company A sent a letter on **5 May 2009** indicating that because the policy was sold with the knowledge that he was self-employed, it would in the future, consider a claim on the basis of *"involuntary unemployment"* if the Complainant had *"involuntarily stopped trading because their business assets cannot pay its debts"*. On the basis of the above letter the Complainant states the following:

"I continued to pay this policy, and am still paying to date, confident in the fact that [Company A], by their response letter, had given their word to honour the contract/policy I had entered into with them, should the need arise."

The Provider acquired Company A and the insurance policy held by the Complainant. The Complainant then states that when the COVID-19 pandemic hit, he was *"instantly out of work"* and his wife contacted the Provider just after **17 March 2020** to make a claim on the policy.

The Complainant states that he was confident his claim would be accepted and so he would not need to avail of the three-month mortgage deferment offered by the Bank. The Complainant states that the Provider, upon being told he was self-employed, immediately stated that it would not accept a claim from the Complainant.

The Complainant states that his wife emailed the Provider with the information about the **2009** letter and that she had to email the Provider *"20 times over a six-week period"*. The Complainant states that over this period the Provider was *"Uncontactable... Dismissive... Unethical and Amoral... [and] lacking in any semblance of compassion or empathy"*.

The Complainant states that *"without any consultation, without any regard for [his] mental health, and without engaging in any further verbal communication"* the Provider sent a Final Response letter on **19 May 2020**, rejecting the claim for a refund.

The Complainant wants to be reimbursed for the premiums paid from **January 2009** to date in the total of **€15,030.60** (fifteen thousand and thirty Euro and sixty Cent).

The Provider's Case

The Provider states that it is the underwriter and claims administrator for this policy which was incepted on **1 February 2009**. The Provider purchased Company A, on **December 2015** and has been the underwriter since this date.

The Provider states that it received a call from the Complainant's wife on **9 April 2020** to make a claim under the policy for the Complainant who was registered for the COVID-19 Pandemic Unemployment Payment, and it is accepted that during this call, it informed the Complainant's wife that the Complainant was not eligible as he was self-employed. The Provider states that it was informed about the **2009** letter at this point, but that it was not given any confirmation that the Complainant met the criteria within that 2009 letter.

The Provider states that it received an emailed photograph of the letter, and the claim was referred to its *"senior management"* as it *"fell outside the normal terms and conditions"*. The Provider states that the letter permits claims for self-employed persons, provided that *"they have involuntarily stopped trading because their business assets cannot pay its debts"*.

The Provider states that the Complainant did not meet the criteria within the letter and so he was not eligible, but that *"It was agreed by senior management that [it] would accept the claim as an exception"* and that this was conveyed to the Complainant's wife on **13 May 2020**.

The Provider states that while it would honour this claim, it would not consider any further unemployment claims, while he remained unemployed. The Provider states that the Complainant declined this offer.

The Provider further states that the policy terms and conditions which govern this claim were amended in **May 2012** and that the policy since then includes cover for self-employed persons *"provided that they have ceased trading permanently"* and that all claims received after **May 2012** will be considered under these criteria. The Provider does not accept that it proffered poor customer service and it states that all emails were replied to, within 5 working days.

The Complaint for Adjudication

The complaint is that the Provider in **2020**, wrongfully interpreted the cover under the Complainant's policy, as amended by the letter of **5 May 2009**, in relation to the involuntary unemployment benefit provided by his policy and that it proffered poor communications and customer service during the handling of his complaint.

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 **5 August 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

The primary issue to determine in this complaint is whether or not the Complainant was entitled to the payment of benefit under the policy of insurance, for the period when he, as a self-employed person, was unable to trade due to the COVID-19 Pandemic.

I note that the original policy terms and conditions in **2008**, under Section 2, specified *“Benefits”*, for *“Involuntary Unemployment Benefits (Not for State or Self Employed)”*. It further set out under *“exclusions”* in Section 3 for Involuntary Unemployment, that no benefit would be paid *“If **you** are self-employed and **your** business temporarily stops trading”*.

Considering the above, I am satisfied that the original terms and conditions excluded self-employed persons from claiming involuntary unemployment benefits. The Complainant has accepted that, due to the passage of time, any complaint about the selling of this policy, is outside the jurisdiction of this Office.

I note that there was an amendment to these terms and conditions, set out in a letter from Company A dated **5 May 2009**, which accepted that self-employed persons were not covered under the policy, and that *“due to a communication error the cover was issued”* to the Complainant. It set out that it was amending the original terms to accept a claim in the future from the Complainant, on the basis of the following criteria:

“Self-employed persons are eligible to make an Involuntary Unemployment claim providing they have involuntarily stopped trading because their business assets cannot pay its debts, other liabilities & expenses and they have provided official documentation to the Irish Revenue Commissioners confirming this.

Claims can be submitted in the event of:

- *The 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.*

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...

Please note that should you submit a claim for unemployment that you provide a copy of this letter along with your claim form in order that your claim can be processed accordingly”

Applying these amendments to the above, I am satisfied that the Complainant, as a self-employed person was then entitled to make a claim if his business had **stopped trading** because the business **was unable to pay its debts and** was either (i) under the control of an insolvency practitioner or (ii) was a partnership which was being dissolved.

I accept that under the policy cover, as a self-employed person, the Complainant remained **unable** to claim for involuntary unemployment, if he did not fit into the above criteria. I note that when the Complainant received this letter in May 2009, explaining the situation, he elected to continue cover on that basis.

I also note that the applicable terms and conditions were amended in **2012** removing the “(Not for State or Self Employed)” from the “Involuntary Unemployment Benefits” heading from what is now section 3. The exception to cover set out above however, was retained, in what is now section 4: “If **you** are self-employed and **your** business temporarily stops trading”.

In summary, considering the above documentation, it is clear that the Complainant’s policy moved from a blanket exclusion of claims by self-employed persons, to a position where he could claim, if his business **permanently** ceased to trade. I am satisfied that the subsequent **2012** amendments to the general terms and conditions removed the requirement for that cessation of trade, to be due to the business being unable to pay its debts, but it nevertheless required permanent, rather than a temporary, cessation of trade.

Applying this policy interpretation to the facts, I note that when the Complainant was unable to trade due to the COVID-19 Pandemic, it is clear that he did not satisfy the criteria within the **2009** letter, as there was no evidence of this being a permanent cessation of trading as required under the **2012** terms and conditions. Consequently, I am satisfied that the Provider was correct in its assertion that the claim fell outside the policy terms and conditions.

However, the Provider did not reject this claim; I note that it acted in a very reasonable way, by agreeing to accept the claim in this instance, given the history of events, but it advised that having done so, it would not accept similar claims in the future. This was set out to the Complainant’s wife in a phone call on **13 May 2020** as follows:

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Agent: The ex-gratia committee have come back and they have agreed to honour the claim you know up to the stage that we can once we have all the information in to our office and it falls within the terms and conditions of that ok.... They have advised to let you know this is outside our usual terms and conditions that this will be honoured in this instance but going further it no longer will be honoured

Complainant's

Wife: Right yeah

Agent: Just giving you the option of cancelling the policy if you are not happy with that.

...

Complainant: I don't accept that one ounce of that now and you can tell them that. I don't accept that they will honour a claim and they are not going to accept anything going forward given the fact that we've paid that for eleven years.... I don't accept that and I want my money back for the last eleven years.

...

Agent: Ok I am just going to log a complaint here for you. Just giving you the option of cancelling the policy if you are not happy with that.

I note that this approach was further detailed in a letter dated **19 May 2020** which advised that:

"[As] your current unemployment situation was a temporary situation based on the COVID-19 Government restrictions... we agreed to present your case to members of [Provider's] Senior Leadership Team for review, this meeting took place on 13 May 2020 and it was agreed that we could accept your current unemployment claim, as an exception, as your situation does not meet the criteria set out in the [Company A] letter dated 05 May 2009.

It was also confirmed during the same meeting, that going forward, we will be unable to accept any future unemployment claims on this policy whilst you remain self-employed, as this particular policy does not provide for this cover."

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I am satisfied that the Provider was correct in its interpretation of the policy terms and conditions. I am further satisfied that the approach taken was a very reasonable one to take in the circumstances. The Provider acknowledged the extreme circumstances of the Complainant and agreed to deviate from the strict policy conditions in this instance (though it made it clear that the policy would be strictly applied in the future). The Complainant would have had the benefit of cover during this unemployment period, and he was also placed on clear notice that, as a self-employed person, this policy is restrictive in the cover it offers and that he had the option to cancel it, rather than continuing with cover on that basis.

The Complainant characterised the offer, in an email from his wife dated **14 May 2020**, as *“rotten, nasty, toxic, arrogant, patronising, illegal, immoral, unethical, [and] characterless”* and he took the decision to reject this offer. The decision to reject the Provider’s offer was his to take but I am not satisfied that he was correct in his characterisation of the offer; I do not accept that the Provider misinterpreted the policy and, in my opinion, it was entitled to decline the claim. I take the view that it acted reasonably in offering to admit the claim, as an exception, and I am satisfied that this was empathetic to the extreme circumstances the Complainant was in, due to the COVID-19 pandemic.

The Complainant further complains of poor customer service, primarily based on the number of emails needed to be sent to obtain a response. At the outset, I note that this was during the period of **April 2020 to June 2020** which was during the first months of the pandemic and the ensuing first lockdown. It was uncharted territory for almost everyone and certainly created an unprecedented situation for insurers. Therefore, I accept that with the volume of claims, some delay was almost inevitable.

The Complainant’s wife emailed the Provider six times from **1 April 2020** before receiving a response on **27 April 2020** which set out that requests made, had been escalated to a line manager and that the representative in the claims team was awaiting a response. During this period, the Complainant’s wife was also in contact with a representative from the Provider’s claims team, during a phone call on **9 April 2020**. This representative informed her that the matter would need to be referred onwards to their line manager.

As has been addressed above, the Complainant’s position was unusual, in that he had the benefit of a letter from **2009**, which amended the terms and conditions of the insurance policy and so I am satisfied that his claim is likely to have taken longer than normal to resolve, and likely, would have required a level of senior staff intervention. It is unfortunate that it took until the **27 April 2020** for the Provider to respond but I am not satisfied, in the circumstances outlined above, that the delay was such as to amount to unreasonable or improper behaviour by the Provider.

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The Complainant sent further emails on **28 April** and **29 April 2020**, and these were responded to on **8 May 2020** to inform the Complainant that the case was to be discussed at the upcoming “*ex-gratia committee meeting*” which did not yet have a fixed date. The Complainant’s wife was also informed of this during a phone call of **5 May 2020**. That meeting occurred on **13 May 2020** and the Complainant was immediately called and informed of the positive outcome, which is explained above. Therefore, in the circumstances, I am conscious that it took in or around six weeks to escalate what was clearly a non-standard policy issue, to senior management, who made a decision in favour of the Complainant, and this was communicated to the Complainant’s wife immediately.

Although there was some initial delay, I am nevertheless satisfied in the circumstances, that the Provider acted within a reasonable time frame, having regard to the urgency and complexity of the situation. While I am sympathetic to the Complainant that this was an extremely stressful situation and he felt under urgent pressure to get an answer from the Provider, as to whether or not his claim would be accepted, I am not satisfied that the time taken by the Provider was in fact unreasonable.

Any further issue which the Complainant has in terms of response times, concerns a subject access request, but this is not within the jurisdiction of this Office and rather, is a matter for the Data Protection Commission.

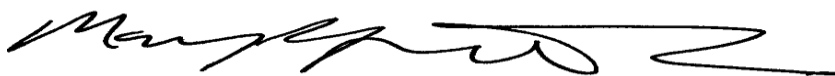
In summary, I accept that the Provider was correct in its interpretation of the contractual documentation relating to this policy cover; the Complainant was not covered for temporary unemployment as a self-employed person, which is the claim he sought to make. The Provider offered to accept his claim in any event, due to the unprecedented circumstances but made it clear to him that similar claims in the future would not be accepted, as they are outside the terms and conditions of the policy.

I am satisfied that the offer made was a reasonable solution to the Complainant’s circumstances and it is a matter for the Complainant that he chose to reject that offer. I am not satisfied that any delay in communication was, in the circumstances, unreasonable or improper and given that there is no evidence of wrongdoing by the Provider, 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)

29 August 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.