

Appendix 7

Case Study 1

Mor Music Mr P & Mrs L O'Dea
Franklins Yard Off Fossgate YORK

The Mor Music business has been run in York by Mr & Mrs O'Dea for over ten years generally located in various premises in the Fossgate area of York. They moved to their current Franklins Yard premises about two years ago. This leased property provided them with a shop area, a workshop, rehearsal and recording studios, tuition rooms and an office.

The business had been open as normal on Boxing Day 2015 and during the afternoon water was noticed bubbling up out of a drain located in the outside cobbled yard area. By mid to late afternoon the water level in the yard area was rising but was not causing undue alarm or concern to Mr & Mrs O'Dea as the area was not known to them as having flooded before. There are rental holiday flats adjacent to Mor Music which where access was being cut off by the rising water and Mr O'Dea built a temporary ramp using wooden pallets to provide access for the visitors. The water level continued to rise and by 10.00pm resulted in Mr O'Dea helping to evacuate people who were then trapped in the flats. At that stage other affected businesses in Franklins Yard were asking for sandbags but were being told there were none available. Mr O'Dea had some sand and some hessian coffee sacks available and he made his own sandbags to try to protect the doorway to his premises.

At this stage Mr & Mrs O'Dea had received no warnings or information about the likely extent of the flooding in the area despite the presence of numerous organisations in the Walmgate/Fossgate area throughout that evening. They had however lifted everything in their premises off the floor by about a foot thinking that the water could not get higher than that. They left their premises after 1.00am at home continued to view the ongoing situation at the shop using cameras located in the shop. At about 2.00am they saw water entering the premises and continuing to rise until the power went off and the cameras stopped working.

Mr & Mrs O'Dea returned to the shop early the next morning (27 December). They were on foot as roads were flooded and closed to traffic. Mr O'Dea waded through the floodwater to establish the extent of the flooding and saw that the Mor Music premises were under about five feet of water. He managed to get the swollen/buckled doors open and saw everything floating around inside the shop. Mr O'Dea said "There was no way of carrying anything out so we could not get anything out. We were then just waiting for the water to recede and the aftermath was horrific. No one came to help. No one came to warn me."

It took about two days for the water to recede and all of the services to the property (electric, phone, gas) were unavailable. A padlock had to be purchased to secure the property as the alarm system was inoperable.

As leaseholders Mr & Mrs O'Dea had insurance in place which covered loss of stock and loss of business continuity. Their policy in the event did not cover fixtures and fittings which in their case were significant. The landlord of the Mor Music premises and of several of the other adjacent businesses and properties had insurance with Aviva covering the buildings. Mr & Mrs O'Dea notified their insurance broker on 27 December 2015 and the broker then notified the Insurer. The loss adjustor did not come out to the business until two weeks after the Insurer had been notified and one of the questions he asked during his visit was "Have you got any list of the stock". As the relevant paperwork had been stored in the flooded office area and obviously destroyed the question raised doubts about the way their claim might be dealt with. Because of their unease following the visit by the loss adjustor Mr & Mrs O'Dea decided to appoint their own loss assessor based on a recommendation they had received. The loss adjustor had advised during his visit that anything that had been touched by the contaminated floodwater could be thrown away. This included about £75,000 worth of stock (guitars, amplifiers, etc). Also to be disposed of were all of

the damaged fixtures and fittings including furniture, display stands, workshop tools, phones, computers, till, sound systems, carpets, blinds and other wall fittings. These fixtures and fittings were not insured on their policy and represented a very significant uninsured loss to Mr & Mrs O'Dea.

Skips were ordered and all of the damaged stock and damaged fixtures and fittings were thrown away. All of the stock disposed of by Mr & Mrs O'Dea was carefully photographed and recorded in situ and in the skips before final removal.

It then took a period of six weeks for the Insurer to admit liability and to accept the claim. Some payments on account were then made but only with pressure from their loss assessor.

The buildings were insured by the landlord through Aviva and builders had been employed to repair the extensive internal damage to the building including replacing walls, doors and door frames, radiators, cabinets, cupboards and kitchen cabinets and then re-plastering and re-painting. The work was completed in early June but was not signed off as acceptable by Mr O'Dea who considered the walls still to be damp. Carpeting was being finished and the shop was almost ready for re-fitting when damp patches on the new plasterwork was noticed. As the damp spread the builders confirmed that the work would have to be redone, including waterproofing, with all the recent plaster being taken off to heights of between 1.5 and 1.8 metres. In late July the repair work was still ongoing with some walls still drying out. The anticipated completion of the works is late Autumn 2016 with Mr & Mrs O'Dea hoping to reopen the business before Christmas 2016.

Mr & Mrs O'Dea have been able to recover some of their uninsured losses on fixtures and fittings through grants available through YCC/Make it York/LEP. They are still several thousand pounds out of pocket as a result of the flooding event in December 2015. An application for a Flood Resilience grant has not been considered by Mr & Mrs O'Dea. Future insurance is an issue for Mr & Mrs O'Dea as their current insurers and other insurers who have been approached have advised that flood cover for the business would not be available.

Mr & Mrs O'Dea had not been signed up to the EA warning system as they felt there was no need in an area that had not flooded since 1982 and completion of the Foss Barrier. They said that if they had been warned on the evening of Boxing Day of the likely extent of the flooding then they could have mitigated the losses significantly by bringing a van and removing the stock and contents from the premises. They are aware that other premises in the locality such as the Merchant Adventurers Hall had been notified during the evening of the 26 December.

Subsequent to the flooding event Mr & Mrs O'Dea were visited by a representative of the EA who at one stage said "What do you think you could have done to have stopped this happening?"

Following what Mr & Mrs O'Dea considered to be a very insensitive comment the EA representative was requested to leave the premises.

Summary

- Slow initial response by insurer/loss adjuster causing uncertainty and distress.
- 6 week period until liability and acceptance of claim by the insurer causing further anxiety and distress.
- New plasterwork signed off by the damp proof company to the Insurer as complete before it had completely dried out leading to work having to start again, costing the Insurer more and potentially doubling the business continuity losses.
- No warnings given to Mr & Mrs O'Dea despite property being in a known low lying area. A warning during the evening of 26 December when water was rising, but at that stage not inside the premises, would have enabled stock and contents to be removed and losses mitigated.
- The Mor Music business is currently unable to obtain flood insurance.
- Mr & Mrs O'Dea will have been without their business for up to twelve months.

- Uninsured losses of several thousand pounds have been incurred by Mr & Mrs O'Dea.

- **Case Study 2**

The Red Lion Mr P Pendlebury
Merchantgate
York

Mr Pendlebury has been the leaseholder/landlord of the Red Lion since 2010 and has lived and managed similar businesses in York since 1998/99.

The Red Lion is located to the immediate East of the junction between Merchantgate and Piccadilly in York city centre and is adjacent to the road bridge carrying Piccadilly over the River Foss. The Red Lion is a Listed building parts of which date back to the 13th Century.

The Red Lion had been open as normal on Boxing Day 2015. During late afternoon/early evening water was seen bubbling up out of the drain cover at the lowest point of the yard at the rear of the property. This did not cause Mr Pendlebury to be unduly concerned at the time. The property was not known to Mr Pendlebury as ever having flooded before and he was unaware that the property was in a Flood zone area. As such he had not signed up to the EA flood warning scheme.

The Red Lion was closed at 10.00pm on Boxing Day and the family (Mr Pendlebury, his wife and daughter), a family friend who was staying with them and the family pet dog went to bed (located upstairs in the living accommodation) at about midnight. At that stage they were aware of lots of police/fire service activity in the area but were unaware of the reason for their presence. No one had contacted them during the evening to make them aware of the imminent flooding problem including a police officer who made use of their toilets during the evening.

The family woke on the morning of 27th December to find the property without electricity and surrounded by floodwater. Mr Pendlebury had recently acquired a new Mini and this had been parked next to the property. It was under water and was subsequently written off. This was covered by separate insurance. Mr Pendlebury rang a friend who provided waders which the family used to wade out of the property to a higher point at the junction of Walmgate and Merchantgate. Mr Pendlebury was the last person to evacuate the property and waded through the floodwater carrying the family dog on his shoulders.

The family checked into a local hotel and were there for four days until the floodwater receded to a point that they were able to return to their property. The property had been flooded internally to a depth of up to five feet. All of the internal fixtures and fittings, plant and machinery, stock, carpets, fireplaces and flues, wall decorations, tiling and kitchen equipment had been ruined and the whole place was covered in contaminated mud and silt. YCC workers assisted with the initial clean-up of the premises and with the removal of all of these damaged contents into skips provided by the council and Mr Pendlebury was particularly pleased with the help he had received.

The buildings insurance was provided through the owners of the property Enterprise Inns. As the leaseholder Mr Pendlebury had arranged insurance through his broker, Gauntlet Group based in Leeds, and this covered fixtures/fittings/plant/machinery/stock and loss of business together with the provision of Public Liability and Employers Liability Insurance. The policy had been arranged by the broker with the Insurer.

Following the clean-up and removal of all the damaged contents the process of drying out started using dehumidifiers. Following substantial repairs and a complete refit the Red Lion opened for business again at the end of April 2016. At this point Mr Pendlebury had personally funded the total refitting of the premises to enable the business to open again at the earliest opportunity and to mitigate the mounting business losses. He had paid because he was having significant difficulties

in progressing his insurance claim. In June 2016 Mr Pendlebury received a letter of avoidance and was told by the loss adjustor that the insurance company was not prepared to settle his claim. Mr Pendlebury has reported his case to the Financial Ombudsman who have advised they have no jurisdiction on the matter as the Insurance Company in question is based in Lichtenstein. Further reference of the case to ABI with the assistance of York Central MP Rachael Maskell has not provided Mr Pendlebury with a satisfactory outcome (as at August 2016).

Mr Pendlebury estimates his losses to date, which he thought were adequately covered by his insurance, to be in the region of £50k - £60k.

Mr Pendlebury has received the business recovery grant and council tax exemption from YCC and a small loan from Enterprise Inns which is being repaid on a weekly basis.

Mr Pendlebury considers that the council workers who helped him were “fantastic” and said “I cannot speak highly enough of them. The Council have really stepped up to the mark.”

Summary

- No warnings were given to Mr Pendlebury and his family despite the local presence of emergency services on the evening of Boxing Day and the fact that the Red Lion is in a low lying area adjacent to the River Foss. A warning during that evening when water was rising but not inside the premises would have enabled stock and contents to be moved and losses mitigated.
- Insurance claim not accepted and significant financial losses incurred by Mr Pendlebury who thought he had obtained adequate cover through his insurance broker.
- Resolution not apparently available through Financial Ombudsman or ABI despite intervention of York MP.
- Litigation now being considered by Mr Pendlebury.
- Stress/trauma caused to Mr Pendlebury and his family during the flooding event and currently due to the rejection of his insurance claim.