



<b><u>Decision Ref:</u></b>	2020-0371
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Service
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainants hold a **Property Owners** insurance policy with the Provider.

#### **The Complainants' Case**

The First Complainant telephoned the Underwriter on **17 April 2020** with questions about the Complainants' insurance policy with regard to loss of rent, as their tenant, which trades as a restaurant, was unable to pay the monthly rent in full, due to its temporary closure arising from the outbreak of Coronavirus (COVID-19).

The Underwriter advised the First Complainant by telephone and email on **17 April 2020**, as follows:

*"I refer to your query in relation to this policy.*

*Please note that the 3 criteria within the Notifiable Disease Extension which need to be met in the current COVID-19 scenario are as follows:*

- 1. The outbreak of the Notifiable Disease is at the Premises and*
- 2. The closure of the Premises is brought about on the advices of the competent authority as a result of an outbreak at the Premises.*
- 3. There is verified financial loss directly resulting from 1. and 2. Above.*

*Please refer to the Business Interruption Section of your Policy wording”.*

In addition, the Provider advised the First Complainant similarly by email on **30 April 2020**. In this regard, in his letter to this Office dated **4 June 2020**, the First Complainant submits, as follows:

*“As of April, this year, our tenant at [the insured premises]...advised us that it had to close its business in keeping with government regulations. What this has meant for us is a considerable loss of rental income. For example, for each of the months of April and May, we have received €1,500 from the tenant instead of the usual payment of €3,583.33. We have registered a complaint with [the Provider] on the grounds that we are supposed to be covered for loss of income under our policy. However, [the Provider] has declined to accept any responsibility whatsoever. As we have not made any claims against [the Provider] in the past, it appears to us to be grossly unfair that when we need our insurer to look after us, it wishes to look the other way. The rental income is how we make our living and we expected that our insurance policy would cover us in the event of any loss of earnings”.*

#### **The Provider’s Case**

Provider records indicate that the Complainants did not submit a formal claim to the Provider. However, the First Complainant did speak with the Underwriter by telephone on 17 April 2020 with questions about the Complainants’ **Property Owners** insurance policy with regard to loss of rent as their tenant, which trades as a restaurant, was unable to pay the monthly rent in full, due to its temporary closure arising from the outbreak of Coronavirus (COVID-19).

In this regard, the Provider notes that the Underwriter emailed the First Complainant at 10:51 on 17 April 2020, as follows:

*“I refer to your query in relation to this policy.*

*Please note that the 3 criteria within the Notifiable Disease Extension which need to be met in the current COVID-19 scenario are as follows:*

- 1. The outbreak of the Notifiable Disease is at the Premises and*
- 2. The closure of the Premises is brought about on the advices of the competent authority as a result of an outbreak at the Premises.*
- 3. There is verified financial loss directly resulting from 1. and 2. Above.*

*Please refer to the Business Interruption Section of your Policy wording”.*

The Provider notes that the First Complainant responded by email at 11:07 on **17 April 2020** that he was disappointed that the Complainants had no cover for loss of rental earnings. The Provider received a formal complaint from the First Complainant by email on **28 April 2020**. Having reviewed this complaint, the Provider advised the First Complainant by email on 30 April 2020, as follows:

*“For a loss of earnings claim due to consequences of a Notifiable Disease to succeed under Business Interruption Extension, the following circumstances must exist:*

- 1. The outbreak of the Notifiable Disease is at the Premises and*
- 2. The closure of the Premises is brought about on the advices of the competent authority as a result of an outbreak at the Premises.*
- 3. There is verified financial loss directly resulting from 1. and 2. above.*

*If you meet this criteria and wish to make a claim please contact our claims team at [telephone number]/[email]”.*

The Provider says that the Business Interruption Extension Notifiable Disease only provides cover where a business is impacted by the occurrence of a disease or infection at the insured premises, which causes restrictions on the use of the premises, on the order or advice of the competent authority.

The Provider notes that the Complainants have not advised of an occurrence of COVID-19 at the insured premises. Instead, reference is made only to the Government order in March 2020 for all restaurants to close, implemented to assist in stopping the spread of COVID-19. Whilst this did impose a restriction on the use of the insured premises, the Provider notes that it was not as a direct result of an occurrence of COVID-19 at the premises. In this regard, the Government order was not specific to the Complainants’ premises, it was an industry wide order imposed on all restaurants in Ireland.

As a result, the Provider does not believe that the first two policy criteria set out above, that is, that there was an outbreak of a notifiable disease at the premises and that its closure was brought about on the advices of the competent authority as a result of an outbreak at the premises, were satisfied in order for the Complainants to make a valid claim under their insurance policy.

Accordingly, the Provider is satisfied that it correctly advised the Complainants that their **Property Owners** insurance policy provided them with no cover in respect of the shortfall in rent received as a result of their tenant’s temporary closure arising from the outbreak of Coronavirus (COVID-19), in accordance with the policy terms and conditions.

/Cont’d...

### **The Complaint for Adjudication**

The complaint is that the Provider wrongly or unfairly advised the Complainants that their **Property Owners** insurance policy provided them with no cover in respect of the shortfall in rent received as a result of their tenant's temporary closure due to the outbreak of coronavirus (COVID-19)

### **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 1 October 2020, 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 complaint at hand is that the Provider wrongly or unfairly advised the Complainants that their insurance policy provided them with no cover in respect of the shortfall in rent received as a result of their tenant's temporary closure arising from the outbreak of Coronavirus (COVID-19).

I note that the First Complainant telephoned the Underwriter on **17 April 2020** with questions about the Complainants' **Property Owners** insurance policy with regard to loss of

/Cont'd...

rent as their tenant, which trades as a restaurant, was unable to pay the monthly rent in full, due to its temporary closure arising from the outbreak of Coronavirus (COVID-19).

In this regard, I note that the Underwriter advised the First Complainant by telephone and by email on **17 April 2020** that there had to be an outbreak of a notifiable disease at the premises and that the closure of the premises was brought about on the advices of the competent authority as a result of the occurrence of the notifiable disease at the premises, in order for the Complainants to make a valid claim under their **Property Owners** insurance policy.

In addition, I note that the Provider advised the First Complainant by email on **30 April 2020**, as follows:

*“For a loss of earnings claim due to consequences of a Notifiable Disease to succeed under Business Interruption Extension, the following circumstances must exist:*

- 1. The outbreak of the Notifiable Disease is at the Premises and*
- 2. The closure of the Premises is brought about on the advices of the competent authority as a result of an outbreak at the Premises.*
- 3. There is verified financial loss directly resulting from 1. and 2. above.*

*If you meet this criteria and wish to make a claim please contact our claims team at [telephone number]/[email]”.*

Like all insurance policies, the Complainants’ **Property Owners** insurance policy does not provide cover for all eventualities. Instead the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, I note that the ‘**Business Interruption Section Extensions**’ section of the applicable **Property Owners** policy conditions document provides, amongst other things, as follows:

***“Notifiable Disease***

*The insurance by this Policy will extend to include loss resulting from interruption or interference with the Business carried on by the Insured at the Premises in consequence of:*

- 1. (i) any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises*  
  
*(ii) any discovery of an organism at the Premises likely to result in the occurrence of a Notifiable Disease ...*

/Cont’d...

*which causes restrictions on the use of the Premises on the order or advice of the competent authority ...*

### **Special Conditions**

*(a) Notifiable Disease means illness sustained by any person resulting from:*

- (i) food or drink poisoning or*
- (ii) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent authority has stipulated will be notified to them”.*

In this regard, I note that the Complainants' **Property Owners** insurance policy only provides cover for business interruption losses, in this case loss of rental earnings, due to the outbreak of a notifiable disease in circumstances limited to where there is an occurrence of a notifiable disease at the insured premises and that the closure of the premises was brought about on the advices of the competent authority, as a result of the occurrence of the notifiable disease at the insured premises.

I note that the Complainants did not advise the Provider of an occurrence of COVID-19 at the insured premises that resulted in the closure of the premises on the advices of the competent authority, as a result of that occurrence. Accordingly, I accept that the Provider correctly advised the Complainants that the terms and conditions of their insurance policy did not cover the situation they found themselves in, in respect of a shortfall in rent received as a result of their tenant's temporary closure arising from the outbreak of Coronavirus (COVID-19).

I am satisfied that the Provider is obliged to make benefit payments to a policyholder, only in respect of such cover agreed within the policy terms and conditions.

In this instance, the Complainants find themselves in an unfortunate situation, insofar as they have been unable to collect the usual level of rent from their tenant, which was obliged to cease trading as a result of the direction from the Government in March 2020, for the premises to close. Such a situation is not however, covered by the terms of the policy in place between the Complainants and the Provider. For that reason, I am of the opinion that it would not be appropriate to uphold this complaint against the Provider as there is no evidence of any wrongful conduct on its part.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

/Cont'd...

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**  
**DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23 October 2020

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.