



<u>Decision Ref:</u>	2020-0373
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Service
<u>Conduct(s) complained of:</u>	Rejection of claim Poor wording/ambiguity of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a limited company trading as a party and catering business, hereinafter 'the Complainant Company', holds a business insurance policy with the Provider.

The Complainant Company's Case

Following initial queries, the Complainant Company submitted to the Provider on **5 May 2020** a claim for business interruption losses as a result of the temporary closure of its business from 15 March 2020 for a period, due to the outbreak of coronavirus (COVID-19).

Following its assessment, the Provider wrote to the Complainant Company's Broker on 18 May 2020 to decline indemnity, as follows:

"I regret to advise that your claim in respect of Business Interruption resulting from COVID-19 is not covered by your Policy for the following reason(s):

- 1. There was no outbreak of the Notifiable Disease at the Premises, and;*
- 2. The restrictions on the use of the Premises by the competent authority was not brought about as a direct result of an outbreak of the Notifiable Disease at the Premises".*

In the Complaint Form it completed, the Complainant Company submits, *inter alia*, as follows:

“[The Provider] are denying responsibility in respect to our notifiable disease cover”.

As a result, the Complainant Company seeks for the Provider to admit its claim for loss of income due to business interruption and in that regard it advised in April 2020 that *“we are losing €40,000 per month in turnover, and have been closed for over 1 month and will be closed for at least another 1 if not 2 [months] based on current NPHET [National Public Health Emergency Team] advice and government directives”.*

The Provider’s Case

Provider records indicate that the Complainant Company, a limited company trading as a party and catering business, holds a business insurance policy with the Provider.

The Provider notes that the Business Interruption Notifiable Disease Extension of the Complainant Company’s business insurance policy provides cover for loss of income where there is an outbreak of a disease at the listed premises and the closure of the premises occurs by order of a local or government authority or is a direct result of an outbreak at the premises.

In this regard, the **‘Business Interruption Section Extensions’** wording of the applicable business insurance policy document states, amongst other things, at pg. 49, as follows:

“6. 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 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 ...

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 ...*

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Premises will only mean those locations stated in the Premises definition”.

The Provider says that, as a result, in order for this extension to apply, the following criteria must be satisfied:

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 a verified financial loss directly resulting from 1. and 2. above.

The Provider says that, upon receipt of the Complainant Company’s claim for business interruption losses on **5 May 2020**, the Provider requested the following details from the Complainant Company via its Broker, by way of letter dated 11 May 2020, as follows:

“To enable us to investigate and consider the claim please let us have details of the occurrence of COVID-19 at your Premises. This should include the following:

- *The date of the occurrence of the Notifiable Disease at the Premises or when it was first brought to Insured’s attention;*
- *The date on which the restrictions by the competent authority were put in place;*
- *The period of the restrictions; and*
- *Copies of any notices or relevant documents in support of the claim”.*

The Provider received a reply from the Complainant Company via its Broker on **12 May 2020** referencing the Government closure orders on all non-essential businesses which were imposed on 20 March 2020, however the Complainant Company did not advise of any occurrence of COVID-19 at its premises. As a result, the Provider wrote to the Complainant Company’s Broker on 18 May 2020 to decline indemnity, as follows:

“I regret to advise that your claim in respect of Business Interruption resulting from COVID-19 is not covered by your Policy for the following reason(s):

1. *There was no outbreak of the Notifiable Disease at the Premises, and;*
2. *The restrictions on the use of the Premises by the competent authority was not brought about as a direct result of an outbreak of the Notifiable Disease at the Premises”.*

Accordingly, the Provider is satisfied that it declined the Complainant Company’s claim for business interruption losses as a result of the temporary closure of its business, due to the outbreak of Coronavirus (COVID-19), in accordance with the terms and conditions of the Complainant Company’s business insurance policy.

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The Complaint for Adjudication

The complaint is that the Provider declined the Complainant Company's claim for business interruption losses as a result of the temporary closure of its business from 15 March 2020 for a period, 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 Complainant Company 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 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.

I note that on **5 May 2020**, the Complainant Company submitted a claim to the Provider for business interruption losses as a result of the temporary closure of its business from 15 March 2020 for a period, due to the outbreak of Coronavirus (COVID-19). Following its assessment, the Provider wrote to the Complainant Company's Broker on **18 May 2020** to decline indemnity, as follows:

"I regret to advise that your claim in respect of Business Interruption resulting from COVID-19 is not covered by your Policy for the following reason(s):

1. *There was no outbreak of the Notifiable Disease at the Premises, and;*

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2. *The restrictions on the use of the Premises by the competent authority was not brought about as a direct result of an outbreak of the Notifiable Disease at the Premises”.*

Like all insurance policies, the Complainant Company’s business 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**’ wording of the applicable business insurance policy document states, amongst other things, at pg. 49, as follows:

“6. 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 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 ...

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

Special Conditions

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

(iii) food or drink poisoning or

(iv) 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 ...

Premises will only mean those locations stated in the Premises definition”.

[My emphasis]

As a result, in order for the Business Interruption Notifiable Disease Extension to apply, there must be an outbreak of a notifiable disease such as COVID-19 at the insured premises and the premises must then be closed by order of a competent authority as a direct result of the outbreak of the notifiable disease at that premises.

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I note that in its email to this Office dated **16 July 2020**, the Complainant Company submitted, as follows:

"I would ask the question of the outside catering cover...given the identifiable disease within the community, if the country goes into lockdown and effectively ends our ability to do business as we do, where does our cover lie in respect of this?"

I note that the '**Business Interruption Section Extensions**' wording of the applicable business insurance policy document states, amongst other things, at pg. 49, as follows:

"Premises will only mean those locations stated in the Premises definition. In the event that the policy includes an extension which deems loss, destruction or damage at other locations to be an incident, such extension will not apply to this Extension"

In addition, I note that the '**Material Damage/Business Interruption Sections Definitions**' segment of this policy document defines the term 'Premises' at pg. 15, as follows:

"Premises means the location of Property Insured as stated in the Schedule"

In this regard, I note that the '**Business Interruption Specification**' section of the Complainant Company's policy schedule notes the location of the premises as one listed address only.

In addition, I note that in its letter to this Office dated **17 July 2020**, the Provider advised, amongst other things, as follows:

"The Business Interruption specification on the Complainant's policy schedule notes the location of Property as [address A].

Therefore if an occurrence of COVID-19 occurs at [address B] which the [Complainant Company] uses as part of their outside catering element of the business there is no cover under this policy for loss resulting from interruption of or interference [with] the Insured's business. The occurrence must be at [address A] for the Notifiable Disease Extension to apply"

Accordingly, I accept that the Provider declined the Complainant Company's claim for business interruption losses, as a result of the temporary closure of its business from 15 March 2020 for a period, due to the outbreak of Coronavirus (COVID-19), in accordance with the terms and conditions of the Complainant Company's business insurance policy.

I can certainly empathise with the position of the Complainant Company as the policy terms and conditions do not anticipate the situation which the Complainant Company found itself in, in March 2020. The Provider however, is obliged to meet a claim only in the event of circumstances arising which are covered by the policy terms and conditions in place between the parties. As no claim was made to the Provider on the basis of the outbreak of a notifiable disease at the Complainant Company's specified premises, I accept that the

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Provider was entitled to decline the Complainant Company's claim as the circumstances outlined were not covered.

Accordingly, on the evidence before me, it would not be appropriate to make any finding of wrongdoing against the Provider and in those circumstances, I take the view that it is not appropriate to uphold this complaint.

Conclusion

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

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.