



<u>Decision Ref:</u>	2020-0415
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Service
<u>Conduct(s) complained of:</u>	Rejection of claim Claim handling delays or issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a sole trader trading as a chartered physiotherapist, holds a business insurance policy with the Provider. The policy period in which this complaint falls, is 12 August 2019 to 11 August 2020.

The Complainant's Case

The Complainant, in correspondence to this Office dated **10 June 2020**, submits, as follows:

"I operate & manage a physiotherapy clinic...I was forced to close my business last March [2020], in common with many others, due to Covid-19.

1 hold a business combined policy underwritten by [the Provider]...which has a business interruption section. This section of the policy extends to cover interruption or interference with my business due to "an occurrence of a notifiable disease"

In this regard, the Complainant notified the Provider on **26 March 2020** of a claim for business interruption losses as a result of the temporary closure of her business for a period, due to the outbreak of coronavirus (COVID-19).

Following its claim assessment, the Provider wrote to the Complainant on **28 April 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".*

The Complainant was dissatisfied with this decision and wrote to the Provider on **28 April 2020** to advise as follows:

"I read the policy wording very carefully and came to the conclusion that it was ambiguous in relation to this matter".

Following its review of her complaint, the Provider wrote to the Complainant on **3 June 2020** to advise that it was satisfied that its decision to decline her claim was correct and in accordance with the policy terms and conditions. The Complainant sets out her complaint in the **Complaint Form** she completed for this office, as follows:

"My business was significantly reduced at the announcement of the presence of Covid-19 worldwide from 11 February 2020 and we were not on the essential service list so closed 26/3/2020 and remained closed until 18/6/2020 when there was an easing of restrictions. We are now at a reduced capacity (more than 1/3 less appointment slots available a day) due to increased restrictions with regard to COVID-19 and this will be ongoing until I imagine a vaccine is developed".

The Complainant refers to the Small Business Policy Summary of Cover document dated 29 June 2019 that states at pg. 2, as follows:

"Business Interruption Section

Covers loss resulting from interruption of or interference with the Business carried on by the Insured at the Premises in consequence of Damage by an Insured Peril to property used by the Insured at the Premises for the purposes of the Business.

Principal Extensions

Cover interruption or interference with the Business in consequence of:

- an occurrence of a Notifiable Disease, the discovery of vermin or pests at the Premises, an accident causing defect in the drains or other sanitary arrangements at the Premises, all of which cause restrictions on the use of the Premises on the order or advice of the competent authority up to €250.000 any one loss".*

In this regard, in her correspondence to this Office dated **10 June 2020**, the Complainant submits, as follows:

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"I called into question the ambiguity, as I saw it of the wording of the policy [extension]... [which] clearly states:

"an occurrence of a Notifiable Disease, the discovery of vermin or pests at the Premises, an accident causing defect in the drains or other sanitary arrangements at the Premises, all of which cause restrictions on the use of the Premises on the order or advice of the competent authority up to €250.000 any one loss".

I contend that to be unambiguous this wording would have to read "an occurrence of a Notifiable Disease at the premises, the discovery of vermin or pests at the Premises etc". By leaving out the words "at the Premises" it can, in my opinion, be read that the Notifiable Disease can be in the community, not specifically in the premises.

On 28th April [2020] I received a letter from [the Provider] which...dismissed my claim without reference to my comments regarding the wording.

I then wrote to the Head of Customer Focus at [the Provider] ...

On 3rd June [2020] I received a letter from [the Provider] which dismissed my claim again and referred to a completely different policy wording to the one in my policy.

I am absolutely convinced that the wording in my policy is ambiguous and as such I feel I should be given the benefit of the doubt but unfortunately [the Provider] are not of that opinion".

Similarly, in her correspondence to this Office dated **21 July 2020**, the Complainant submits as follows:

"I feel my claim is very simple and valid. It is that I am covered under my policy as the wording extends to cover interruption or interference with my business due to "an occurrence of a notifiable disease". It does not state a notifiable disease at the premises" ...

So I make my case that it is being stated by [the Provider] that I am not covered, as the notifiable disease was not at the premises but my [policy] wording is not that and the policy, [the Provider] referred to was not my policy".

As a result, the Complainant seeks for *"my loss of income to be reimbursed under the policy"*.

The complaint is that the Provider wrongfully declined the Complainant's claim for business interruption losses as a result of the temporary closure of her business due to the outbreak of coronavirus (COVID-19).

The Provider's Case

Provider records indicate that the Complainant notified the Provider on **26 March 2020** of a claim for business interruption losses as a result of the temporary closure of her business for a period, due to the outbreak of coronavirus (COVID-19). In this regard, the Provider notes that the '**Business Interruption Section – Extension**' of the Complainant's Business Policy document provides at pg. 39, 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 (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 ...*

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:*
...

(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".*

The Provider says that the Business Policy document, which sets out the full terms and conditions of the cover, was issued to the Complainant on **26 July 2018** when the policy was first incepted.

As part of its claim assessment, the Provider wrote to the Complainant on **7 April 2020** requesting the date of the occurrence of the notifiable disease (COVID-19) at the insured premises or when its occurrence had been first brought to her attention, the date on which the restrictions by the competent authority were put in place and the period of these restrictions, as well as copies of any notices or relevant documents in support of the claim.

The Provider says that the Complainant responded on **22 April 2020** referencing the Government closure orders on all non-essential businesses which were imposed on 20 March 2020.

The Provider says that because the Complainant did not confirm the occurrence of COVID-19 at the insured premises, the Provider concluded that the Business Interruption Section – Extension did not apply and it wrote to the Complainant on **28 April 2020**, 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”.*

The Provider notes that as part of her complaint, the Complainant refers to wording contained in the Policy Summary of Cover document dated 29 June 2019. Whilst this four page document does not explicitly state that the occurrence of a notifiable disease must be at the premises, the Provider is satisfied that the Summary of Cover document is a summary only.

The Provider says that the document clearly states that it does not list all of the benefits, terms, conditions, limitations, exceptions and exclusions associated with the policy and advises the policyholder to read the Business Policy document and Schedule to ensure that they understand the cover provided. In this regard, the business insurance policy is a contract between the Provider and the policyholder and the Business Policy document and Schedule should be read as one contract, and the separate Policy Summary of Cover does not form part of this contract of insurance.

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

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined the Complainant’s claim for business interruption losses as a result of the temporary closure of her business 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 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.

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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 on **27 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 the Complainant, a sole trader trading as a chartered physiotherapist, holds a business insurance policy with the Provider. The Complainant closed her business on **26 March 2020** and though it reopened on **18 June 2020**, she says that it has since been operating at *“a reduced capacity (more than 1/3 less appointment slots available a day) due to increased restrictions with regard to COVID-19”*.

The Complainant notified the Provider on **26 March 2020** of a claim for business interruption losses as a result of the temporary closure of her business, due to the outbreak of coronavirus (COVID-19). Following its claim assessment, the Provider wrote to the Complainant on **28 April 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”.*

The Complainant was dissatisfied with this decision and wrote to the Provider on **28 April 2020** to advise as follows:

“I read the policy wording very carefully and came to the conclusion that it was ambiguous in relation to this matter”.

I note that following its review of her complaint, the Provider wrote to the Complainant on **3 June 2020** to advise that it was satisfied that its decision to decline her claim was correct and in accordance with the policy terms and conditions.

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The Complainant's business insurance policy, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, the '**Business Interruption Section – Extension**' of the applicable Business Policy document provides at pg. 39, 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 (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 ...*

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:*
...

(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”.*

[Emphasis added]

In order for this extension to apply where there is an interruption to, or interference with, the business carried on by the policyholder at the insured premises due to a notifiable disease, I am satisfied that the policy terms and conditions clearly state that the occurrence of the notifiable disease must be at the insured premises itself.

As there is no evidence before me, or indeed put before the Provider as part of the claim process, indicating that there had been an occurrence of COVID-19 at the Complainant's insured premises, I am satisfied that the Provider was entitled to decline the Complainant's claim for business interruption losses as a result of the temporary closure of her business due to the outbreak of coronavirus (COVID-19), in accordance with the terms and conditions of her business insurance policy.

I note that in her correspondence to this Office dated **10 June 2020**, the Complainant submits, as follows:

"I called into question the ambiguity, as I saw it of the wording of the policy [extension]... [which] clearly states:

"an occurrence of a Notifiable Disease, the discovery of vermin or pests at the Premises, an accident causing defect in the drains or other sanitary arrangements at the Premises, all of which cause restrictions on the use of the Premises on the order or advice of the competent authority up to €250.000 any one loss".

I contend that to be unambiguous this wording would have to read "an occurrence of a Notifiable Disease at the premises, the discovery of vermin or pests at the Premises etc". By leaving out the words "at the Premises" it can, in my opinion, be read that the Notifiable Disease can be in the community, not specifically in the premises".

Similarly, in her correspondence to this Office dated **21 July 2020**, the Complainant submits that:

"I feel my claim is very simple and valid. It is that I am covered under my policy as the wording extends to cover interruption or interference with my business due to "an occurrence of a notifiable disease". It does not state a notifiable disease at the premises" ...

So I make my case that it is being stated by [the Provider] that I am not covered, as the notifiable disease was not at the premises but my wording is not that and the policy, [the Provider] referred to was not my policy".

In this regard, I note that the Complainant is quoting from the Policy Summary of Cover document dated 29 June 2019. Whilst the Complainant is correct that this document does not state that the occurrence of a notifiable disease must be at the insured premises in order for business interruption cover to apply, I note that the Policy Summary of Cover document clearly states, at pg. 1, as follows:

*"This document outlines the main benefits and restrictions associated with [a Provider] Retail Policy. It **does not** list all of the benefits, terms, conditions, limitations, exceptions and exclusions associated with the Policy, a copy of which is available from the Company or your Insurance Intermediary on request ...*

Please take time to read the Policy and your Schedule to ensure that you understand the cover provided".

I am satisfied accordingly, that this Policy Summary of Cover document provides clear and appropriate notice that it is a summary document only and that the full terms and conditions of the cover, are instead set out in the Business Policy document.

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I also accept that it duly advises policyholders to read this Business Policy document in order to familiarise themselves with the cover provided. In this regard, I note that the 'Introduction' section of the applicable Business Policy document provides at pg. 2, as follows:

"In consideration of the Insured having paid or agreed to pay the Premium [the Provider] (hereinafter called "the Company") will indemnify the Insured in the manner and to the extent described within this Policy on the terms set out and subject to its terms Definitions Exclusions Extensions Conditions and any Endorsements ...

The Policy comprising the Introduction Schedule Specification Definitions Insuring Clauses Extensions Exclusions Conditions and any Endorsements shall be read as one contract and any word and expression to which specific meaning has been attached therein shall bear such specific meaning wherever it may appear".

Accordingly, it is the Business Policy document and the Schedule which detail the particulars of the contract of insurance between the Provider and the policyholder. In addition, I note that the 'General Policy Conditions' section of this Business Policy document provides at pg. 96, as follows:

"1. Due Observance

The observances and fulfilment of the terms, Exclusions and Conditions of this Policy in so far as they relate to anything to be done or complied with by the Insured or any other indemnified party will be conditions precedent to any liability of the Company to make any payment under this Policy".

I note that the Provider has advised that it issued the Complainant with a copy of the applicable Business Policy document on 26 July 2018 when her policy was initially incepted. Accordingly, given the particular policy provisions in place, I accept that the Provider was entitled to decline the Complainant's claim and it is my Decision therefore, on the evidence before me that this complaint cannot be upheld.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 November 2020

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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.

