



<u>Decision Ref:</u>	2021-0002
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Service
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a sole trader trading as both a bed and breakfast and a [other business redacted], holds two insurance policies with the Provider, namely, a Guesthouse Multiperil insurance policy in respect of her bed and breakfast business and a Business Multiperil insurance policy in respect of her [other business redacted] business.

The Complainant's Case

The Complainant notified the Provider in **March 2020** of a claim for loss of income as a result of the temporary closure of her bed and breakfast and [other business redacted] businesses for a period, due to the outbreak of coronavirus (COVID-19). Following its assessment, the Provider advised the Complainant by letter dated **8 April 2020** that it was declining indemnity in this matter.

In the Complaint Form she completed, the Complainant sets out her complaint, as follows:

"I made €550 weekly claim for loss of income in relation to business interruption in respect of [other business redacted] and bed and breakfast...closing due to [COVID-19] and government shut down under my business interruption policy".

As a result, the Complainant seeks for the Provider to admit her claims for loss of income in the total amount of €550 a week, from **15 March 2020**.

The Provider's Case

Provider records indicate that the Complainant notified the Provider in March 2020 of a claim for loss of income as a result of the temporary closure of her bed and breakfast and her [other business redacted] businesses for a period, as a result of nationwide measures introduced by the Government to slow the spread of the COVID-19 pandemic.

The Provider says that the Complainant holds a Guesthouse Multiperil insurance policy in respect of her bed and breakfast business. The Provider notes that the loss of income cover is only triggered under that policy where the insured property has suffered damage caused by any insured peril listed under Section 1A or 1B of the policy. In this regard, the policy does not provide any cover whatsoever for loss of income arising from the imposed closure of the premises by order of a local government authority, following the outbreak of a contagious or infectious disease. As there was no damage to the insured property caused by any insured peril listed under Section 1A or 1B of her policy, the Provider is satisfied that it declined the Complainant's claim for loss of income arising from the temporary closure of her bed and breakfast business due to the outbreak of coronavirus (COVID-19), in accordance with the terms and conditions of her Guesthouse Multiperil policy.

The Provider also says that the Complainant holds a Business Multiperil insurance policy in respect of her [other business redacted] business. Similarly, the Provider notes that the loss of income cover is only triggered under this policy following damage to the insured property caused by any insured peril under Section 1 of the policy. In this regard, the policy does not provide any cover whatsoever for loss of income arising from the imposed closure of the premises by order of a local government authority, following the outbreak of a contagious or infectious disease. As there was no damage to the insured property caused by any insured peril listed under Section 1 of her policy, the Provider is satisfied that it declined the Complainant's claim for loss of income arising from the temporary closure of her [other business redacted] business due to the outbreak of coronavirus (COVID-19), in accordance with the terms and conditions of her Business Multiperil policy.

The Provider notes that it confirmed to the Complainant's son, by telephone on **12 March 2020** and again on **18 March 2020** that the loss of income sustained due to the closure of her businesses were not covered by her respective insurance policies. In addition, the Provider-appointed Loss Adjuster confirmed to the Complainant's son by telephone on **6 April 2020** that the losses were not covered. The Provider also wrote to the Complainant on **8 April 2020** setting out its position in writing, and again on **27 April 2020** to advise that it was maintaining its decision to decline indemnity.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined to admit and pay the Complainant's claims for loss of income as a result of the temporary closure of her businesses due to the outbreak of coronavirus (COVID-19).

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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.

A Preliminary Decision was issued to the parties on **26 November 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 is a sole trader, trading as both a bed and breakfast and a [other business redacted]. She holds two insurance policies with the Provider, namely, a Guesthouse Multiperil insurance policy in respect of her bed and breakfast business and a separate Business Multiperil insurance policy in respect of her [other business redacted] business.

The Complainant notified the Provider in **March 2020** of a claim for loss of income as a result of the temporary closure of her businesses for a period, due to the outbreak of coronavirus (COVID-19). The Provider declined indemnity as it advised the Complainant that neither her Guesthouse Multiperil policy, nor her Business Multiperil policy, provided cover for loss of income arising from the imposed closure of the premises by order of a local government authority following the outbreak of a contagious or infectious disease, as this was not listed as an insured peril in either policy.

In this regard, I note that, like all insurance policies, neither the Complainant's Guesthouse Multiperil insurance policy nor her Business Multiperil insurance policy, provide cover for every possible eventuality. Rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

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In respect of the Guesthouse Multiperil policy, I note that the '**Special Provisions applicable to Section 1A and 1B**' section of the Policy Document provides at pg. 10, as follows:

"4. LOSS OF INCOME

It is agreed that the Company will indemnify the Insured in respect of Loss of Trading Profit in the event of Loss of Income following damage to the insured Property caused by an insured Peril under Section 1.

The maximum amount payable under this Extension shall not exceed €6,500 unless otherwise stated in the Schedule".

[Underlining added for emphasis]

I note that in order for this loss of income cover to be triggered under this policy provision, the Complainant's insured premises, her bed and breakfast, must have suffered damage caused by one of the 18 insured perils listed under Section 1A, 'Loss or Damage to the Buildings', or one of the 29 insured perils listed under Section 1B, 'Loss or Damage to the Contents', of the Policy Document.

As the imposed closure of the policyholder's premises by order of a local government authority following the outbreak of a contagious or infectious disease, is not one of the insured perils listed under Section 1A or Section 1B, I am satisfied that the Provider was entitled to decline the Complainant's claim for loss of income, caused by the temporary closure of her bed and breakfast business due to the outbreak of coronavirus (COVID-19). The terms and conditions of her Guesthouse Multiperil insurance policy did not cover such circumstances.

In respect of the Business Multiperil insurance policy, I note that **Section 2, 'Consequential Loss'** of the applicable Policy Document provides at pg. 11, as follows:

"In the event of the premises or property described in the Schedule used by the insured for the purpose of the Business being destroyed or damaged by:

- 1. Any of the perils outlined under Section 1 of the Policy*
- 2. Explosion of any boilers or economisers on the premises*

(such destruction or damage so caused herein after termed "Damage"), and the business carried on by the insured at the Premises being in consequence thereof interrupted or interfered with

THE COMPANY WILL PAY THE INSURED in respect of each item in the Schedule to this Section the amount of loss resulting from such interruption or interference in accordance with the provisions therein contained.

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PROVIDED THAT at the time of the happening of the Damage there shall be in force an insurance covering the interest of the Insured in the property at the premises against such Damage and that payment shall have been made or liability admitted therefore under such insurance”.

[Underlining added for emphasis]

I accept that under this policy, for this consequential loss (loss of income) cover to be triggered, the Complainant’s insured premises (her hairdressing premises) must have suffered damage caused by one of the insured perils listed under **Section 1, ‘Fire, Lightning & Explosion (Property Damage)’**, of the Policy Document. In this instance, the imposed closure of the policyholder’s premises was by order of the local government authority, following the outbreak of a contagious or infectious disease. This is not however, one of the insured perils listed under Section 1 of the policy.

I therefore accept that the Provider was entitled to decline the Complainant’s claim for loss of income as a result of the temporary closure of her [other business redacted] business due to the outbreak of coronavirus (COVID-19) as the terms and conditions of her Business Multiperil insurance policy did not cover such circumstances.

Whilst I appreciate that the Complainant will be disappointed with the outcome of her complaint, I am satisfied that the contractual provisions agreed between the parties, did not cover the circumstances in which the Complainant found herself, and accordingly, I do not believe that there is any reasonable basis upon which this complaint can 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**

4 January 2021

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—

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- (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.**

