An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

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| **Decision Ref:** | 2021-0042 |
| **Sector:** | Insurance |
| **Product / Service:** | Service |
| **Conduct(s) complained of:** | Rejection of claim |
| **Outcome:** | Rejected |

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

The Complainant, a sole trader trading as a dentist, holds an office insurance policy with the Provider.

## The Complainant's Case

The Complainant notified the Provider on **30 March 2020** of a claim for business interruption losses as a result of the temporary closure of his dental practice from **18 March 2020** for a period, due to the outbreak of coronavirus (COVID-19).

Following its assessment, the Provider wrote to the Complainant on **24 April 2020** to advise that it was declining indemnity as the claim circumstances fell outside the scope of cover provided by his office insurance policy.

Following a subsequent review of the claim, the Provider wrote to the Complainant on 16 June 2020 to advise that it was standing over its decision to decline indemnity.

The Complainant seeks for the Provider to admit and pay his claim for business interruption losses as a result of the temporary closure of his dental practice from 18 March 2020 for a period, due to the outbreak of coronavirus (COVID-19).

## The Provider's Case

Provider records indicate that the Complainant, who holds an office insurance policy with it, notified the Provider on 30 March 2020 of a claim for business interruption losses as a result of the temporary closure of his dental practice from 18 March 2020 for a period, due to the outbreak of coronavirus (COVID-19).

The Provider says that following its consideration of the claim presented, it wrote to the Complainant on 24 April 2020 to advise that it was declining indemnity, as follows:

> *"*[The Provider's] *Business Interruption insurance covers risks that are specific, pre-defined and local to your business, such as closure caused by a fire, flood or a break-in. Our wording does not provide cover for national or global threats such as wars, nuclear risks, or pandemics. While some* [Provider] *policies have extensions for 'specified diseases', these cover a pre-defined list of conditions and not new and emerging diseases …*
>
> [The Provider's] *standard business interruption cover under your policy provides cover if the business at the premises is interrupted or interfered with as a result of loss or damage to contents or buildings. Neither the occurrence of Covid-19, nor of the SARS-Cov-2 virus, constitutes "damage" to property or premises. Accordingly, I regret that we will not indemnify you for the interruption to your business caused by the Covid-19 pandemic under our standard business interruption cover."*

The Provider says that following a review of this matter, it then wrote to the Complainant on 16 June 2020 to advise that it was standing over its decision to decline indemnity, as follows:

> *"…the Business Interruption section of your policy cover is only triggered -*
>
> > ***"if the business at the premises is interrupted or interfered with as a result of loss or damages to the contents or buildings for which we pay a claim under sections 1 (Contents) or 5 (Buildings)"***
>
> *In the context of the current Covid-19 situation, it is a material fact that no "**loss or damages**" has been caused to the premises, or to any of the property within it. Covid-19, and indeed Pandemic, in general, is not an insured peril that is covered under the Contents and Buildings sections of the policy. Accordingly, as no insured peril relative to sections 1 or 5 of your policy has operated, the Business Interruption section of your policy is not triggered.*
>
> *It is for this reason that we have come to the view that your policy has no application to any losses arising as a result of the closure of your business due to the Covid-19 pandemic. Your insurance policy is a contact of insurance and it will not cover every eventuality. Like any contract, your policy is subject to terms, conditions and exclusions. We are completely satisfied that the policy terms are straightforward, clear and free of any ambiguity."*

The Provider advises that it is satisfied that the terms and conditions of the Complainant's office insurance policy is clear that in order for business interruption cover to react, there must first and foremost have been loss of, or damage to, the Complainant's contents or buildings for which the Provider would pay a claim under **Section 1 'Contents'** or **Section 5 'Buildings'** of the policy.

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In this regard, the Provider says that whilst his business was closed due to measures imposed by the Government to curb the spread of COVID-19, nevertheless there was not any accidental loss of, destruction of or damage to the Complainant's premises, or to any of the property within it. In addition, the Provider notes that there are no circumstances under which the Complainant's office insurance policy provides cover where his business is closed due to the occurrence of a notifiable infectious disease at this insured premises.

Accordingly, the Provider is satisfied that it declined the Complainant's business interruption claim in accordance with the terms and conditions of his office insurance policy.

**The Complaint for Adjudication**

The Complainant's complaint is that the Provider wrongfully or unfairly declined to admit and pay his claim for business interruption losses as a result of the temporary closure of his dental practice 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.

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 January 2021, 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.

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I note that the Complainant, who holds an office insurance policy with the Provider, notified the Provider on 30 March 2020 of a claim for business interruption losses as a result of the temporary closure of his dental practice from 18 March 2020 for a period, due to measures imposed by the Government to curb the spread of COVID-19.

Following its assessment, I note that the Provider wrote to the Complainant on 24 April 2020 to advise that it was declining indemnity on the basis that the claim circumstances fell outside the scope of cover provided by his office insurance policy.

It is important to note that the Complainant's office insurance policy, like all insurance policies, does not 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.

I note that **Section 3, 'Business interruption and book debts'**, of the Complainant's policy document provides as follows:

> *"**Business interruption***
>
> *If the business at the premises is interrupted or interfered with as a result of loss or damages to the contents or buildings for which we pay a claim under sections 1* ['Contents'] *or 5* ['Buildings']*, we will cover you for either item 1* ['Loss of gross fees'] *or item 2* ['Extra expenses (increase in the cost of working)'] *below".*
>
> [My emphasis]

I am satisfied that in order for the office insurance policy business interruption cover to be triggered, the business interruption must arise from some loss or damage to either the contents of the Complainant's dental practice or to the premises of the dental practice itself, for which the Provider would pay a claim under Section 1 'Contents' or Section 5 'Buildings' of the policy. In this regard, I note that Section 1, 'Contents', of the office insurance policy document provides, *inter alia*, at pg. 5:

> *"We will cover accidental loss of, destruction of or damage to (other than as excluded later in the policy) property at the premises described in the schedule."*

Similarly, I note that Section 5, 'Buildings', of this policy document provides at pg. 19:

> *"**Cover***
> *Accidental loss of, destruction of or damage to (other than as excluded later in the policy) to the buildings at the premises described in the schedule."*

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There is no evidence that the Complainant made a claim to the Provider under Section 1 "Contents" and Section 5 "Buildings", which then itself gave rise to an ancillary claim for business interruption losses, thereby caused, as a result of damage to the buildings or to the contents of the Complainant's practice. Rather, it seems that the business interruption caused by the temporary closure of the Complainant's dental practice, was not due to the loss or damage to either the contents of his dental practice, or to the premises of the dental practice itself.

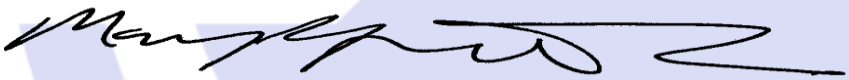
For that reason, I am satisfied that the Provider was entitled to decline the Complainant's claim in accordance with the terms and conditions of his office insurance policy. There is no evidence before me that the Provider acted wrongfully in coming to the decision that the losses claimed for by the Complainant were not covered by Section 3 of the policy agreement in place.

Accordingly, I take the view that there is no reasonable basis upon which it would be 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**

19 February 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—**

**(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.**