



<b><u>Decision Ref:</u></b>	2021-0083
<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 Complainant, a limited company trading as a hotel, hereinafter ‘the Complainant Company’, held a business insurance policy with the Provider.

#### **The Complainant Company’s Case**

The Complainant Company’s Broker notified the Provider on **3 April 2020** of a claim for business interruption losses as a result of the temporary closure of its hotel 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 **29 April 2020**, to advise that it had declined the Complainant Company’s claim, as follows:

*“I regret to advise that your claim in respect of the 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*

*We appreciate you may be disappointed with this response ...”*

The Complainant Company made a complaint to the Provider on **6 May 2020** in respect of its decision to decline indemnity, as follows:

*“Our business has [been] suffering significant loss as a result of all cancelled guest accommodation from the date of March 15th 2020 and going forward probably till December 31st 2020. We have also suffered with all group bookings i.e. communions, confirmations, parties etc have all been cancelled as a result of this business interruption. This will have a detrimental effect to our business, our staff and customers going forward.*

*As a direct result of the closure of our premises which will result in a Loss of Gross Profit for this year and 2021. ...”*

In response to the complaint, the Provider wrote to the Complainant Company on **25 May 2020**, advising that:

*“The Notifiable Disease Extension of your Policy, operates only where there is loss resulting from interruption or interference with the business as a result of any occurrence of a Notifiable Disease at the Premises, which causes restrictions on the use of the Premises on the order or advice of the competent authority. The Indemnity Period is from the date on which the restrictions on the Premises are applied for a maximum period up to three months, and is subject to a limit as noted in your Policy.*

*In reviewing your claim I note that the Hotel closed on the 15th March 2020 as per instruction by the Government due to the Covid 19 Pandemic and was not as a result of an outbreak of the Notifiable Disease at the Premises. 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.*

*Our position is that as with all claims we must be bound by the terms and conditions of your insurance policy. Having completed my review, our decision to decline your claim is correct and no cover can be provided.”*

Prior to submitting a completed Complaint Form to this Office, the Complainant Company wrote to this Office by email dated **27 May 2020**, as follows:

*“We are a hotel ... and closed our doors on the 15th March 2020 under the guidance of the Government due to the Covid 19 Pandemic. Our annual liability for Insurance via our brokers ... is 41338.50 Euros per year. Our Commercial Combined Policy Cover Business Interruption. The Scope of this Cover is to cover loss of Gross Profit following material damage insured by any of the perils specified. According to our policy the Exclusion only would be Terrorism and other items on our policy that is Fire, Explosion, Aircraft, Riot[t] Civil Commotion, Earthquake, Storm, Escape of Water, Impact of Own Vehicles or ex Own Vehicles, Theft, Glass, Accident Damage, Subsidence.*

*Our business has been interrupted. Our Gross Profit has been impacted and it will be some time before this will come back to the same figure in 2018/2019.*

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*I today received a letter on behalf of [the Provider] to notify me that our claim has been declined for Business Interruption during this period."*

As a result, the Complainant Company seeks for the Provider to admit its claim for loss of income due to business interruption, and in making this complaint, the Complainant Company stated that:

*"We are seeking payment of a sum of money. We have suffered a financial loss from March 15th as a result of being told to close our doors from the Government. We are currently closed. These months would be our busiest 3 months during the year and our [gross profit] has greatly been impacted."*

### **The Provider's Case**

Provider records indicate that the Complainant Company holds a business insurance policy with the Provider.

The Provider says that on **12 March 2020**, it received a notification from the Complainant Company's Broker to include 'Endorsement ND007' (i.e. Business Interruption Disease endorsement) with immediate effect on the policy.

On **27 March 2020**, the Provider says the Complainant Company's Broker submitted a letter dated **15 March 2020** which advised that under the guidance from the Irish Government issued on **15 March 2020**, the Complainant Company's business closed and was no longer trading as of 8pm that evening and, therefore, the Complainant Company was looking for a revision of the payment terms.

On **3 April 2020**, the Provider says the Complainant Company's Broker issued a letter advising of a formal claim being made against the policy under the Business Interruption section.

The Provider notes that the Business Interruption Notifiable Disease Extension provides cover where there is an outbreak of a disease at the Premises causing an interruption or interference with the Business carried on at the Premises. 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; and
3. There is a verified financial loss directly resulting from 1 and 2 above.

Upon receipt of the claim, the Provider says it requested the following details from the Complainant Company:

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1. The date of the occurrence of the Notifiable Disease at the Premises or when it was first brought to the Complainant Company's attention;
2. The date on which the restrictions by the competent authority were put in place;
3. The period of restrictions; and
4. Copies of any notices or relevant documents in support of the claim.

On **20 April 2020**, the Provider says it received a reply from the Complainant Company advising that its business closed on **15 March 2020** following Government closure instructions due to COVID-19 issued on **15 March 2020**.

The Provider says that because there was no occurrence of COVID-19 at the premises, the first criterion outlined above was not satisfied. On this basis, the Provider says it subsequently wrote to the Complainant Company via its Broker, advising that the claim was not covered under the policy because:

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 states that the Business Interruption Notifiable Disease Extension provides cover for loss of income where the outbreak of the disease is at the Premises and the closure of the premises by order of a local or government authority, is as a direct result of an outbreak at the Premises.

The Provider refers to the Business Interruption Notifiable Disease endorsement wording of the Complainant Company's business insurance policy document, for the period 14 January 2020 to 13 January 2021, which states on pg. 14, as follows:

*"The insurance by this Policy shall subject to all the exclusions and conditions of the policy (except in so far as they may be hereby expressly varied) and the special conditions set out below extend to include loss resulting from interruption or interference with the Business carried on by the Insured at the Premises in consequence of:*

1. *(a) any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises*  
*(b) any discovery of an organism at the Premises likely to result in the occurrence of a Notifiable Disease*
2. *the discovery of vermin or pests at the Premises*
3. *any accident causing defect in the drains or other sanitary arrangements at the Premises*

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

4. *any occurrence of murder or suicide at the Premises.*

**Special Conditions**

1. *Notifiable Disease means illness sustained by any person resulting from:*

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

2. *For the purposes of this Memorandum:*

*Indemnity period shall mean the period during which the results of the Business shall be affected in consequence of the occurrence, discovery or accident, beginning-*

- (a) *in the case of 1, 2 and 3 above with the date from which the restrictions on the Premises are applied or*
- (b) *in the case of 4 above with the date of the occurrence or discovery*

*and ending not later than the Maximum Indemnity Period thereafter.*

*Maximum Indemnity Period shall mean 3 months.*

*Premises shall mean only 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 shall not apply to this memorandum.*

3. *The Company shall not be liable for any costs incurred in the cleaning, repair, replacement, recall or checking of property.*
4. *The Company shall only be liable for the loss arising at those Premises which are directly affected by the occurrence discovery or accident.*

*The liability of the Company shall not exceed €250,000 in respect of any one occurrence or €250,000 in any one Period of Insurance.”*

The Provider says that in order for the Business Interruption Notifiable Disease cover 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. The Provider notes this was not the case in respect of the Complainant Company's claim.

Based on the information on file, the Provider says that the Complainant Company's business closed on **15 March 2020** following the Government National Emergency order across a wide range of businesses/services to prevent the spread of COVID-19 in the community. However, the Cabinet decision of **24 March 2020** did not specifically require hotels to close. The Provider notes the decision was that: All hotels to limit occupancy to essential non-social and non-tourist reasons.

The Provider says that under the Health Act 1047 (Section 21A – Temporary Restrictions) (Covid-19) Regulations 2020, the Complainant Company's business could be considered both an '**essential service**' and also an '**essential retail outlet**' under the applicable regulations.

The Provider says that, if it had attempted to do so, the Complainant Company's business would have been permitted by the public authorities to remain open and trading, and if it had, its employees would have been permitted to travel to and from the business. The Provider accepts that if the Complainant Company remained open, it is possible that it would have incurred financial loss in its revenue. However, it is also possible that the business would not have incurred financial loss in its revenue.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongly or unfairly declined the Complainant Company's claim for business interruption losses as a result of the temporary closure of its hotel in March 2020, for a period due to the outbreak of 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.

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A Preliminary Decision was issued to the parties on **10 March 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Complainant Company holds a business insurance policy with the Provider. On **12 March 2020**, the Complainant Company's Broker emailed the Provider to instruct it to add 'Endorsement ND007' (which relates to business interruption) to the Complainant Company's policy with immediate effect.

The Complainant Company wrote to its Broker on **1 April 2020**, requesting that:

*"... appropriate notification is made to [the Provider] under the above policy or any other policy that [the Complainant Company] have in relation to the business interruption and any other claims I may be able to make under my insurance policy.*

*In the current circumstances it is no longer possible to have the business open due to the infectious disease – Covid 19."*

The Complainant Company's Broker subsequently notified the Provider of a claim for business interruption losses as a result of the temporary closure of the Complainant Company's business on **15 March 2020** for a period, due to the outbreak of coronavirus (COVID-19).

By letter dated **14 April 2020**, the Provider wrote to the Complainant Company requesting certain information regarding the claim and advised that:

*"The cover, provided under the Notifiable Diseases Section of your policy, operates only where there is a loss resulting from interruption or interference with the business as a result of any occurrence of a notifiable disease at the premises, which causes restrictions on the use of the premises on the order or advice of the competent authority. The indemnity period is from the date on which the restrictions on the premises are applied for a maximum period up to three months, and is subject to a limit as noted in your policy. ..."*

I note that on **29 April 2020**, following its assessment, the Provider wrote to the Complainant Company to advise that it had declined the claim because there was no outbreak of a Notifiable Disease at the Premises and the restrictions imposed on the use of the Premises were not a direct result of the Notifiable Disease at the Premises.

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I note that subsequently, a complaint was made by the Complainant Company on **6 May 2020** regarding the Provider's decision to decline indemnity. Following its investigation into the complaint, the Provider advised the Complainant Company on **25 May 2020** that its decision to decline the claim had been correct.

In an email to this Office dated **27 May 2020**, the Complainant Company states, as follows:

*"We are a hotel ... and closed our doors on the 15th March 2020 under the guidance of the Government due to the Covid 19 Pandemic....Our Commercial Combined Policy Cover Business Interruption. The Scope of this Cover is to cover loss of Gross Profit following material damage insured by any of the perils specified. According to our policy the Exclusion only would be Terrorism and other items on our policy that is Fire, Explosion, Aircraft, Rio[t] Civil Commotion, Earthquake, Storm, Escape of Water, Impact of Own Vehicles or ex Own Vehicles, Theft, Glass, Accident Damage, Subsidence.*

*Our business has been interrupted. ..."*

In this regard, I note the 'Endorsement applicable to Business Interruption' at pgs. 14 - 15 of the 'Endorsement Schedule' of the Complainant Company's policy, states as follows:

*"The insurance by this policy shall subject to all the exclusions and conditions of the policy (except in so far as they may be hereby expressly varied) and the special conditions set out below extend to include loss resulting from interruption or interference with the Business carried on by the Insured at the Premises in consequence of:-*

1. *(a) any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises*  
*(b) any discovery of an organism at the Premises likely to result in the occurrence of a Notifiable Disease*
2. *the discovery of vermin or pests at the Premises*
3. *any accident causing defect in the drains or other sanitary arrangements at the Premises*  
*which causes restrictions on the use of the Premises on the order or advice of the competent local authority*
4. *any occurrence of murder or suicide at the Premises.*

[My emphasis]

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**Special Conditions**

1. *Notifiable Disease means illness sustained by any person resulting from:*

*(a) food or drink poisoning or*

*(b) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent local authority has stipulated shall be notified to them.*

2. *For the purposes of this Memorandum:*

*Indemnity Period shall mean the period during which the results of the Business shall be affected in consequence of the occurrence discovery or accident, beginning -*

*(a) in the case of 1, 2 and 3 above, with the date from which the restrictions on the Premises are applied*

*(b) in the case of 4 above, with the date of the occurrence or discovery*

*and ending not later than the Maximum Indemnity Period thereafter*

*Maximum Indemnity Period shall mean 3 months.*

*Premises shall mean only 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 shall not apply to this memorandum.*

3. *The Company shall not be liable for any costs incurred in the cleaning, repair, replacement, recall or checking of property.*

4. *The Company shall only be liable for the loss arising at those Premises which are directly affected by the occurrence discovery or accident.*

*The liability of the Company shall not exceed €250,000 in respect of any one occurrence or €250,000 in any one Period of Insurance."*

I have examined the Complainant Company's business insurance policy in detail, in particular the business interruption endorsement on pg. 14 of the Endorsement Schedule.

In this regard, I note that for cover to become operative, the policy requires there to be "*any occurrence of **a Notifiable Disease** (as defined below) **at the Premises ...**" or "*any **discovery of an organism at the Premises** likely to result in the occurrence of a Notifiable Disease."**

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In the context of this complaint, I note that section 1(a) of the business interruption endorsement requires:

- i. a Notifiable Disease,
- ii. at the Premises

Separately, section 1(b) requires:

- i. discovery of an organism,
- ii. at the Premises,
- iii. likely to result in the occurrence of a Notifiable Disease.

I note that common to both sub-sections, the Notifiable Disease or the 'organism' must be at, or discovered at, the premises. Looking at the wording of section 1(a) and section 1(b), and giving those words their plain and ordinary meaning, I am satisfied that cover is not triggered by the occurrence of a notifiable human disease such as COVID-19 unless this occurrence is at the Complainant Company's premises, that is, the hotel; nor is cover invoked because of the presence of a Notifiable Disease or organism in the country or in the vicinity of the Complainant Company's premises. The policy wording is clear and unambiguous in terms of the 'at the Premises' requirement.

The evidence is that the Complainant Company closed its business in compliance with Government guidance. It says that had it not done so, it would have been in breach of the ***Hotel Proprietors' Act 1963*** and it says that if it had stayed open for essential purposes, some of its staff would have been required to travel 10-20 miles and this may have put people's lives at risk. The Complainant Company believes that the Provider's failure to admit its claim for payment is in breach of contract and has interfere with its economic interests.

I do not accept that the Provider acted wrongfully in declining the Complainant Company's claim. I accept that cover is not triggered by the occurrence of a notifiable human disease such as COVID-19, unless this occurrence is at the Complainant Company's premises. Neither is cover invoked because of the presence of a Notifiable Disease or organism in the country or in the vicinity of the Complainant Company's premises. However, the Complainant Company has not supplied any evidence to show, within the meaning of the policy, that there was an occurrence of a Notifiable Disease at the premises or that there was any organism likely to result in the occurrence of a Notifiable Disease discovered at the premises.

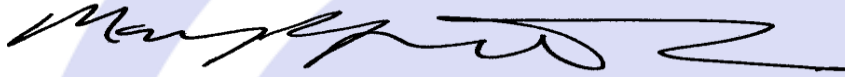
The Provider is only obliged to make benefit payments to a policyholder in respect of the cover provided for within the policy terms and conditions, and only in circumstances where the particular requirements of the terms and conditions are satisfied. While I appreciate this will be disappointing to the Complainant Company, which has suffered a significant downturn to its turnover and gross profit, I am nevertheless satisfied that the Provider was entitled to decline the claim in accordance with the terms and conditions of the Complainant Company's policy.

In this instance, I accept that the provider was entitled to conclude that the circumstances which led to the Complainant Company's claim were not covered by any of the insured perils listed in the policy. Accordingly, I can find no evidence of wrongful conduct on the part of the Provider and, for that reason, I do not propose to uphold this complaint.

**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**

7 April 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.