



<u>Decision Ref:</u>	2021-0087
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Other
<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 limited company trading as a jewellers, hereinafter ‘the Complainant Company’, held a commercial insurance policy with the Provider.

The Complainant Company’s Case

The Complainant Company’s Broker notified the Provider on **6 April 2020** of a claim for business interruption losses as a result of the temporary closure of the Complainant Company’s business on **16 March 2020** for a period, due to the outbreak of coronavirus (COVID-19).

Following its assessment, the Provider wrote to the Complainant Company on **24 April 2020**, to advise that it had declined its claim, 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 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 ‘specific diseases’, these cover a pre-defined list of conditions and not new and emerging diseases.

Specifically, in respect of your policy, the following is applicable, as set out in the policy wording.

[The Provider’s] standard business interruption cover, which applies to this policy, provides cover in the event of the Business carried on by the insured at the Premises

being interrupted or interfered with as a consequence of DAMAGE (being loss or destruction of or damage to property used by the insured at the Premises for the purpose of the Business) by any of the Contingencies A-M specified as being insured in Section 1 of the policy. The policy also references cover for Suppliers Customers and Property Stored, Prevention of Access and Loss of Attraction, all of which require damage to have occurred. Neither occurrence of Covid-19, nor SARS-Cov-2 virus, constitutes "damage" to property or Premises and in addition, none of the specified contingencies in your policy are relevant to the Covid-19 pandemic.

In view of the circumstances, I regret to inform you that, under the [Provider] policy that you hold, we will not indemnify you for the interruption to your business caused by the Covid-19 pandemic and that I do not propose to take further action in respect of your claim. I can assure you that this decision has not been reached lightly, but I should emphasise that your [Provider] policy will not and was never designed to respond to such circumstances. ..."

The Complainant Company made a complaint to the Provider on **27 April 2020** in respect of its decision to decline indemnity, as follows:

"Under government instruction I had to close my shop, then I contacted my insurance broker ... to discuss my cover as I had business interruption on my policy, and I instructed then (sic) to proceed with a claim.

Last Friday my broker informed me that my claim was denied as my policy only cover (sic) material damage under business interruption. As you can imagine these are very challenging times for us all and I feel that under the circumstances of this awful virus that there has to be some goodwill with [the Provider] to compensate me, nobody could ever imagine that anything like this pandemic would ever happen if we did we would have included it in our business protection cover.

Please review [the Provider's] decision."

In response to the complaint, the Provider wrote to the Complainant Company on **22 June 2020**, advising that:

*"... In the context of the current COVID-19 situation, it is a material fact that no **"loss or destruction of or damage"** has been caused to the Premises, or to any of the property within it. COVID-19, and indeed pandemic of any description, is not an insured peril that is covered under the 'Material damage' section of the policy. Accordingly, as no insured peril relative to Section 1, Contingencies A-M has operated, the Business Interruption section of your policy is not triggered.*

*Our letter dated 21 April 2020, also sets out that while the policy references Business Interruption cover arising from **'Suppliers Customers and Property Stored', 'Prevention of Access' and 'Loss of Attraction'**.*

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The current COVID-19 situation does not constitute “DAMAGE” to the Premises, or to any of the property within it. None of the specified contingencies in the policy are relevant to the COVID-19 pandemic.

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 contract of insurance and it will not cover every eventuality. Like any contract, your policy is subject to terms, condition and exclusions. We are completely satisfied that the policy terms and conditions are straightforward, clear and free of any ambiguity. ...”

The Complainant Company sets out its complaint in the **Complaint Form** it completed, as follows:

“Due to Covid 19 pandemic, and following Government guidelines, I had no option but to close my shop on March 16th 2020.

On my insurance schedule it states that I have business interruption but when I contacted my broker they told me that my insurance only covers material damage.

My business had been greatly affected by the pandemic and I feel my insurance company should look more leniently on my claim.”

As a result, the Complainant Company seeks for the Provider to admit its claim for business interruption losses as a result of the temporary closure of its business in March 2020 for a period, due to the outbreak of COVID-19.

The Provider’s Case

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

The Complainant Company’s Broker notified the Provider on **6 April 2020** of a claim for business interruption losses as a result of the Complainant Company’s temporary closure on **16 March 2020**.

Following its assessment, the Provider wrote to the Complainant Company on **24 April 2020** to advise that it had decline the claim.

Subsequently, the Provider received a complaint from the Complainant Company on **27 April 2020** regarding its decision to decline indemnity.

Following completion of its investigation, the Provider wrote to the Complainant Company on **22 June 2020** setting out its reasons for declining the business interruption claim.

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The Provider says that in order to verify the Complainant Company's claim, the cover provided by its policy was carefully reviewed. The Provider says '**Section 1 – Material damage**' provides cover for the insured property (as described in the Schedule), should it be *lost, destroyed or damaged* as a result of any of the Contingencies specified in the Policy Schedule:

"The Company agrees that if any of the Property Insured described in the Schedule be lost destroyed or damaged by any of the Contingencies in force as specified in the Schedule the Company will pay to the Insured the value of the property at the time of its loss or destruction or the amount of the damage or at the Company's option reinstate or replace such property or any part of it."

The Provider says the Contingencies are set out in detail on pages 12 to 14 of the policy booklet, and as can be seen from the Complainant Company's Policy Schedule, it was insured for all contingencies apart from K. which is noted as *Sprinkler Leakage*. The Provider lists the Contingencies as follows:

Contingencies

- A. Fire
- B. Lightning
- C. Explosion
- D. Aircraft
- E. Earthquake
- F. Riot, Civil Commotion, Strikers, Lock-Out Workers
- G. Subterranean Fire
- H. Storm or Flood
- I. Escape of Water from Any Tank Apparatus or Pipe
- J. Impact
- K. Accidental Escape of Water from Any Automatic Sprinkler Installation
- L. Any Accidental Cause (All Risks)
- M. Stealing or Attempted Stealing

The Provider says '**Section 2 – Business interruption**', is outlined on page 30 of the policy booklet. The Provider says for the Business interruption cover to react, there must first and foremost have been a *loss or destruction of, or damage to the property* used by the Complainant Company at the premises for the purpose of its business. The Provider says this damage must have been caused by any of the above listed '**Contingencies**', that are specifically insured under Section 1 of the Complainant Company's policy. Section 2 of the policy states, as follows:

"In the event of the Business carried on by the Insured at the Premises being interrupted or interfered with as a consequence of DAMAGE (being loss or destruction of or damage to the property used by the Insured at the Premises for the purpose of the Business) by any of the Contingencies A-M specified as being insured in Section 1 then the Company will pay to the Insured in respect of each item shown as insured in the Schedule the amount of loss resulting from such interruption or interference provided that the liability of the Company shall not exceed

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- (i) *in respect of Increase in Cost of Working/Income/Gross Profit/Tax Relief/Rent Receivable the sum insured by each item*
 - (ii) *133^{1/3}% of the sum insured on Estimated Income/Estimated Gross Profit/Estimated Tax Relief*
 - (iii) *in respect of each other item its sum insured*
- as stated in the Schedule at the time of the DAMAGE.”*

[Provider’s emphasis]

The Provider says ‘**Damage**’ is defined on page 11, as follows:

“Definitions

- B The word “DAMAGE” in capital letters shall mean loss or destruction of or damage to the Property Insured”*

The Provider says that although the Complainant Company was closed due to measures imposed by the Government to curb the spread of COVID-19, the Provider says no “DAMAGE” (being loss or destruction of or damage) has been caused to the Premises, or to any of the property within it. Likewise, none of the Contingencies outlined in section 1 have occurred.

The Provider says that it is for these reasons, that it declined the Complainant Company’s claim for business interruption losses resulting from the outbreak of COVID-19. The Provider says it informed the Complainant Company of this position in its letter of **24 April 2020**.

The Provider says there are no circumstances under which the Complainant Company’s policy provides cover when its business is closed due to the occurrence of a notifiable infectious disease at its premises.

The Provider says these are exceptional circumstances which we are all in and the Provider understands the hardship that the Complainant Company faced while being closed. The Provider says it has completed a thorough review of the Complainant Company’s policy and unfortunately, on this occasion, it is unable to settle the Complainant Company’s claim as no cover applies.

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 business in March 2020, due to the outbreak of 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 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 on **15 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. 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 in early 2020, the Complainant Company held a commercial insurance policy with the Provider. The Complainant Company's Broker notified the Provider on **6 April 2020** of a claim for business interruption losses as a result of the temporary closure of its business on **16 March 2020** for a period, due to the outbreak of coronavirus (COVID-19). I also note that on **24 April 2020**, following its assessment, the Provider wrote to the Complainant Company to advise that it had declined the claim.

Thereafter, a complaint was made by the Complainant Company on **27 April 2020** regarding the Provider's decision to decline indemnity. Following its investigation into the complaint, the Provider advised the Complainant Company on **22 June 2020** that it was standing over its decision to decline the claim. The Complainant Company states in the Complaint Form it completed for this Office, as follows:

"Due to Covid 19 pandemic, and following Government guidelines, I had no option but to close my shop on March 16th 2020.

*On my insurance schedule it states that I have business interruption but when I contacted my broker they told me that my insurance only covers material damage.
..."*

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In this regard, I note that 'Section 1 – Material damage' of the Complainant Company's insurance policy wording states at pg. 11, as follows:

"The Company agrees that if any of the Property Insured described in the Schedule be lost destroyed or damaged by any of the Contingencies in force in the Schedule the Company will pay to the Insured the value of the property at the time of its loss or destruction or the amount of the damage or at the Company's option reinstate or replace such property or any part of it."

[My Emphasis]

This is followed by a series of definitions. In particular, the terms 'Damage' and 'Defined Contingency', are defined as follows:

"The word "DAMAGE" in capital letters shall mean loss or destruction of or damage to the Property Insured.

The words "DEFINED CONTINGENCY" shall mean fire lightning explosion aircraft or other aerial devices or articles dropped therefrom riot civil commotion strikers locked-out workers persons taking part in labour disturbances malicious persons other than thieves earthquake storm flood escape of water from any tank apparatus or pipe or impact by any road vehicle or animal."

I also note that Section 1 of the policy contained, at sub-clause 23 on pg. 27, a 'Public authorities' clause' which provided as follows:

"Subject to the following special conditions the insurance by items under Buildings and Contents extends to include such additional cost of reinstatement of the lost destroyed or damaged property thereby insured as may be incurred solely by reason of the necessity to comply with Building or other Regulations under or framed in pursuance of any Act of the Oireachtas/Parliament or with Bye-Laws of any Public Authority excluding

(a) the cost incurred in complying with any of the aforesaid Regulations or Bye-Laws:-

- i. in respect of DAMAGE occurring prior to the granting of this extension*
- ii. in respect of loss destruction or damage not insured by the policy*
- iii. under which notice has been served upon the Insured or any lessee tenant or sub-tenant prior to the happening of the DAMAGE*
- iv. in respect of undamaged property or undamaged portions of property other than foundations ...*

(b) the additional cost that would have been required to make good the property lost destroyed or damaged to a condition equal to its condition when new had the necessity to comply with any other aforesaid Regulations or Bye-Laws not arisen

(c) the amount of any change or assessment arising out of capital appreciation ..."

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Separately, I note that ‘**Section 2 – Business interruption**’ of the Complainant Company’s insurance policy wording stated at pg. 30, as follows:

“This cover is applicable to the Insured’s Business and Premises specified in the Schedule

In the event of the Business carried on by the Insured at the Premises being interrupted or interfered with as a consequence of DAMAGE (being loss or destruction of or damage to property used by the Insured at the Premises for the purpose of the Business) by any of the Contingencies A-M specified as being insured in Section 1 then the Company will pay to the Insured in respect of each item shown as insured in the Schedule the amount of loss resulting from such interruption or interference provided that the liability of the Company shall not exceed ...”

The ‘Contingencies’ referred to in section 2 were set out on pgs. 11 and 12 of the policy and comprised the following:

- A. Fire
- B. Lightening
- C. Explosion
- D. Aircraft
- E. Earthquake
- F. Riot, Civil Commotion, Strikers, Lock-Out Workers
- G. Subterranean Fire
- H. Storm or Flood
- I. Escape of Water from Any Tank Apparatus or Pipe
- J. Impact
- K. Accidental Escape of Water from Any Automatic Sprinkler Installation
- L. Any Accidental Cause (All Risks)
- M. Stealing or Attempted Stealing

In the ‘Special Conditions’ of section 2, ‘Damage’ was defined at pgs. 35 and 36, as follows:

“DAMAGE as insured by this Cover includes

1. Suppliers Customers and Property Stored

- (a) the premises of any of the Insured’s suppliers manufacturers or processors of components goods or materials but excluding the premises of any public supply undertaking from which the Insured obtains electricity gas water or telecommunications services*
- (b) the premises of any of the Insured’s customers with whom the Insured has a contract or trading relationship to supply goods or services*

(c) premises not in the occupation of the Insured where property of the Insured is stored.

2 Contract Sites

any situation not in the occupation of the Insured where the Insured is carrying out a contract.

3 Prevention of Access

Property in the vicinity of the Premises destruction of or damage to which shall prevent or hinder the use of the Premises or access thereto ...

4 Public Utilities

Property at any

(a) generating station or sub-station of the public electricity supply undertaking

(b) land based premises of the public gas supply undertaking ...

(c) waterworks or pumping station ...

(d) land based premises of the public telecommunications undertaking ...

5 Transit

Property of the insured whilst in transit by road ...

6 Loss of Attraction

Property in the vicinity of the Premises destruction of or damage to which would cause a diminution of attraction to the Premises."

I have examined the Complainant Company's insurance policy in detail, and in particular 'Section 1 – Material damage' and 'Section 2 – Business interruption', together with the definitions of the term 'damage' and the various 'Contingencies'.

In this regard, I accept that for cover to be invoked under section 1, the property insured must "*be lost destroyed or damaged by any of the Contingencies in force in the Schedule*". In respect of section 2, the Complainant Company's business must be "*interrupted or interfered with as a consequence of DAMAGE (being loss or destruction of or damage to property used by the Insured at the Premises for the purpose of the Business) by any of the Contingencies A-M*".

As a result, both section 1 and section 2 require some form of loss, destruction or damage to the Complainant Company's property; and this loss, destruction or damage must also have been caused by any of the relevant 'Contingencies'. I note that, in this instance, all of the contingencies applied to the Complainant Company's policy except for item K.

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Looking at the wording of section 1 and section 2, and giving those words their plain and ordinary meaning, I am satisfied that cover was not triggered by the occurrence of a notifiable human disease such as COVID-19. I am also satisfied that an occurrence of COVID-19 whether in/on the Complainant Company's premises or within the vicinity of the Complainant Company's premises was not capable of causing loss, destruction or damage to the insured property within the meaning of section 1 or section 2 of the policy. Further to this, I am not satisfied that a notifiable human disease was one of the stated 'Contingencies' nor can it be said that a notifiable human disease would come within any of those contingencies.

The Provider is obliged to make benefit payments to a policyholder, only 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. There is no obligation on the Provider to make benefit payments to a policyholder, on the basis of "some goodwill" as suggested by the Complainant Company.

While I appreciate this will be disappointing for the Complainant Company, I accept that the Provider was entitled to decline the claim in accordance with the terms and conditions of the policy. In this instance, the circumstances which led to the Complainant Company's claim, were not anticipated or provided for by any of the insured perils. Accordingly, I can find no evidence of wrongful conduct on the part of the Provider and, for that reason, I do not consider it appropriate 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**

9 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.

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