



<b><u>Decision Ref:</u></b>	2021-0112
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Rental Property
<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 sole trader letting a public house premises to a tenant, holds a business insurance policy with the Provider.

#### **The Complainant's Case**

The Complainant notified the Provider on **24 March 2020** of a claim for business interruption losses of rent receivable because the public house premises that he lets, had to temporarily close on 15 March 2020 due to measures imposed by the government to curb the spread of the coronavirus (COVID-19), and his tenant was unable to pay the rent due.

The Provider-appointed Loss Adjuster advised the Complainant by telephone on **30 March 2020** that the claim circumstances were not covered by the terms of his business insurance policy. In addition, the Provider wrote to the Complainant on 31 March 2020 to advise that it had declined indemnity in this matter, a decision it stood over upon review on 14 July 2020.

The Complainant set out his complaint in the Complaint Form he completed, as follows:

*"I have business interruption insurance with [the Provider] but they say that they are not covering COVID-19. I have a public house let to a tenant...which has been closed since 15 March [2020]. My policy was sold to me in person by [the Provider] on 6<sup>th</sup> August 2019 who specifically advised me at that time to put the business interruption cover on the policy to cover me against any loss of rental income as I had an agreement to rent out the premises for €85,000 per annum".*

As a result, the Complainant seeks for the Provider to admit and pay his claim, as follows:

*“I wish to be covered and appropriately compensated by [the Provider] for the loss of my rental income of €85,000, pro rata for the period of the premises closure”.*

The Complainant’s complaint is that the Provider wrongfully or unfairly declined to admit and pay his claim for business interruption losses arising from measures imposed by the government to curb the spread of the coronavirus (COVID-19).

### **The Provider’s Case**

Provider records indicate that the Complainant notified the Provider on **24 March 2020** of a claim for business interruption losses of rent receivable as the public house premises that he lets had to temporarily close on 15 March 2020 due to measures imposed by the government to curb the spread of COVID-19, and that his tenant was unable to pay the rent due.

The Provider notes that its Loss Adjuster spoke with the Complainant by telephone on 30 March 2020 and advised that the claim circumstances was not covered by the terms of his business insurance policy. In addition, the Provider wrote to the Complainant on 31 March 2020 to advise that it had declined indemnity in this matter, a decision it stood over upon review on **14 July 2020**.

The Provider notes that business interruption is only covered by the Complainant’s business insurance policy in certain defined circumstances, none of which include closure or interruption as a result of COVID-19.

In broad terms, the Provider says that there are three distinct reasons why it declined the Complainant’s claim, as follows:

1. *The claim did not come within the terms of the business interruption cover as set out in Section 2, ‘Business Interruption’, of the business insurance policy document.*

Section 2, ‘Business Interruption’, of the applicable Business Complete Insurance Policy Document defines business interruption at pg. 36, as follows:

***“Business interruption***

*Interruption of or interference with the **business** carried on by the Insured at the **premises** in consequence of **damage** to property used by the Insured at the **premises** for the purpose of the **business**”.*

This is repeated at pg. 39 of the policy document, as follows:

**“Cover**

*The Company will indemnify the Insured for the amount of loss against each item insured shown in the schedule, in the manner and to the extent as described under ‘Basis of settlement’ below, following **damage** caused to property used in connection with the Insured’s **business** as the **premises** by any of the perils insured against under section 1: Property Damage of this policy”.*

The Provider says that the bold highlighting, as it appears in the original policy document, emphasises that the policy only responds to a business interruption claim in circumstances where the business is interrupted as a result of damage to the property and not in any other circumstance. In this regard, the Provider says that it is quite clear that the interruption to the Complainant’s business in this case arose, not as a result of damage to the premises, but rather as a result of both the suite of public health measures including social distancing measures introduced in mid-March 2020 and other governmental restrictions which prohibited the making of unnecessary journeys by the public.

In summary, the policy only responds to claims for loss of rent receivable arising from damage caused to the premises. As the Complainant’s claim is manifestly not such a claim, it follows that the Provider was correct to decline the claim.

2. *COVID-19 is not a notifiable disease for the purpose of the infectious diseases extension in Section 2, ‘Business Interruption’, of the policy document.*

The ‘Additional extensions that apply to section 2: Business interruption’ of the applicable policy document provides at pg. 45, as follows:

**“H. Human notifiable diseases, murder or suicide**

*This extension provides cover against **business interruption** resulting from the following.*

- *A case or cases of any of the notifiable diseases (as listed below) at the **premises**, or caused by food or drink supplied from the **premises**.*
- *Any organism likely to cause a notifiable disease (as listed below) being discovered at the **premises**.*
- *Murder or suicide at the **premises**”.*

The Provider says that the bold highlighting, as it appears in the original policy document, emphasises the requirement that the notifiable disease or organism must actually be present on the premises. In this regard, the infectious disease extension only covers business interruption arising from the presence of a notifiable disease on the premises or caused by food and drink supplied from the premises. In addition, the Provider notes that this extension is confined to a specified and finite list of notifiable diseases listed at pg. 45 of the policy document, as follows:

**“Notifiable diseases**

<i>Acute encephalitis</i>	<i>Acute poliomyelitis</i>
<i>Anthrax</i>	<i>Bubonic or pneumonic plague</i>
<i>Chickenpox</i>	<i>Cholera</i>
<i>Conjunctivitis</i>	<i>Diphtheria</i>
<i>Dysentery</i>	<i>Legionellosis</i>
<i>Legionnaires’ disease</i>	<i>Leprosy</i>
<i>Leptospirosis</i>	<i>Malaria</i>
<i>Measles</i>	<i>Meningitis</i>
<i>Mumps</i>	<i>Paratyphoid fever</i>
<i>Rabies</i>	<i>Rubella</i>
<i>Scarlet fever</i>	<i>Smallpox</i>
<i>Tetanus</i>	<i>Tuberculosis</i>
<i>Typhoid fever</i>	<i>Viral hepatitis</i>
<i>Whooping cough</i>	<i>Yellow fever”</i>

The Provider says that COVID-19 does not fall within this list of notifiable diseases. The Provider says it is clear that COVID-19 is a disease of very recent origin and one that postdates that inception of the policy and as a result, COVID-19 does not and could not come within the list of notifiable diseases in circumstances where the disease was not in existence or, at the very best, was entirely unknown at the time when the policy was incepted.

In addition, the Provider says that it has sought and obtained expert advice and evidence on this issue, which confirmed that COVID-19 is an entirely new disease that could not reasonably be described as a subset of any of the diseases on the list of notifiable diseases – none of which are coronaviruses, and that the viruses that give rise to the listed diseases are actually taxonomically distinct from SARS-CoV2, the virus agent of COVID-19.

3. *The infectious disease extension only covers business interruption arising from the presence of a disease on the premises or caused by food and drink supplied from the premises.*

Quite apart from the fact that COVID-19 is not a notifiable disease for the purpose of the policy, the Provider says it is quite clear that the Complainant is not asserting that the loss of rent receivable was caused by the disease or the organism causing it, SARS-CoV2, being present on his premises, or present in food or drink supplied from the premises. Rather, the closure arose as a result of both the suite of public health measures including social distancing measures introduced in mid-March 2020 and other governmental restrictions which prohibited the making of unnecessary journeys by the public.

The Provider notes that these reasons for declining indemnity are essentially the same as those previously explained by the Provider to the Complainant by correspondence dated 31 March 2020, and again in its final response letter dated 14 July 2020.

It is the Provider's position that the terms of the Complainant's business insurance policy are abundantly clear. Whilst it is very much alive to the very difficult situation which the Complainant, along with many others, finds himself in, the Provider is satisfied that it is quite clear that the policy is not responsive to a business interruption claim arising from a loss of rent receivable due to the closure of the Complainant's tenant's business, by reason of the COVID-19 pandemic.

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

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainant's claim for business interruption losses arising from measures imposed by the government to curb the spread of the 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.

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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 **29 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 the Complainant notified the Provider on **24 March 2020** of a claim for business interruption losses of rent receivable, as the public house premises that he lets to a tenant, had to temporarily close on 15 March 2020 due to measures imposed by the government to curb the spread of COVID-19, and his tenant was unable to pay the rent due to him.

Thereafter, the Provider-appointed Loss Adjuster spoke with the Complainant by telephone on 30 March 2020 and advised that the claim circumstances were not covered by the terms of his business insurance policy. In addition, the Provider wrote to the Complainant on 31 March 2020 to advise that it had declined indemnity in this matter, a decision it stood over upon review on 14 July 2020.

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.

**Section 2, Business Interruption'**, of the applicable business insurance policy document defines business interruption at pg. 36, as follows:

***"Business interruption***

*Interruption of or interference with the **business** carried on by the Insured at the **premises** in consequence of **damage** to property used by the Insured at the **premises** for the purpose of the **business**".*

I note that the Complainant's premises was not closed or interrupted as a result of damage to the property. Instead, I note that the Complainant's tenant temporarily closed its public house as a result of the outbreak of COVID-19 in Ireland and the measures imposed by the government to curb the spread of the coronavirus.



In this regard, the ‘**Additional extensions that apply to section 2: Business interruption**’ of the applicable policy document provides at pg. 45, as follows:

**“H. Human notifiable diseases ...**

*This extension provides cover against business interruption resulting from the following:*

- *A case or cases of any of the notifiable diseases (as listed below) at the premises, or caused by food or drink supplied from the premises.*
- *Any organism likely to cause a notifiable disease (as listed below) being discovered at the premises ...*

[My emphasis]

**Notifiable diseases**

<i>Acute encephalitis</i>	<i>Acute poliomyelitis</i>
<i>Anthrax</i>	<i>Bubonic or pneumonic plague</i>
<i>Chickenpox</i>	<i>Cholera</i>
<i>Conjunctivitis</i>	<i>Diphtheria</i>
<i>Dysentery</i>	<i>Legionellosis</i>
<i>Legionnaires disease</i>	<i>Leprosy</i>
<i>Leptospirosis</i>	<i>Malaria</i>
<i>Measles</i>	<i>Meningitis</i>
<i>Mumps</i>	<i>Paratyphoid fever</i>
<i>Rabies</i>	<i>Rubella</i>
<i>Scarlet fever</i>	<i>Smallpox</i>
<i>Tetanus</i>	<i>Tuberculosis</i>
<i>Typhoid fever</i>	<i>Viral hepatitis</i>
<i>Whooping cough</i>	<i>Yellow fever”.</i>

I note that in order for Extension H, ‘**Human notifiable diseases**’, to provide business interruption cover, there must be the operation of the insured peril, that is, that the business interruption must have been caused by the presence of a notifiable disease at that premises (or is caused by food and drink supplied from the premises), and that the notifiable disease must also be one of those diseases specified in the policy.

Although COVID-19, and its virus agent SARS-CoV-2, were designated as notifiable diseases in Ireland on 20 February 2020, by way of the Infectious Diseases (Amendment) Regulations 2020, I note that it is not one of the notifiable diseases specified in the business insurance policy. I am also conscious that the Provider sought and obtained expert opinion on this matter, which I note indicated that COVID-19 is an entirely new disease that, “*considering both the disease agent itself and the symptoms it causes*”, could not reasonably be described as a subset of any of the notifiable diseases specified in the business insurance policy.

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I am satisfied therefore that the business insurance policy very clearly identifies and defines the precise circumstances in which a business interruption claim will be covered. As a result, the business interruption human notifiable disease extension only responds, to cover business interruption arising from the presence of a notifiable disease on the premises or caused by food and drink supplied from the premises, and indemnity is only provided in respect of the notifiable diseases within the meaning of, and listed in, the policy wording.

In those circumstances, I am satisfied that the Provider was entitled to adopt the position which it did, that the claim circumstances did not satisfy the insured peril in the business interruption human notifiable disease extension. For that reason, I accept that the Provider was entitled to decline the Complainant's claim in accordance with the terms of his business insurance policy.

As the evidence available discloses no wrongdoing by the Provider, it is my Decision therefore, that this complaint cannot be upheld.

### **Conclusion**

My Preliminary 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**

22 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.