



<u>Decision Ref:</u>	2021-0137
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Service
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a sole trader, trading as a public house and restaurant, held a pub insurance policy with the Provider.

The Complainants' Case

The Complainant's Broker notified the Provider by telephone on **27 March 2020** of the Complainant's claim for business interruption losses as a result of the temporary closure of his business from 15 March 2020, as a result of measures imposed by the Government to curb the spread of the 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 Complainant's pub insurance policy only provides business interruption cover where there has been damage to the insured property caused by one of the specified perils listed in the policy.

The Complainant then submitted a complaint to the Provider regarding its decision to decline indemnity, as follows:

"I refer to the letter dated April 24th 2020...which denied my claim in respect of losses arising from the closure of my business as a result of the Covid-19 pandemic. I do not accept that the decision is a fair and reasonable interpretation of the policy currently in place. Your policy specifically lists that business interruption is covered (in Section 2) and in the policy endorsements it states that there are "None". Any reasonable reading of your policy by a layman would provide comfort that unforeseen disasters, such as Covid-19, would be relieved".

Following its review, the Provider wrote to the Complainant on **30 June 2020** to advise that it was standing over its decision to decline indemnity in this matter.

The Complainant seeks for the Provider to admit and pay his claim for business interruption losses.

The complaint is that the Provider wrongly or unfairly declined to admit and pay the Complainant's claim for business interruption losses arising from the temporary closure of his business in March 2020, as a result of measures imposed by the Government to curb the spread of COVID-19.

The Provider's Case

Provider records indicate that the Complainant's Broker first notified the Provider by telephone on 27 March 2020 of the Complainant's claim for business interruption losses as a result of the temporary closure of his business from 15 March 2020, due to measures imposed by the Government to curb the spread of the COVID-19.

Following its assessment, the Provider 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, 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 the occurrence of Covid-19, nor of the 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 these 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".

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Following the Complainant's email complaint of **2 May 2020** and having reviewed the matter in full, the Provider wrote to the Complainant on **30 June 2020** to advise that it was standing over its decision to decline indemnity in this matter, as follows:

"I am writing in response to your complaint which we received on 5 May 2020. My understanding of your complaint is that you are dissatisfied that your 'Business Interruption' claim arising from closure of your business due to the COVID-19 pandemic has not been met by your policy. You complain that: "any reasonable reading of [the] policy by a layman would provide comfort that unforeseen disasters, such as Covid-19, would be relieved" and you request that we reconsider our decision.

As set out in our letter dated 24 April 2020, the Business Interruption section of your policy cover is only triggered -

"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 [Material damage]"

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. SARS-Cov-2, COVID-19, or 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. None of the specified contingencies in the policy are relevant to the COVID-19 pandemic.

Our letter dated 24 April 2020, also sets out that while the policy references Business Interruption cover arising from the 'Suppliers Customers and Property Stored', 'Prevention of Access' and 'Loss of Attraction' extensions; again, the current COVID-19 situation does not constitute "DAMAGE" to the Premises, or to any of the property within it.

It is for these reasons 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, conditions and exclusions. We are completely satisfied that the policy terms are straightforward, clear and free of any ambiguity.

Having carefully considered both your claim, and your subsequent complaint, we are completely satisfied that your policy does not respond, and our position remains unchanged. Your policy will not, and was never designed to, respond to such circumstances".

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The Provider says that in order for the pub insurance policy business interruption cover to be triggered, there must first have been damage to the insured property caused by one of the contingencies listed in the policy schedule. In this regard, the Provider notes that the Complainant's business was not closed as the result of any damage to the insured property, rather it was closed due to measures imposed by the government to curb the spread of COVID-19, a reason that does not fall under any of the listed contingencies.

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

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined to admit and pay the Complainant's claim for business interruption losses, arising from the temporary closure of his business in March 2020, as a result of measures imposed by the Government to curb the spread 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 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 **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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

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The Complainant, a sole trader trading as a public house and restaurant, held a pub insurance policy with the Provider. His Broker notified the Provider by telephone on 27 March 2020 of his claim for business interruption losses as a result of the temporary closure of his business from 15 March 2020, as a result of measures imposed by the Government to curb the spread of the coronavirus (COVID-19).

Following its assessment, the Provider wrote to the Complainant on 24 April 2020 to advise that it was declining indemnity because the pub insurance policy only provides business interruption cover where there has been damage to the insured property caused by one of the specified perils listed in the policy, a decision it subsequently stood over upon review on 30 June 2020.

The Complainant's pub insurance policy, like all insurance policies, did not provide cover for every possible eventuality. Rather the cover was subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. I note that Section 1, 'Material Damage', of the applicable pub insurance policy booklet provides, at pg. 10, 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 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".

In this regard, the 'Material Damage - Contingencies' section of the Complainant's Pub Policy Endorsement document, which forms part of the policy schedule, provides at pg. 4, as follows:

<i>"CONTINGENCIES (AS DEFINED IN POLICY BOOKLET)</i>	<i>INSURED YES/NO</i>
<i>A. FIRE</i>	<i>YES</i>
<i>B. LIGHTNING</i>	<i>YES</i>
<i>C. (i) AND (ii) EXPLOSION</i>	<i>YES</i>
<i>D. AIRCRAFT</i>	<i>YES</i>
<i>E. EARTHQUAKE</i>	<i>YES</i>
<i>F. RIOT, CIVIL COMMOTION</i>	<i>YES</i>
<i>G. SUBTERRANEAN FIRE</i>	<i>YES</i>
<i>H. STORM OR FLOOD</i>	<i>YES</i>

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I.	BURST PIPES	YES
J.	IMPACT	YES
K.	SPRINKLER LEAKAGE	NO
L.	ANY ACCIDENTAL CAUSE (ALL RISKS)	YES
M.	STEALING	YES
N.	ACCIDENTAL BREAKAGE OF GLASS	YES
O.	MONEY AND PERSONAL ASSAULT	YES
P.	ACCIDENTAL DAMAGE TO MACHINES	NO
Q.	COMPUTERS	NO
R.	GOODS IN TRANSIT	NO
S.	FROZEN FOOD	YES"

I note that the Complainant's claim is for business interruption losses. In this regard, Section 2, '**Business Interruption**', of the pub insurance policy booklet provides 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 ['Material Damage'] 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

- (i) in respect of Increase in Cost of Working/Income/Gross Profit/Tax Relief/Rent Receivable the sum insured by each item*
- (ii) 133⅓ 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"

[Underlining added for emphasis]

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I also note that “DAMAGE” is defined at pg. 10 of the policy booklet, as follows:

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

I am satisfied that the terms and conditions of the Complainant’s pub insurance policy clearly stated that in order for the business interruption cover to be triggered, there must first have been damage to the insured property caused by one of the specified perils, that is, one of the listed contingencies. The Complainant’s business interruption claim in this instance, arose from the temporary closure of his business due to measures imposed by the Government to curb the spread of COVID-19. This did not constitute damage to the Complainant’s property, nor did it fall under one of the contingencies listed in the Complainant’s pub insurance policy schedule.

Accordingly, whilst I appreciate that the Complainant will be very disappointed with this outcome, I am satisfied that the Provider was entitled to decline the Complainant’s claim for business interruption losses in accordance with the terms and conditions of his pub insurance policy, because the circumstances which gave rise to the claim, were not covered by the insurance in place. As the evidence discloses no wrongdoing on the part of the Provider, I take the view that there is no reasonable basis upon which it would be 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**

10 May 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.