



<u>Decision Ref:</u>	2021-0148
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Retail
<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 limited company trading as a clothing wholesaler, hereinafter ‘the Complainant Company’, held a shop insurance policy with the Provider, which it renewed on **23 March 2019** and again on **23 March 2020**.

The Complainant Company’s Case

The Complainant Company’s Broker notified the Provider by email on 26 March 2020 of the Complainant Company’s claim for business interruption losses as a result of the temporary closure of its business due to measures imposed by the government to curb the spread of the coronavirus (COVID-19).

Following its assessment, the Provider wrote to the Complainant Company on **8 May 2020** to advise it was declining indemnity as its 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, and separately, in terms of the business interruption disease clause, that the coronavirus and COVID-19 are not listed as a specified disease in the policy.

The Complainant Company then submitted a complaint to the Provider by email on **24 May 2020** regarding its decision to decline indemnity, as follows:

"I wish to make a formal complaint regarding the refusal of [the Provider] to indemnify [the Complainant Company] against Interruption of Business due to:

1) disruption of my business due to COVID-19

and

2) mandatory closure of [the Complainant Company's] business by the Government.

As you are aware, the policy has a specific clause for Interruption of Business.

The [policy] booklet you refer to [in the Provider's declination letter of 8 May 2020] was not supplied to us on time of renewal of contract last year or this year. Therefore in my opinion it does not form part of the contract.

An insurance product information document was supplied which identifies policy exclusions [that do] not specify infectious diseases or mandatory closure by government.

1) Under COVID-19, the premises required closing on the basis that the virus could be contacted/spread specifically on the premises.

2) The mandatory closure by government amounts to a serious interruption of trade and this is not listed as an exclusion on the cover ...

I do not accept that my policy, given its interruption of business cover, does not exclude the COVID-19 situation and in particular does not specifically exclude under [the policy] exclusions the mandatory closure of my business by the government".

Following its review, the Provider wrote to the Complainant Company on **9 July 2020** to advise that it was standing over its decision to decline indemnity in this matter.

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

"[The Provider] are refusing to honour a claim for Business Interruption for Covid-19 ...

We have had ongoing communications with our broker...and [the Provider]. [The Provider] have now rejected our claim and our complaint under the Business Interruption cover.

The current main argument from [the Provider] is that we received notification (after renewal) of the deletion of the words "Government or Local Authority action

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Please note, at the time of renewal, 23-03-2019, we were not provided with a Shop Policy booklet, which specifies Clause 9. We did receive the Insurance Product Information document, which does not identify this as an exclusion under the key exclusion list.

Although the words in question were deleted, it is our opinion that this in itself does not specifically exclude the cover for the closure of our Business under the concept of Business Interruption cover. Furthermore, we maintain that regardless of the Government order, we were obliged to close the Business on the grounds of Health and safety concerns for our staff and customers, as the general health advice was that Covid-19 could be contacted/spread on our premises”.

In addition, in its email to this Office on **23 November 2020**, the Complainant Company also submits:

“We remain convinced that under our contract we were obliged to shut our premises, as above all COVID-19 is an illness and in order to avoid illness / harm to staff and customers it was necessary.

The premises suffered a loss of attraction and would also be deemed unsafe.

[The Provider] interprets the business interruption clause to only cover damage to building, yet outlines diseases that are not covered!

No exclusions relating to new illnesses i.e. COVID-19 or mandatory closure is specified.

If an insurance policy fails to detail exclusions and be precise as to its cover it is not good enough to then given a retrospective interpretation that would contradict the customer’s legitimate expectations of their contract”.

As a result, the Complainant Company seeks for the Provider to admit and pay its claim for business interruption losses as a result of the temporary closure of its business due to measures imposed by the Government to curb the spread of COVID-19 and in that regard, the Complainant Company says *“we have suffered a loss of turnover, estimated value €45,000”.*

The complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainant Company’s claim for business interruption losses as a result of the temporary closure of its business in March 2020, due to measures imposed by the Government to curb the spread of the coronavirus (COVID-19).

The Provider's Case

The Provider says that the Complainant Company's Broker first notified the Provider by email on **26 May 2020** of the Complainant Company's claim for business interruption losses as a result of the temporary closure of its business due to measures imposed by the Government to curb the spread of the COVID-19.

Following its assessment, the Provider wrote to the Complainant Company on **8 May 2020** to advise it was declining indemnity as its 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, and separately, in terms of the business interruption disease clause, that the coronavirus/COVID-19 are not listed as a specified disease in the policy, 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 indemnifies You in respect of loss of income resulting from Damage to property used by You at The Premises for the purpose of The Business to the extent of Cover under the Property Damage Section and where liability is admitted under a policy of insurance covering Your interest in such property. Your policy also includes cover for Prevention of Access, Loss of Attraction and damage to Suppliers premises, where damage has occurred in each case. Neither the occurrence of Covid-19, nor of the SARS-Cov-2 virus, constitutes "damage" to the property or premises. Accordingly, we 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.

Under your policy we also include a clause for business interruption cover based on the occurrence of a disease infestation and defective sanitation at The Premises. This clause only provides cover in respect of a specified list of diseases, which does not include Covid-19. Accordingly, we will not indemnify you for the interruption to your business caused by the Covid-19 pandemic under this clause for business interruption cover.

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 Company's email complaint of **24 May 2020** and having reviewed the matter in full, the Provider wrote to the Complainant Company on **9 July 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, my understanding of which is that you are dissatisfied that your 'Business Interruption' claims arising from closure of your business due to the COVID-19 pandemic has not been met by your policy. You reference the policy wording which was provided to you when your policy inceptioned, and it is your opinion that the policy provides cover under the "Government or Local Authority Action" clause.

I refer you to the policy renewal documentation/schedule dated 11 February 2019 which was issued prior to you taking the decision to renew your policy. This documentation notified both your broker and your good self of policy wording changes with effect from the policy renewal date, 23 March 2019. I enclose of copy of this documentation for your ease of reference. You will note that the "Government or Local Authority Action" clause which you refer to was deleted from the Policy with effect from 23 March 2019. As the clause itself was deleted prior to the occurrence of the event giving rise to the claim, we are unable to consider the claim against same.

The opening paragraph of our letter dated 8 May 2020 set out in broad terms, how the 'Business Interruption' section of your policy operates and notes that our wording does not provide cover for losses arising from pandemic which is accurate. In the latter part of the letter, we outlined in more detail specifically why your policy does not respond to COVID-19 related losses. For clarity, I will further outline the position here:

As set out in our letter dated 8 May 2020, the cover so underwritten by [the Provider] for Business Interruption, as stated, is only triggered -

"... in respect of loss of Income resulting from Damage to property used by You at The Premises for the purposes of The Business ... etc"

In the context of the current COVID-19 situation, it is a material fact that no "Damage" has been caused to the premises, or to any of the property within it therefore the Business Interruption section of the policy is not triggered.

Our letter dated 8 May 2020, also sets out that while the policy also covers Business Interruption arising from 'Prevention of Access', 'Loss of Attraction' and damage to Suppliers premises; again, the current COVID-19 situation does not constitute "Damage" to premises, or to any of the property within it.

*Equally, while cover is also provided by us under the **Disease, Infestation and Defective Sanitation** clause, it only has application when the specified diseases referred to are "sustained by any person at The Premises". Both SARS-Cov-2, and more specifically, COVID-19 are not one of the listed diseases.*

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It is for these reasons that we have come to the view that your policy, underwritten by us, has no application to losses arising as a result of the closure of your business due to the COVID-19 pandemic...An insurance policy is a contract of insurance, it will not cover every eventuality. Like any contract, the 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. The policy will not, and was never designed to, respond to such circumstances”.

The Provider declined the Complainant Company’s claim for business interruption as it ascertained that there was no cover under the Complainant Company’s shop insurance policy.

In this regard, the Provider notes that the ‘**Revenue Protection – Business Interruption**’ section of the applicable Shop Policy booklet [February 2019] states at p.26:

“Cover 1. Income

We will indemnify You in respect of loss of income resulting from Damage to property used by You at The Premises for the purposes of The Business to the extent of Cover under the Property Damage Section and where liability is admitted under a policy of insurance covering Your interest in such property”.

The Provider says that in order for this business interruption section of the policy to operate, “Damage” must have occurred to the Property Insured. “Damage” is defined at pg. 11 of the policy booklet as:

“Damage *Accidental loss, destruction or damage”.*

The Provider notes that the cover provided by the ‘**Property Damage – All Risks**’ section of the shop insurance policy document covers Damage (being accidental loss, destruction or damage) to the Property Insured at The Premises. As a result, the Provider says that cover is only provided for Damage that is attributable to the specified contingencies at pg. 11 of the policy document, as follows:

“Defined Contingency(1) Fire

(2) Lightning or earthquake

(3) Explosion

(4) Aircraft

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(5) Riot, civil commotion, strikers, locked out workers or persons taking part in labour disturbances

(6) Malicious persons other than thieves

(7) Storm or flood

(8) Escape of water from any tank, apparatus or pipe

(9) Falling trees, radio or television aerials, masts or satellite dishes no bigger than one metre in diameter

(10) Impact

(11) Leakage of fuel

(12) Theft or attempted theft”.

The Provider says that although the Complainant Company’s business was closed due to measures imposed by the Government to curb the spread of COVID-19, it is a fact that no “*Damage*” (being accidental loss, destruction or damage) has been caused to the Complainant Company’s Premises, or to any of the property within it. Accordingly, the Provider says that the Business Interruption cover does not react, as no loss of income “*resulting from Damage to property used by You at The Premises for the purposes of The Business*” occurred insofar as no Defined Contingency relative to the ‘**Property Damage – All Risks**’ section of the policy has operated.

The Provider notes that there are a number of other Clauses outlined at pg. 28 of the ‘**Revenue Protection – Business Interruption**’ section of the Shop Policy booklet [February 2019], as follows:

“Clauses *We will also indemnify you in respect of loss of Income as insured under this Section resulting from*

1. Prevention of Access

Damage to property in the vicinity of The Premises by any cause included under the Property Damage Section which hinders or prevents access to the Premises ...

3. Disease, Infestation and Defective Sanitation

The occurrence of ...

(b) Acute Encephalitis, Acute Poliomyelitis, Anthrax, Chickenpox, Cholera, Diphtheria, Dysentery, Legionellosis, Leptospirosis, Legionnaire's Disease, Leprosy, Leptospirosis, Malaria, Measles, Meningococcal Infection, Mumps, Ophthalmia Neonatorum, Paratyphoid Fever, Plague, Rabies, Rubella, Scarlet Fever, Smallpox, Tetanus, Tuberculosis, Typhoid Fever, Viral Hepatitis, Whooping Cough or Yellow Fever sustained by any person at The Premises ...

5. Suppliers

Damage to any of Your suppliers' premises within Great Britain, Northern Ireland, the Republic of Ireland, the Channel Islands or the Isle of Man by any cause included under the Property Damage Section ...

8. Loss of Attraction

Damage to property in the vicinity of The Premises by any cause insured under the Property Damage Section which directly causes a loss of custom to The Business".

The Provider says that because the loss of income to the Complainant Company was as a result of the outbreak of COVID-19 and the measures imposed by the Government to curb its spread, and was not due to Damage caused by any Defined Contingency listed in the policy, therefore Clauses 1 'Prevention of Access', 5 'Suppliers' and 8 'Loss of Attraction' are not applicable.

Equally, in relation to **Clause 3, 'Disease, Infestation and Defective Sanitation'**, the Provider says that this cover only has application when the specified diseases are sustained by any person at The Premises. The Provider notes that SARS-Cov-2 (the coronavirus), and more specifically, COVID-19, are not one of the specified diseases included under this Clause and therefore no cover operates in that regard.

The Provider says that following careful consideration of the claim, and for the reasons set out above, it established that there was no cover under the Complainant Company's shop insurance policy. In this regard, the Provider says it is evident that none of the items listed as a "Defined Contingency" in the policy occurred, causing "Damage" and separately, that coronavirus and COVID-19 are not listed as a specified disease in the policy. It is for these reasons that the Provider concluded that the Complainant Company's policy has no application to any losses it incurred as a result to the closure of its business due to the COVID-19 pandemic.

The Provider notes that when the Complainant Company renewed its shop policy with the Provider in **March 2018**, the Shop Policy booklet that applied at that time, was the November 2016 version.

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In this regard, the 'Revenue Protection – Business Interruption' section of this Shop Policy booklet [November 2016] contained an additional Clause, as follows:

“Clauses *We will also indemnify you in respect of loss of Income as insured under this Section resulting from ...*

9. Government or Local Authority Action

Prevention of access to The Premises due to the actions or advice of a government or local authority due to an emergency which is likely to endanger life or property.

We will not indemnify You in respect of:

- (a) any incident lasting less than 12 hours*
- (b) any period other than the actual period when the access to The Premises was prevented*
- (c) a Notifiable Human Infectious or Contagious Disease as defined in the current relevant legislation occurring at The Premises.*

The maximum We will pay under this clause is €30,000 in respect of the total of all losses occurring during the Period of Insurance”.

The Provider says that before the Complainant Company renewed its Shop Insurance policy with the Provider on **23 March 2019**, the Provider sent a renewal offer to the Complainant Company’s Broker on 11 February 2019. The Provider notes that pg. 1 of the enclosed ‘**Your Shop Policy Schedule**’ document stated:

“This Schedule forms part of Your policy.

If the information in the Schedule is incorrect or incomplete or if the insurance does not meet your requirements, please tell Us as soon as possible ...

Renewal Date 23/03/2019 ...

Renewal Notices/Updates

With effect from the renewal date showing in this renewal notice, your policy with [the Provider] has changed. Clause 9 Government or Local Authority Action has been deleted under the Revenue Protection - Business Interruption

In addition, pg. 5 of this Policy Schedule also stated:

“PLEASE READ – Policy wording changes

With effect from the renewal date showing in this renewal notice, your policy with [the Provider] has changed. Clause 9 Government or Local Authority Action has been deleted under the Revenue Protection - Business Interruption”.

Furthermore, on 7 February 2019, the Provider issued a general communication to all brokers advising, *inter alia*, as follows:

“Changes effective:

New Business policies 27 January 2019

Renewals 10 March 2019

... Shop policies

Revenue Protection – Business Interruption

Clause 9 Government or Local Authority Action has been deleted under the Revenue Protection – Business Interruption”.

The Provider says that the Shop Policy booklet [November 2016] was therefore replaced by the Shop Policy booklet [February 2019].

In this regard, the Provider notes that the Complainant Company’s shop insurance policy is an annual contract in which renewal terms and conditions are issued prior to the renewal date. It is then up to the customer to review and decide if they are satisfied with the product offerings. For all renewals from 10 March 2019 onwards, with the Complainant Company’s renewal date being 23 March 2019, the Provider offered renewal terms with the removal of **Clause 9, ‘Government or Local Authority Action’**, from the ‘Revenue Protection - Business Interruption’ section of its Shop Policy. The Provider notes that the Complainant Company did not raise any queries with the Provider in respect of the deletion of Clause 9 and accepted the policy terms and conditions. As a result, the Provider says that the Complainant Company’s policy was renewed on those terms on 23 March 2019, and again, on 23 March 2020.

Upon full review of this complaint, the Provider is satisfied that there is no cover under the Complainant Company’s insurance policy for business interruption losses arising as a result to the closure of its business due to the COVID-19 pandemic. In addition, the Provider is also satisfied that the Complainant Company and its Broker were properly notified in advance of renewal, of the change to business interruption cover brought about by the removal of Clause 9, ‘Government or Local Authority Action’, from the ‘Revenue Protection - Business Interruption’ section of the Shop Policy.

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The Provider recognises that the queries that were raised by the Complainant Company's Broker regarding policy cover after the closure of the Complainant Company's business, could have been handled better. Given the exceptional circumstances that the Complainant Company faced, the Provider would like to offer the Complainant Company a gesture of goodwill in the amount of €2,000 for any inconvenience this poor service may have caused.

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainant Company's claim for business interruption losses as a result of the temporary closure of its business in March 2020, due to 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 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 **12 April 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.

I note that the Complainant Company trades as a clothing wholesaler and holds a shop insurance policy with the Provider. The Complainant Company's Broker notified the Provider by email on **26 March 2020** of the Complainant Company's claim for business interruption losses as a result of the temporary closure of its business due to measures imposed by the government to curb the spread of the coronavirus (COVID-19).

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Following its assessment, the Provider wrote to the Complainant Company on 8 May 2020 to advise that it was declining indemnity on the basis that its 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, and separately, in terms of the business interruption disease clause, that coronavirus and COVID-19 are not listed as a specified disease in the policy. The Provider stood over this decision upon review on 9 July 2020.

The Complainant Company's shop insurance policy, like all insurance policies, does not provide cover for every possible eventuality. Rather the insurance cover available will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

I note that as part of the complaint at hand, the Complainant Company contends that the terms and conditions of its shop insurance policy are those that could be found in the Shop Policy booklet of November 2016, which included (i) business interruption cover for the prevention of access to the insured premises, due to the actions or advice of a government or local authority due to an emergency likely to endanger life, and (ii) business interruption cover for the occurrence of a notifiable human infectious or contagious disease at the insured premises.

I am, however, satisfied that the terms and conditions applicable to the Complainant Company's shop insurance policy in March 2020, when it first notified the Provider of the claim which gives rise to this complaint, are those contained in the Shop Policy booklet of **February 2019**.

In this regard, I note from the documentation before me that before the Complainant Company renewed its Shop Insurance policy with the Provider on 23 March 2019, the Provider sent a Renewal Notice to the Complainant Company's Broker dated 11 February 2019. I note that pg. 1 of the enclosed 'Your Shop Policy Schedule' stated that:

"This Schedule forms part of Your policy ...

Renewal Notices/Updates

With effect from the renewal date showing in this renewal notice, your policy with [the Provider] has changed. Clause 9 Government or Local Authority Action has been deleted under the Revenue Protection - Business Interruption

In addition, pg. 5 of this 'Your Shop Policy Schedule' document also stated:

"PLEASE READ – Policy wording changes

With effect from the renewal date showing in this renewal notice, your policy with [the Provider] has changed. Clause 9 Government or Local Authority Action has been deleted under the Revenue Protection - Business Interruption".

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I am satisfied accordingly, that in February 2019 the Provider supplied the Complainant Company with appropriate notice of the deletion from its shop policy, of (i) business interruption cover for the prevention of access to the insured premises due to the actions or advice of a government or local authority due to an emergency likely to endanger life, as well as (ii) business interruption cover for the occurrence of a notifiable human infectious or contagious disease at the insured premises.

The Complainant Company's claim is for business interruption losses, arising from the temporary closure of its business due to measures imposed by the Government to curb the spread of the COVID-19. In this regard, the 'Revenue Protection – Business Interruption' section of the applicable Shop Policy booklet [February 2019] states at p.26:

"Cover 1. Income

We will indemnify You in respect of loss of income resulting from Damage to property used by You at The Premises for the purposes of The Business to the extent of Cover under the Property Damage Section and where liability is admitted under a policy of insurance covering Your interest in such property".

I note that "Damage" is defined at pg. 11 of the policy booklet as:

"Damage *Accidental loss, destruction or damage".*

In general, in order for business interruption cover to operate, I am satisfied that the policy wording clearly states that there must first have been "Damage" to the property insured, that is, the physical property of the policyholder, and that such damage must also be attributable to one the insured perils listed at pg. 11 of the '**Property Damage – All Risks**' section of the Shop Policy booklet, as follows:

"Defined Contingency

- (1) Fire*
- (2) Lightning or earthquake*
- (3) Explosion*
- (4) Aircraft*
- (5) Riot, civil commotion, strikers, locked out workers or persons taking part in labour disturbances*
- (6) Malicious persons other than thieves*
- (7) Storm or flood*
- (8) Escape of water from any tank, apparatus or pipe*

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(9) Falling trees, radio or television aerials, masts or satellite dishes no bigger than one metre in diameter

(10) Impact

(11) Leakage of fuel

(12) Theft or attempted theft”.

I note that the Complainant Company’s claim circumstances for business interruption losses, arising from the temporary closure of its business due to measures imposed by the government to curb the spread of the COVID-19, do not indicate that any such “damage” has occurred.

There are a number of additional business interruption clauses set out under the ‘Revenue Protection – Business Interruption’ section of the Shop Policy booklet at pg. 28, including:

“Clauses *We will also indemnify you in respect of loss of Income as insured under this Section resulting from*

2. Prevention of Access

Damage to property in the vicinity of The Premises by any cause included under the Property Damage Section which hinders or prevents access to the Premises ...

5. Suppliers

Damage to any of Your suppliers’ premises within Great Britain, Northern Ireland, the Republic of Ireland, the Channel Islands or the Isle of Man by any cause included under the Property Damage Section ...

8. Loss of Attraction

Damage to property in the vicinity of The Premises by any cause insured under the Property Damage Section which directly causes a loss of custom to The Business”.

As the loss of income to the Complainant Company was as a result of the outbreak of COVID-19 and the measures imposed by the Government to curb its spread, and was not due to “Damage”, as so defined by the policy terms, in the circumstances provided for by these three clauses, I take the view that the cover offered by Clauses 1 ‘Prevention of Access’, 5 ‘Suppliers’ and 8 ‘Loss of Attraction’ is not relevant to the Complainant Company’s claim circumstances.

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In addition, Clause 3, 'Disease, Infestation and Defective Sanitation', of the 'Revenue Protection – Business Interruption' section at pg. 28 of the Shop Policy booklet states:

"Clauses *We will also indemnify you in respect of loss of Income as insured under this Section resulting from ...*

3. Disease, Infestation and Defective Sanitation

The occurrence of ...

(b) Acute Encephalitis, Acute Poliomyelitis, Anthrax, Chickenpox, Cholera, Diphtheria, Dysentery, Legionellosis, Leptospirosis, Legionnaire's Disease, Leprosy, Leptospirosis, Malaria, Measles, Meningococcal Infection, Mumps, Ophthalmia Neonatorum, Paratyphoid Fever, Plague, Rabies, Rubella, Scarlet Fever, Smallpox, Tetanus, Tuberculosis, Typhoid Fever, Viral Hepatitis, Whooping Cough or Yellow Fever sustained by any person at The Premises".

This clause does not require there to have been "Damage" in order for the cover to apply. Instead, in order for Clause 3, '**Disease, Infestation and Defective Sanitation**', to provide business interruption cover in respect of disease, there must be the operation of the insured peril, that is, that the business interruption must have been as a result of any person at the policyholder's insured premises being diagnosed with one of those diseases, specified in the policy.

In this regard, though COVID-19, and its virus agent SARS-CoV-2, were designated by the Government as notifiable diseases in Ireland on 20 February 2020, by way of the Infectious Diseases (Amendment) Regulations 2020, it was not one of the notifiable diseases specified in the Complainant Company's insurance policy.

For that reason, I am satisfied that the cover provided by Clause 3, '**Disease, Infestation and Defective Sanitation**', was not relevant to the Complainant Company's claim circumstances in March 2020.

I note in its email of complaint to the Provider on **24 May 2020**, the Complainant Company submitted, as follows:

"An insurance product information document was supplied which identifies policy exclusions [that do] not specify infectious diseases or mandatory closure by government ...

I do not accept that my policy, given its interruption of business cover, does not exclude the COVID-19 situation and in particular does not specifically exclude under [the policy] exclusions the mandatory closure of my business by the government".

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Similarly, in its email to this Office on **23 November 2020**, the Complainant Company states:

“No exclusions relating to new illnesses i.e. COVID-19 or mandatory closure is specified.

If an insurance policy fails to detail exclusions and be precise as to its cover it is not good enough to then given a retrospective interpretation that would contradict the customers legitimate expectations of their contract”.

I take the view that the absence of a policy exclusion in relation to *“infectious diseases”*, *“new illnesses”* or *“mandatory closure”* has no bearing on this matter, because the purpose of a policy exclusion is to restrict cover which is otherwise available, if it were not for the exclusion itself. There is however, no such cover available from the policy in this instance.

I am satisfied that the Complainant Company’s shop insurance policy clearly identified and defined the precise circumstances in which a business interruption claim would be covered. In that regard, I am satisfied that the Provider was entitled to decline the Complainant Company’s claim for business interruption losses in accordance with the terms and conditions of its shop insurance policy.

I note that the Provider accepts that queries that were raised by the Complainant Company’s Broker regarding policy cover after the closure of the Complainant Company’s business, could have been handled better and in that regard, the Provider has offered the Complainant Company a goodwill compensatory payment in the amount of €2,000 for any inconvenience that this poor level of service may have caused.

In my preliminary decision of 12 April 2021, I offered my opinion that this was a reasonable offer, and that it was a matter for the Complainant Company to communicate directly with the Provider if it wished to accept this offer. I note that after the preliminary decision was issued, the Complainant Company indicated that it wished to accept that goodwill payment from the Provider, and indeed, the Provider swiftly paid those monies, indicating that although it would normally wait for the issue of a Legally Binding Decision, before making any payment, it was mindful of its efforts to prioritise complaints of this nature. I note in that regard that on 23 April 2021, the monies in question were being processed by the Provider’s finance department, for transfer to the complainant Company.

Whilst I have noted the payment in question to the Complainant Company by the provider, in recognition of some poor customer service issues, nevertheless, as the evidence available otherwise discloses no wrongdoing by the Provider, I take the view that there is no reasonable basis upon which this complaint can be upheld.

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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**

14 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.