An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0248
Sector:	Insurance
Product / Service:	Retail
Conduct(s) complained of:	Claim handling delays or issues Rejection of claim
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants, a partnership engaged in the manufacture of furniture, held a commercial combined insurance policy with the Provider.

The Complainants' Case

The Complainants submitted a claim for business interruption losses to the Provider in **March 2020** as a result of the temporary closure of their business on **24 March 2020** for a period, due to the outbreak of coronavirus (COVID-19).

Following its assessment of the claim, the Provider wrote to the Complainants on **2 June 2020** to advise that it was declining their claim, as follows:

> *"Unfortunately, for the reasons explained below, we have concluded that there is no cover available under the Policy for your claim.*
>
> *Please be assured that* [the Provider] *appreciates you may be disappointed with this position and of the potential implications our response may have on your business. We have carefully considered the terms of your policy and have obtained legal advice on how our policies respond, which forms the basis of our decision.*

The Claim Made

My understanding of your claim is based upon the information provided during recent communications with our Loss Adjusters. I note that on the 24th March 2020 following the Government's announcement on the 24th March 2020, that all non-essential retail outlets were to close, you ceased trading. As a consequence of the present situation you have suffered a loss of revenue and have sought to establish the extent of cover under your policy.

The Coverage Position

The main policy is triggered in the event that business interruption losses arise as a consequence of damage to the property insured (subject to any exclusions). As we understand it, your claim is based upon the economic effects that the Covid-19 situation has had on your business. The policy does provide some limited cover, by way of extensions, for certain situations where the business is adversely affected by a specific event, happening at or near the premises. The extension of relevance to Covid-19 claims of this nature is the Infectious Diseases/Murder or Suicide Extension.

Infectious Disease/Murder or Suicide Extension

In the event that, losses have arisen due to the occurrence of Covid-19, cover may be available under the Infectious Diseases/Murder or Suicide Extension. This Extension is designed to be the only potential source of cover for losses arising from disease such as Covid-19.

The Extension may respond where:

(a) Loss results from the occurrence of a notified disease at the premises; or

(b) Loss results from the occurrence of a notifiable disease within the specified vicinity of the premises.

Covid-19 was added to Irish Government list of notifiable disease on 20 February 2020. This Extension will therefore respond in respect of losses suffered after that date as a consequence of the occurrence of Covid-19 at the relevant locations. Cover will not be back-dated to apply to any losses suffered before Covid-19 became notifiable in Ireland.

It is important to note that this Extension will only provide cover where loss is in consequence of the occurrence of Covid-19 at the relevant locations, and not where losses are in consequence of, for example, wide-scale government measures. The effect of (for example) government-mandated blanket shutdowns, or the effect of the Covid-19 outbreak on the reginal, national or global economy, will not trigger cover. Cover will only be available where a specific outbreak of Covid-19 at the premises, or within the specified vicinity, has had a direct effect on the business.

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Where a case of Covid-19 has occurred at the insured premises, it is likely that cover under the Extension would be engaged to the extent that that occurrence has required the premises to close for a short period, subject to the terms and conditions of the policy. Where it is shown that there has been an occurrence of Covid-19 within the radius of the relevant premises as specified in the policy, interruption loss at the premises will only be recoverable to the extent that that loss is in consequence of that particular occurrence, and not some other cause.

Conclusion

Having carefully considered your claim, unfortunately I do not believe there is any cover, as the notified circumstances and losses do not fall within the terms of your policy, for the reasons set out above. …".

The Complainants submitted a complaint to the Provider through their Broker on **14 June 2020** regarding its decision to decline their claim, as follows:

"I note from [the Provider's] *letter that* [the Provider's] *view is that the notified circumstances do not fall within the terms of our policy. However, having regard to the terms of our policy with* [the Provider]*, this position is unsustainable for the reasons set out below.*

1. [The Provider] *states that "… the majority of insurance policies are not designed to provide cover for these unprecedented circumstances". That may be so in general terms. However, the terms of our specific policy, in particular clause 3.3.4, clearly provide for the outbreak of an infectious disease and that such an event would trigger cover in relation to the business interruption flowing from such an outbreak.*

2. *Clause 3.3.4 (c) provides that* [the Provider] *will cover loss resulting from interruption of or interference with the business in consequence of any occurrence of a notifiable disease within a radius of 25 miles of the premises. The current circumstances notified to* [the Provider] *clearly fulfil those requirements. Firstly, and as noted in* [the Provider's] *letter, Covid-19 was added to Irish Government list of notifiable diseases on 20 February 2020 and therefore the extension to business interruption cover provided for in clause 3.3.4 will cover losses resulting from that disease from 20 February 2020 onwards. Secondly, that clause refers to any occurrence of a notifiable disease with a radius of 25 miles of the premises. A 25 mile radius from the premises in our case encapsulates almost the entirety of County* [redacted]*. The latest figures released by the Irish Government (as of 11 June 2020) record 25,295 confirmed cases of Covid-19 in Ireland with XX,XXX cases in County* [redacted]*. The outbreak of Covid-19 within our primary trading area - i.e. County* [redacted] *- has caused serious and unavoidable interruption to the business.*

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3. [The Provider] *states that "where it is shown that there has been an occurrence of Covid-19 within the radius of the relevant premises as specified in the policy, interruption loss at the premises will only be recoverable to the extent that that loss is in consequence of that particular occurrence". This is an extremely subjective and in my view inaccurate reading clause 3.3.4 (c). That clause specifically refers to "interference with the business in consequence of* ***any*** *occurrence of a notifiable disease" within the 25 mile radius of the premises which affects the business' ability to trade. It appears that* [the Provider] *is trying to limit the scope of clause 3.3.4 to a specific occurrence of the disease which causes business interruption rather than the cumulative effect of the outbreak and large volume of cases within the specified area resulting in a business being unable to trade for a period of time, which is what the terms of the policy actually provide for.*

For the reasons set out above, I do not accept the response from [the Provider] *…. In essence, the terms of our policy provide that the outbreak of an infectious disease with the specified area is an insurable event insofar as it interrupts or impacts our business. This has unfortunately come to pass. It is simply not acceptable for* [the Provider] *to resile from the terms of the policy to avoid making payment for an event which, on the terms of its own policy, was a foreseeable risk."*

Following its review of the complaint, the Provider wrote to the Complainants through their Broker on **30 June 2020** to advise that it was standing over its decision to decline the claim, as follows:

"I have now completed my review of the complaint, relating to the declinature of your claim which Insurers have confirmed does not fall for consideration under the policy.

I am unable to uphold the complaint, please find my rationale as outlined below;

To recap the claim relates to the temporary closure of your business … from 24th March 2020 due to health and safety concerns in accordance with the Government Directive and the resultant impact this has caused as a result of Government guidelines and recommendations in response to the Covid-19 crisis. A claim for business interruption was notified under the policy, which was received by our office on 1st April 2020.

Whilst we had considered that the circumstances of the losses being experienced by the Insured fell outside the scope of policy cover, in order to ensure that the correct decision was made we sought legal opinion on the policy wording, with particular reference to Extension 3.3.4 (Infectious diseases/murder or suicide). Our letter of 2nd June 2020 detailed the findings of the review, which confirmed we had correctly interpreted the wording and that on this occasion the losses the Insured are experiencing fall outside the scope of the policy.

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> *Having now completed my review of the file, I can see no basis on which to reconsider the decision on policy cover. The policy is very specific in that for consideration to be given under Extension 3.3.4 losses must be in consequence of an occurrence of a notifiable disease at the premises, or in consequence of an occurrence of a notifiable disease within a radius of twenty five (25) miles of the premises, there being no cover for losses resulting from measures introduced to curtail the spread of Coronavirus or the extremely challenging economic conditions that exist at present."*

In this regard, the Complainants set out their complaint in the **Complaint Form**, as follows:

> *"I contacted* [the Complainants' Broker] *in March to raise a claim under my policy for business interruption as a result of Covid-19.* [The Provider] *responded with a letter rejecting this claim and refusing to provide cover. As part of the business interruption clause in my policy, it states that the business is covered for business interruption due to "any occurrence of a notifiable disease within a radius of 25 (twenty five) miles of the premises". I responded to the insurer on this basis, however, the insurer emailed a final letter rejecting my claim and refusing cover, without providing any credible for* (sic) *reason for doing so. …."*

As a result, the Complainants seeks for the Provider to admit their claim for business interruption losses, as follows:

> *"As part of my policy, the business is insured for 25,000 euro under the business interruption clause. I wish for this complaint to be resolved by … honouring the terms of my insurance policy in that regard."*

The Provider's Case

In order to assist and to provide context, the Provider first set out a chronology of the material facts relevant to, and measures taken in respect of, the COVID-19 pandemic in Ireland, including where the Complainants' business interruption claim fits into that chronology, as follows:

20 February 2020:	COVID-19 became a notifiable disease in Ireland, as did its virus agent SARS-CoV-2, by way of the *Infectious Diseases (Amendment) Regulations 2020*.
29 February 2020:	First diagnosis of COVID-19 in Ireland.
11 March 2020:	First death in Ireland attributable to COVID-19.
12 March 2020:	On the advice of the National Public Health Emergency Team (NPHET), the Irish Government announced the following measures to control the spread of COVID-19:

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a. the closure was ordered of museums, galleries, tourism sites, schools, creches, other childcare facilities and higher education institution; and

b. no mass gatherings involving more than 100 people indoors or 500 people outdoors.

In addition, a statement from the Taoiseach also stated:

"… Public transport will continue to operate … Shops will remain open … Businesses are to take a sensible and level-handed responsible approach … Restaurants, cafes and other businesses can stay open but should look at ways to implement the public health advice on social distancing."

14 March 2020: Second death in Ireland attributable to COVID-19. By this date, there were 129 confirmed cased of COVID-19 in the country.

15 March 2020: Following discussions with the Licensed Vintners Association and the Vintners Federation of Ireland and with their support, the Government requested that all public houses and bars, including hotel bars, close from 15 March 2020 to at least 29 March 2020.

20 March 2020: The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020* was enacted, which at that time was valid until 9 November 2020. This Act empowered the Minister for Health, on an emergency basis, to prohibit and restrict the holding of certain events and to close certain premises.

24 March 2020: The Government adopted the following NPHET recommendations:

a. non-essential retail outlets were closed to members of the public;

b. all theatres, clubs, gyms/leisure centres, hairdressers, betting shops, marts, markets, casinos, bingo halls, libraries and other similar outlets were closed;

c. all hotels were limited to non-social and non-tourist occupancy;

d. all playgrounds and holiday or caravan parks were closed;

e. all organised social indoor or outdoor events of any size were not to take place; and

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f. all cafes and restaurants were to operate on a take-away or delivery basis, with strict physical distancing measures applied to queuing for this service.

The Complainants closed their furniture manufacturing premises.

27 March 2020: From midnight, strict public health measures came into force requiring all members of the public to stay at home, excluding essential service workers. The Provider notes that Schedule 2, 'Essential Services', of the *Health Act 1947 (Section 31A – Temporary Restrictions) (COVID-19) Regulations (S.I. 121 of 7 April 2020)*, (**the 7 April 2020 Regulations**), *"essential services"* did not include businesses such as the Complainants' furniture manufacturing business.

8 April 2020: An Garda Síochána were given additional powers under the 7 April 2020 Regulations to levy fines for not complying with the above restrictions.

1 May 2020: The Government published its 'Roadmap for Reopening Society and Business', setting out its plans for easing COVID-19 restrictions and enable a phased reopening of Ireland's economy, with Phase 1 on 18 May 2020, Phase 2 on 8 June 2020, Phase 3 on 29 June 2020, Phase 4 on 20 July 2020 and Phase 5 on 10 August 2020.

18 May 2020: Phase 1 of reopening commenced with the following enterprises allowed to recommence trading:

a. hardware stores;

b. builders' merchants and those providing essential supplies and tools for gardening;

c. farming and agriculture; garden centres and farmers markets;

d. opticians/optometrists/outlets providing hearing test services, selling hearing aids and appliances;

e. retailers involved in the sale, supply and repair of motor vehicles, motorcycles and bicycles and related facilities (for example, tyre sales and repairs); and

f. office products and services; electrical, IT and phone sales, repair and maintenance services for home (not including hardware stores).

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8 June 2020: Phase 2 of reopening commenced with all retail outlets permitted to recommence trading, but all workers otherwise still required to work from home where possible.

29 June 2020: Phase 3 of reopening commenced in which businesses such as hairdressers, barbers, beauty salons, spas, tanning, tattooing and piercing services were allowed to re-open.

In this regard, the Provider said it would assist if the Complainants could confirm the date from which their premises re-opened.

The Provider said that the relevant Extension in the 'Business Interruption' section of the Complainants' policy which provides cover for infectious disease, murder or suicide is at clause 3.3.4, which reads, as follows:

> *"**Infectious diseases/murder or suicide***
>
> [The Insurer will pay to the Insured] *Loss resulting from interruption of or interference with the business in consequence of any of the following events:*
>
> *a) any occurrence of a notifiable disease at the premises or attributable to food or drink supplied from the premises;*
>
> *b) any discovery of any organism at the premises likely to result in the occurrence of a notifiable disease;*
>
> *c) any occurrence of a notifiable disease within a radius of 25 (twenty five) miles of the premises;*
>
> *d) the discovery of vermin or pests at the premises which cause restrictions on the use of the premises on the order or advice of the competent local authority;*
>
> *e) any accident causing defects in the drains or other sanitary arrangements at the premises which causes restrictions on the use of the premises on the order or advice of the competent authority;*
>
> *f) any occurrence of murder or suicide at the premises;*
>
> *provided that the*
> *g) insurer shall not be liable for any costs incurred in cleaning, repair, replacement, recall or checking of property;*
>
> *h) insurer shall only be liable for loss arising at those premises which are directly subject to the incident;*

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i) insurer's maximum liability under this cover extension clause in respect of any one claim shall not exceed EUR50,000 or fifteen per cent (15%) of the sum insured (or limit of liability) for this insured section, whichever is the lesser, any one claim and EUR10,000 any one period of insurance."

(**the ID Extension**)

Clause 15.61, the Provider said, defines 'Notifiable disease' as:

"… illness sustained by any person resulting from:

15.61.1 food or drink poisoning; or

15.61.2 any human infectious or human contagious disease, an outbreak of which the competent local authority has stipulated shall be notified to them, excluding Acquired Immune Deficiency Syndrome (AIDS), an AIDS related condition or avian influenza".

As above, the Provider said COVID-19 and its virus agent, SARS-CoV-2, were designated as notifiable diseases in Ireland on **20 February 2020**. Reading the provisions relevant to this matter together, the Provider said, the ID Extension provides cover for losses resulting from:

(i) interruption of or interference with the business;

(ii) "in consequence of" any of the following events:

a) any occurrence of COVID-19 illness at the premises;
b) any discovery of any organism at the premises likely to result in the occurrence of COVID-19 illness;
c) any occurrence of COVID-19 illness within a radius of 25 miles of the premises;

(iii) provided that the Provider shall only be liable for loss arising at those premises which are directly subject to the incident.

The Provider said points (ii) (a) – (c) above, constitute the insured peril which must proximately cause the financial losses claimed by the Complainants.

Against this background, the Provider said the Complainants notified the Coverholder of a claim under the policy in **March 2020**. The Provider was provided with no further details at that point. The Provider said it instructed its Loss Adjuster on **1 April 2020**, and on **3 April 2020**, the Loss Adjuster sent an email to the Complainants' Broker requesting further information regarding the Complainants' business, to which a response was provided on the same day.

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By letter dated **2 June 2020**, the Provider said it set out the reasons why it did not consider there to be coverage for the claim under the ID Extension terms of the policy. The Provider said a complaint was forwarded by the Complainants' Broker by email dated **15 June 2020** which was acknowledged by the Provider the same day. As part of their complaint, the Complainants provided further information on the area of County [redacted] covered by a 25 mile radius from their business premises and the complaint referred to figures released by the Irish Government recording 12,179 confirmed COVID-19 related cases in County [redacted] as of **11 June 2020**.

The Provider said a Final Response Letter was forwarded to the Complainants on **30 June 2020** detailing the reasons why the claim was not considered to be covered. It said the Complainants completed and filed a Financial Services and Pensions Ombudsman Complaint Form on **31 July 2020**.

Referring to sub-sections (c) and (h) of the ID Extension, the Provider said this requires the Complainants to prove:

(i) the existence of an "event", in the sense of an occurrence, or occurrences, of COVID-19 within a radius of 25 miles;

(ii) *"in consequence of"* which business interruption or interference occurred;

(iii) which resulted in the financial losses claimed.

The Provider said that (i)-(ii) above, constitute the Insured Peril.

The Provider said that the key consideration is when business interruption can be said to be *"in consequence of"* occurrences of COVID-19 within the 25 mile radius. In short, the Provider said that to trigger cover, those occurrences within the radius must be the specific proximate cause of the interruption, in the sense that, but for those occurrences, no interruption would be suffered. If the interruptions would have occurred in any event, irrespective of the local occurrences within the 25 mile radius, there is no cover. It is not enough that there simply happened to be such occurrences in the radius.

The Provider said this means that:

(i) the Complainants will only be able to recover under clause (c) of the ID Extension for business interruption that is *"in consequence of … c) any occurrence of a notifiable disease within a radius of 25 (twenty five) miles of the premises"* - if they can show that the business interruption had been proximately caused by the specific occurrence(s) of the disease within the 25 mile radius (being the relevant "event" and insured peril);

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(ii) that is consistent with section 55(1) of the Marine Insurance Act 1906 (which is a pre-independence statute that is in force in Ireland), which provides that:

> *"Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused a peril insured against"*;

(iii) further, as stated in the Insurance text, *Buckley on Insurance Law* at paras. 8.71, 8.76 and 8.77:

> *"The fundamental rule of insurance law is that the insurer is only liable for losses proximately caused by a peril covered by the policy. … The use of words such as "in consequence of" or "originating from" does not … prevent the operation of the doctrine …* [Further]*, words such as "caused by" or "arising from" are unambiguous. Such words have been interpreted as relating to the proximate cause …"*;

(iv) for proximate cause purposes, therefore, a two-step test must be undertaken:

a. firstly, the "but for" test (factual causation) must be applied. This boils down to a simple question: what would have happened had the insured peril not occurred i.e. had there been no *"occurrence(s) of* [COVID-19] *within a radius of 25 miles of the* [Complainants'] *premises"*?:

   i. if the business interruption and losses would have occurred in any case, through a separate independent event (in the form of incidents of COVID-19 outside the radius), then the incidents of COVID-19 within the 25 mile radius (being the insured peril) does not cause the interruption and losses, such that those losses are not covered;

   ii. alternatively, if it can be said that "but for" the event comprising the local occurrences within 25 miles the business would not have suffered the relevant interruption/losses, then the local incidents *are* the factual cause of those losses – the business would not have suffered the same losses in any case;

b. secondly - and assuming factual causation had been satisfied as in ii. above - were the incidents inside the 25 mile radius also the proximate cause (i.e. the dominant or effective cause) of the presented losses (legal causation)?;

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c. if the above tests are satisfied by an Insured i.e. "but for" the local 25 mile COVID-19 event the business interruption losses would not have occurred, the losses will be covered.

These issues, on the exact policy wording as the present complaint, were considered by the English High Court in the **15 September 2020** decision of ***The Financial Conduct Authority v. Arch Insurance (UK) Ltd and others*** [2020] EWHC 2448, (**the FCA Test Case**).

The Provider said this case considered the extent of COVID-19 related coverage, if any, under 21 separate business interruption coverage wordings for test case purposes. In this regard, the Provider said the Court considered the COVID-19 related operation of an identical infectious disease extension to the one the subject of this complaint, as follows:

> *"231. … in* [the Provider's wording]*, there is a combination of factors which together, to our minds, indicate that the cover is indeed intended to be confined to the results of specific (relatively) local cases. …*
>
> *In particular, the relevant clause has the following features.*
>
> *In the first place, the insuring clause itself identifies the matters in (a) to (f) as "events".*
>
> *This indicates that what is being insured is matters occurring at a particular time, in a particular place and in a particular way: see the dictum of Lord Mustill in Axa Reinsurance v Field [1996] 1 WLR 1026 at 1035 as to the meaning of "event".*
>
> *This is the context within the clause in which Clause 3.2.4(c) refers to "any occurrence of a notifiable disease".*
>
> *Given the reference to "events", and taken with the nature of the other matters referred to in (a), (b) and (d) to (f), the emphasis in (c) appears to us in this clause not to be on the fact that the disease has* ***occurred*** *within 25 miles, but on the* ***particular occurrences*** *of the disease within the 25 miles.*
>
> *It is the "event" which is constituted by the occurrence(s) of the disease within the 25 mile radius which must have caused the business interruption or interference.*
>
> *If there were occurrences of the disease at different times and/or different places* [outside the 25 mile radius] *then these would not constitute the same "event", and the clause provides no cover for interruption or interference with the business caused by such distinct* [outside-the-radius] *"events". …*
>
> *232. This focus of the clause is then emphasised by the fact that in (h), it is stated that the insurer is only to be liable for loss arising at those premises which are directly subject to the "incident" … These uses of the word "incident" appear to us to reinforce the fact that the clause is concerned with specific events, limited in time and place. …*

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234. We accept that, for the purposes of [the Provider's wording]*, there will be an "occurrence" of COVID-19 within the radius when a person has the disease within the area, whether symptomatically or not, because that person has then "sustained" the illness within the definition in Clause* [15.61 of the current policy]. *However, as we have said, the terms of Clause 3.2.4* [i.e. Clause 3.3.4 in the present case] *show that there is cover only if there is business interruption as a result of the "event" of the person(s) sustaining that illness within the area. It is difficult to see how there could be such consequential interference if the disease was asymptomatic and undiagnosed.*

235. Given our construction of Clause 3.2.4, the issues as to causation largely answer themselves. We accept that the words "in consequence of" imply a causal relationship.

As we have found that this clause … is drawing a distinction between the consequences of the specific cases occurring within the radius and those not doing so, because the latter would constitute separate "events", we consider that insureds would only be able to recover if they could show that the case(s) within the radius, as opposed to any elsewhere, were the cause of the business interruption.

In the context of this clause, it does not appear to us that the causation requirement could be satisfied on the basis that the cases within the area were to be regarded as part of the same cause as that causing the measures elsewhere, or as one of many independent causes each of which was an effective cause, because this clause, in our view, limits cover only to the consequences of specific events [within the 25 mile radius]*."*

[Provider emphasis]

The Provider said the proximate cause requirements in point (i)-(iv) above, as endorsed in the judgment above, were not satisfied in the present matter, which must be analysed from the perspective of the period both prior to, and after, Government-directed closure of the Complainants' business on **24 March 2020**.

In respect of Interruption/Financial Loss prior to 24 March 2020, the Provider said that:

(i) The Complainants' business was closed on **24 March 2020**, pursuant to the government direction that non-essential businesses close on that date, which became a legal requirement on **27 March 2020**;

(ii) The Complainants stated in their complaint that *"Covid-19 was added to Irish government list of notifiable diseases on 20 February 2020 and therefore the extension to business interruption cover provided for in clause 3.3.4 will cover losses resulting from that disease from 20 February 2020 onwards"*. Insofar as the above assertion forms part of any Complainant claim for downturn in

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business/loss of profit in the period prior to closure on **24 March 2020**, the burden is on the Complainants to prove, on a balance of probabilities, that:

a. there was an occurrence of COVID-19 within the 25 mile radius of the Complainants' premises during the period prior to **24 March 2020**;

b. a reduction in turnover/gross profit loss was suffered during that period relative to the same period in the previous year (**the Pre-24 March Losses**); and

c. those Losses would not have been suffered but for/without the specific occurrence(s) of COVID-19 illness *"within a radius of 25 (twenty five) miles of the premises"*;

(iii) As mentioned above, the Complainants in their complaint refer to Irish government figures as of **11 June 2020** recording XX.XXX cases in County [redacted], which is asserted as falling within the 25 mile radius around the Complainants' business premises. Even assuming the Complainants provide documentary evidence of the figure referenced, those figures do not prove the occurrence(s) of COVID-19 in the 25 mile radius in the period prior to **24 March 2020**;

(iv) Further, even assuming there is proof of one or more cases of COVID-19 within the 25 mile radius prior to **24 March 2020**, there is no evidence proving on a balance of probabilities that any drop in turnover/gross profit during that period (relative to the previous year) was proximately caused by those cases of COVID-19 illness within the 25 mile radius i.e. that but for/without those "local" COVID-19 incidents the drop in turnover would not have occurred;

(v) In such circumstances, any pre-**24 March 2020** gradual downturn suffered by the Complainants would have occurred in any event, irrespective of the local position within the 25 mile radius. All business trade was affected nationwide due to national disquiet/generalised fear/consequent reduction in footfall during the pre-**24 March 2020** period. The burden of proof is accordingly on the Complainants to provide evidence that the extent of their pre-**24 March 2020** losses was greater than other similar businesses in the same furniture manufacturing sector across the country. If the downturn suffered by the Complainants mirrored, or was less than, the average drop-off of other similarly placed businesses in Ireland, it cannot be said that the Complainants' drop-off in trade was specific to/in consequence of local occurrences of COVID-19 within 25 miles, as similar drop-off was encountered by all similar businesses *across the country*.

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In respect of Interruption/Financial Loss On or After 24 March 2020, the Provider said:

(i) Regarding the Complainants' business interruption that occurred on or after **24 March 2020** (when it was required to close by government direction) (**the Post-24 March Losses**), the ensuing losses are similarly not recoverable;

(ii) This is because that government-directed closure was not *"in consequence of"* (i.e. proximately caused by) the insured peril, being the local "event" of *"occurrences of* [COVID-19] *within* [the 25 mile radius]*."* It cannot be stated that but for the local occurrences, the closure order would not have been imposed: it would have been imposed in any case, due to the separate uninsured events of COVID-19 elsewhere in the country. As was stated in the FCA Test Case in a different context:

"437. … Even if there were a total closure of insured premises pursuant to the [Government] *Regulations, there could only be cover if the insured could demonstrate that it was the risk of COVID-19 in the vicinity, in that sense of the neighbourhood* [i.e. in the present case, the 25 mile radius]*, of the insured premises, as opposed to in the country as a whole, which led to the action of the government in imposing the Regulations. It is highly unlikely that that could be demonstrated in any particular case …"*;

(iii) As the post-**24 March** losses were in consequence of a government direction introduced as a national response to a national health issue to reduce the spread of the virus (which is an uninsured peril) - not as a local response to the Complainants' 25 mile radius "event" (which is the insured peril) - clause (c) of the ID Extension is not triggered.

The Provider said that it considers the "incident" referred to in clause 3.3.4 (h) refers back to each of the insured "events" set out in clauses (a) to (f), including clause 3.3.4 (c). The Provider said it has set out above the reasons why it concludes that the interruption and losses incurred by the Complainants as a result of the closure of their business are not in consequence of an *"occurrence(s) of a notifiable disease within a radius of 25 (twenty five) miles of the premises"* and sub-paragraph (h) does not alter that analysis.

The Provider said that, assuming it might be shown that interruption losses were in consequence of a local event involving occurrences of COVID-19 in the 25 mile radius (which is not the case in the present matter), sub-paragraph (h) simply makes clear that:

(i) interruption losses suffered by a premises in that radius would be covered;

(ii) however, if the Complainants had another "sister" premises outside that radius that was indirectly affected through, for example, a local authority order that it too must close simply because it was a sister premises to the premises within the 25 mile radius, there would be no cover for interruption losses at the sister premises.

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The Provider notes that in its ***'Expectations of Insurance Undertakings in Light of COVID-19'*** correspondence issued to insurers dated **27 March 2020**, the Central Bank of Ireland stated:

> *"The Central Bank is of the view that where a claim can be made because a business has closed, as a result of a Government direction due to contagious or infectious disease, that the recent Government advice to close a business in the context of COVID-19 should be treated as a direction."*

In this regard, the Provider said it accepts that the Complainants closed their business on **24 March 2020** as a result of a government direction on that date. However, for the reasons set out extensively above, the Provider said as that direction was not "in consequence of"/proximately caused by a local event or incident comprising occurrences of COVID-19 within the 25 mile radius of the premises (being the Insured Peril under the ID Extension), but rather was a direction that would have issued in any case, irrespective of the local position within that radius, the losses due to the closure direction are not covered.

The Provider said it does not consider the Complainants' furniture manufacturing business to be an "essential service" or an "essential retail outlet" for the purpose of the 7 April 2020 Regulations.

Insofar as the Complainants' business was not an "essential service", the Provider said it does not consider that the Complainants would have been permitted to remain open and trading if they had attempted to do so after **24 March 2020** or after **27 March 2020** at the latest nor does the Provider consider that the Complainants' employees would have been permitted to travel to and from the business.

The Provider said it was for the Complainants to prove that their business would likely have incurred financial losses as a direct result of the implementation of the 7 April 2020 Regulations if their business had remained open and trading, insofar as they show that their customer base would not have been permitted to travel to and from the premises, or avail of, the services offered by the Complainants. However, even if such proof is provided by the Complainants, the Provider said this is not the relevant issue for coverage purposes. The relevant issue is whether any interruption and loss as a result of the implementation of the 7 April 2020 Regulations is *insured*.

The Provider said its position is that it is not insured, as the 7 April 2020 Regulations - and the resulting business interruption losses - were not "in consequence of" (i.e. were not proximately caused by) the relevant insured "event"/"incident" i.e. local occurrence(s) of COVID-19 within a radius of 25 miles of the premises. Those Regulations, the Provider said, would have been imposed, and the interruption/losses would have been suffered, in any case (even if there had been no incidents within the 25 mile radius) such that the losses cannot be said to have been "in consequences of"/proximately caused by the insured peril i.e. local incidents of COVID-19 within the 25 mile radius.

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Having adopted the above position at all material times during 2020, nevertheless more recently, the Provider copied this Office on a letter issued to the Complainants on **24 February 2021** which advised that the decision of the Irish High Court, in ***Hyper Trust Ltd v. FBD Insurance plc*** [2021] IEHC 78 delivered on **5 February 2021**, provided welcomed clarity as regards the operation of cover under clauses such as the ID Extension in the Complainants' policy. The letter advised that the Complainants' claim was admitted in principle, subject to validation and that the Provider's nominated Loss Adjusters would be in contact with the Complainants regarding next steps.

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly declined the Complainants' claim for business interruption losses as a result of the temporary closure of their business in March 2020, due to the outbreak of COVID-19.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were 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 **10 June 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.

On **24 March 2020**, the Government adopted certain NPHET recommendations for the nationwide closure of non-essential retail outlets and services. This was followed by the introduction of further Government measures to combat the spread of COVID-19 which came into effect from mid-night on **27 March 2020**.

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The Complainants are a partnership and are engaged in the business of manufacturing furniture. On **24 March 2020**, the Complainants closed their business premises and, in the same month, they submitted a claim to the Provider for business interruption losses arising from the temporary closure of their business. I note that following the claim assessment process, the Provider wrote to the Complainants in **June 2020** to advise that it was declining indemnity as it had concluded that the Complainants' losses did not fall within the scope of cover provided by the relevant business interruption infectious disease extension policy wording, a decision it upheld on review later that month.
The Complainants held a commercial combined insurance policy with the Provider. It can be seen from the Complainants' Schedule of Insurance that the 'Period of Insurance' covered the period **11 May 2019** to **10 May 2020**. In terms of business interruption, the 'Insured Details' section stated that business interruption cover was operative under the Complainants' policy, as follows:

"BUSINESS INTERRUPTION INSURED
Indemnity Period: 12 Months €25,000"

Section 3 of the Complainants' policy document deals with business interruption. In the context of the Complainants' claim, the relevant extension of the business interruption section is extension 3.3.4, '**Infectious diseases/murder or suicide**', at pg. 27 of the policy document, which states, as follows:

*"The **insurer** will pay to the **insured**: …*

*3.3.4 **Infectious diseases/murder or suicide***

*Loss resulting from interruption of or interference with the **business** in consequence of any of the following events:*

*a) any occurrence of a **notifiable disease** at the **premises** or attributable to food or drink supplied from the **premises**;*

*b) any discovery of any organism at the **premises** likely to result in the occurrence of a **notifiable disease**;*

*c) any occurrence of a **notifiable disease** within a radius of 25 (twenty five) miles of the **premises**;*

*d) the discovery of vermin or pests at the **premises** which cause restrictions on the use of the **premises** on the order or advice of the competent local authority;*

*e) any accident causing defects in the drains or other sanitary arrangements at the **premises** which causes restrictions on the use of the **premises** on the order or advice of the competent authority;*

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*f) any occurrence of murder or suicide at the **premises**;*

provided that the

*g) **insurer** shall not be liable for any costs incurred in cleaning, repair, replacement, recall or checking of property;*

*h) **insurer** shall only be liable for loss arising at those **premises** which are directly subject to the incident;*

*i) **insurer's** maximum liability under this cover extension clause in respect of any one claim shall not exceed EUR50,000 or fifteen per cent (15%) of the **sum insured** (or **limit of liability**) for this **insured section**, whichever is the lesser, any one claim and EUR10,000 any one **period of insurance**."*

I have examined the specific policy wording relevant to the Complainants' claim, which can be extracted from the business interruption extension 3.3.4, '**Infectious diseases/murder or suicide**', hereinafter 'clause 3.3.4 c)', as follows:

"The insurer will pay to the insured: …

Loss resulting from interruption of or interference with the business in consequence of …

c) any occurrence of a notifiable disease within a radius of 25 (twenty five) miles of the premises".

Having examined the policy in detail, I am of the opinion that there is nothing within this particular policy clause indicating that for cover to be triggered, a policyholder's business premises must have been required to close as a result of, say, a government or public authority order or direction to do so. Indeed, I take the view that there is nothing within this particular policy clause indicating that for cover to be triggered, the business has to be closed at all.

Rather, I am satisfied that for cover to be triggered by clause 3.3.4 c), there must be a loss to the policyholder, arising from the interruption of or interference with the business, as a result of the insured peril, that is, in this instance because of the occurrence of COVID-19 within 25 miles of the Complainants' business premises.

I am of the opinion that the reasonable interpretation of the plain meaning of clause 3.3.4 c) is that *"**any**"* occurrence of a notifiable disease (in this case COVID-19) within a radius of 25 miles of the Complainants' business premises, once that occurrence has caused an interruption of or interference with the business resulting in loss, is sufficient in itself to trigger cover. I am also satisfied that there is no stipulation within this policy provision that occurrences of the notifiable disease elsewhere outside of the 25 mile radius will in some manner nullify or cancel the operation of the insured peril which the policy specifies.

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In this regard, I am of the opinion that if it had been the intention of the underwriters that the occurrence of the notifiable disease must only be within a radius of 25 miles of the policyholder's premises (and not also beyond that 25 mile radius) in order for the particular insured peril at clause 3.3.4 c) to operate, it would have been open to the underwriters to have specified that particular requirement. In this instance, however, the underwriters did not do so.

As a result, it seems to me that once there is an occurrence of a notifiable disease within a radius of 25 miles of the policyholder's business premises, then cover is potentially triggered. This is the position, regardless of whether there are also occurrences of this notifiable disease elsewhere outside of that radius. Further to this, I am satisfied that even if the official response to the notifiable disease, that is occurring both within and outside of the radius is, or becomes, a national response, or is recognised to be in some way greater than a localised response, it does not follow from the policy provisions that the interference with or interruption to the policyholder's business is not thereby covered.

I find support for such an interpretation in the Irish High Court decision in *Hyper Trust Limited trading as Leopardstown Inn v. FBD Insurance plc* [2021] IEHC 78 and in the UK Supreme Court decision in *The Financial Conduct Authority v. Arch Insurance (UK) Limited & Ors* [2021] UKSC 1.

In that context, I note that clause 15, '**General definitions and interpretation**', of the Complainants' policy document defines 'notifiable disease' at pg.81, as follows:

> *"**Notifiable disease***
> *Notifiable disease means illness sustained by any person resulting from:*
> *food or drink poisoning, or*
> *any human infectious or human contagious an outbreak of which the competent local authority has stipulated shall be notified to them excluding Acquired Immune Deficiency Syndrome (AIDS), an AIDS related condition or avian influenza."*

In this regard, I note that on **20 February 2020**, the Minister for Health signed Statutory Instrument No. 53/2020 – Infectious Diseases (Amendment) Regulations 2020, to include the coronavirus (COVID-19) (SARS-Cov-2) on the list of notifiable diseases. Accordingly, I am satisfied that COVID-19 is a notifiable disease within the meaning of clause 3.3.4 c) of the Complainants' policy.

It appears from the evidence that when the Complainants' claim was submitted to the Provider, evidence of an occurrence of COVID-19 within a radius of 25 miles of their premises was not provided. The Provider's Loss Adjusters contacted the Complainants' Broker by email on **3 April 2020** with a list of questions regarding the Complainants' claim. While only a partial copy of this email has been supplied, I can see that the second question asked whether there had been an outbreak of COVID-19 at or within 25 miles of the Complainants' premises. The answer given in response to this was *Unknown*. Beyond this set of questions, there is no evidence of any further enquiries being made regarding occurrences of COVID-19 within 25 miles of the Complainants' premises.

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Following the declinature of their claim, in correspondence forwarded to the Provider in **June 2020**, the Complainants made reference to the number of cases of COVID-19 in County [redacted] in which their premises is located, as at **11 June 2020**. While the Complainants do not appear to have provided any references or documentation to support this statement, I am satisfied they were making efforts to demonstrate the presence of occurrences of COVID-19 within a radius of 25 miles of their premises.
In its assessment of the claim, I note that the Provider did not dispute the presence of COVID-19 within a radius of 25 miles of the Complainants' business premises nor did the Provider require the Complainants to demonstrate the presence of any such occurrences as part of its consideration of the claim. This appears to have arisen from the position the Provider was adopting towards causation requirements.

However, I note that on **26 March 2020**, the National Health Surveillance Centre reported XXX confirmed cases of COVID-19 in the Complainants' county, as of midnight on **24 March 2020**, with a cumulative incidence rate of 34.4 per 100,000 of population. While the area is approximately 356 square miles, clause 3.3.4 c) required there to be an occurrence of COVID-19 within a 25 mile radius of the Complainants' premises - this covers an area of approximately 1,963 square miles. Accordingly, I am of the opinion that, on the balance of probabilities, the Complainants would have been in a position to demonstrate, at the time of making their claim, an occurrence of COVID-19 within a radius of 25 miles of their premises (an area covering approximately 1,963 square miles) when their business closed on **24 March 2020**.

That said, I accept that it is not sufficient to simply point to an occurrence or occurrences of COVID-19 within a 25 mile radius of the Complainants' premises and expect the policy benefit to be paid. This is only a potential trigger for policy benefit. Accordingly, I am satisfied that, on foot of this trigger, the Complainants must demonstrate that the occurrence of the notifiable disease within the 25 mile radius interrupted or interfered with their business, causing financial loss.

As a result, it would appear to me that the question to be asked is whether the insured peril, that is, *"any occurrence of a notifiable disease* [COVID-19] *within a radius of 25 miles of the* [Complainants'] *premises"*, resulted in *"an interruption of or interference with"* the Complainants' business.

The inclusion by the underwriters of business interruption cover in the Complainants' policy in the manner set out in clause 3.3.4 and in particular, in the event of a notifiable disease occurring within 25 miles of a policyholder's premises, suggests to me that the policy recognises that notifiable diseases, by their nature, will often trigger the implementation of measures (including public health measures) for the purpose of seeking to limit the spread of a notifiable disease. As can be seen, in line with Government's response to combat the spread of COVID-19 through the adoption of NPHET recommendations that all non-essential businesses close, the Complainants closed their business premises on **24 March 2020**. In light of the proper construction of clause 3.3.4 c), it is my opinion that the closure of the Complainants' business on this date resulted, on the balance of probabilities, in interruption of or interference with their business, thereby causing loss.

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Therefore, I am satisfied that the occurrence of COVID-19 within a radius of 25 miles of the Complainants' premises gave rise to the Complainants experiencing business interruption losses within the meaning of clause 3.3.4 c). As a result, I take the view that the Provider's original decision to decline the Complainants' claim was inappropriate and unfair and that it was unreasonable and unjust within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017***.

In considering this complaint, I am cognisant of the provisions of the ***Financial Services and Pensions Ombudsman Act 2017***, which prescribes at section 12(11) that:

> *"… the Ombudsman, when dealing with a particular complaint, shall act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality and legal form."*

I am also conscious that in considering whether this complaint should be upheld, pursuant to ***Section 60(2)*** of the FSPO Act 2017, I should be mindful that those provisions are identical to the then equivalent provisions in the governing legislation of the Financial Services Ombudsman, which came under the scrutiny of Mr. Justice Hogan (of the High Court at the time) in *Koczan v FSO* [2010] IEHC 407.

Hogan J., having referred to the powers given to the Financial Services Ombudsman, and in advance of quoting from those same provisions, observed:-

> *"The Ombudsman's task, therefore, runs well beyond that of the resolution of contract disputes in the manner traditionally performed by the Courts. It is clear form the terms of s.57BK(4) that the Ombudsman must, utilising his or her specialist skill and expertise, resolve such complaints according to wider concepts of ex aequo et bona which go beyond the traditional limitations of the law of contract. This is further reflected by the terms of s.57CI(2) ….".*

Accordingly, having considered the matter at length, and for the reasons outlined above, I consider it appropriate on the evidence before me, to uphold the complaint against the Provider, that it wrongfully or unfairly declined to admit and pay the Complainants' claim for business interruption losses, incurred as a result of the temporary closure of their business premises in March 2020, due to the outbreak of COVID-19. This Office is of the opinion that the Provider acted wrongfully in failing to recognise that the Complainants met the criteria for cover specified at clause 3.3.4 c) of the policy, regardless of whether their losses were concurrently caused by other consequences of the presence elsewhere of COVID-19.

In response to the preliminary decision of this Office, the Provider has indicated that in its opinion, this finding suggests that the Provider's conduct was in some manner capricious. I do not agree. This office has not found that the Provider acted capriciously in its dealings with the Complainants. Indeed, it is notable that the Provider reacted swiftly to the outcomes of certain litigation in early 2021, both in this jurisdiction, and in the UK.

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It is however disappointing that before that change in position, the Provider failed to adequately assess the nature of the claim which was sought to be made by the Complainants, in order to establish whether the Complainants met the clear policy criteria. It is for that reason that this office considers the Provider's conduct to have been unreasonable and unjust within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017***.

The provider has also suggested that the complaint should instead have been upheld under Section 60(2)(e) of the Act, because the conduct was based wholly or partly on a mistake of law or fact. I accept the Provider's position that this ground may also be relied upon, in this adjudication, as an additional basis for upholding this complaint.

In the usual course, in a matter such as this, I would usually direct the Provider to rectify the conduct complained of, by immediately admitting the Complainants' claim for an immediate assessment of the benefit payment to be made, in accordance with the terms of the policy.

However, by letter dated **24 February 2021**, the Provider wrote to the Complainants (copying this Office) following judgment being delivered in the Irish Test Case, as follows:

> *"*[The Irish Test Case] *considered the operation of certain business interruption coverage clauses in the context of Covid-19. While the terms of your* [Provider] *policy were not before the Court, various aspects of the Court decision have provided welcome clarity as regards the operation of cover under clauses such as the notifiable disease extension in your* [Provider] *policy.*
>
> *As a result of that clarity,* [the Provider] *are pleased to confirm that policy cover for your above claim is now admitted in principle, subject to validation detailed below. This is the case even though we have previously indicated that there is no cover available under the notifiable disease extension in your policy …. The reason for this change is because the above* [Irish Test Case] *Decision has now clarified the manner in which your notifiable disease extension operates as a matter of Irish law. We are therefore now upholding your complaint. …."*

The Provider's Loss Adjusters subsequently wrote to the Complainants on **3 March 2021**, confirming that their claim was admitted in principle, and requested certain information to validate the claim. The Loss Adjusters wrote to the Complainants again on **11 March 2021** by email with details of a settlement proposal in the amount of **€3,750**, being the maximum benefit payable under clause 3.3.4 (calculated as the lesser of €50,000 or 15% of the Sum Insured for business interruption losses).

In a further email of **11 March 2021**, it appears that a redress payment of €750 was also offered for the likely costs incurred and inconvenience caused in submitting a complaint to this Office. On **19 March 2021**, the Loss Adjusters advised the Complainants that the Provider was offering an interim payment of 50% of the settlement offer, being €1,875.

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I note that in accordance with the Complainants' Schedule of Insurance, the Sum Insured for business interruption is €25,000. However, the amount recoverable for an individual business interruption claim, is limited in the terms provided for in clause 3.3.4 i) to the lesser of €50,000 or 15% of the total sum insured. The total sum insured for business interruption, as noted earlier is €25,000 and 15% of this figure is €3,750.

Therefore, I am of the view that the maximum amount recoverable by the Complainants for their claim in March 2020, under the business interruption infectious disease extension was €3,750, being the lesser of €50,000 or 15% of the business interruption sum insured.

I note that the Complainants have pointed to the level of their business turnover in the period from January – March 2020, exceeding €200,000 and they seek for the Provider to pay the maximum figure insured under business interruption, in the total amount of €25,000. I am satisfied however, by reason of the specific terms and conditions of the Complainants' policy, that the maximum amount recoverable for the claim made by the Complainants in March 2020 was 15% of the business interruption sum insured (€25,000) i.e. a total of **€3,750**.

I note that the Provider offered to settle the Complainants' claim for the maximum amount of benefit payable under the infectious disease extension, though it remains entirely unclear as to why the Provider offered an interim payment only of €1,875.00 on 19 March 2021, when in fact, it appears from the Provider's Loss Adjuster's letter of 11 March 2021 that €3,750.00 was "*the basis of our offer now being proposed*".

Accordingly, when the legally binding decision of this Office issues, if the total sum of €3,750 has not already been paid by the Provider to the Complainants by way of policy benefit, relation to the claim, I intend to make a direction that the Provider make that payment of €3,750 to the Complainants in respect of the policy benefits payable in response to the claim.

I also note that the Provider had offered an additional compensatory figure of €750 "*in recognition of* [the Complainants] *having likely incurred costs and inconvenience in submitting and preparing your complaint to the FSPO…".* In my preliminary decision, on 10 June 2021, I indicated my opinion that such a compensatory payment of €750 was inadequate to redress the inconvenience of the circumstances in which the Complainants found themselves, given that it took in excess of 11 months from initial claim notification before the claim was admitted.

In such circumstances, I indicated my intention to direct the Provider to make an additional compensatory payment to the Complainants in the sum of **€1,500** (entirely separate from the claim settlement amount of €3,750), in order to compensate the Complainants for the tremendous inconvenience encountered throughout a very difficult period, as a result of the Provider's disappointing approach to their claim, and its unsatisfactory, unreasonable and unjust failure to recognise the claim as one which was clearly covered by the plain meaning of the policy wording.

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I note that on **1 July 2021**, this office was notified by the Provider that it was in the process of making those payments to the Complainants, irrespective of its submissions as to the content of the preliminary decision. This is a welcome development.

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in ***Section 60(2)(b)(e) and (g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of by making a policy benefit payment to the Complainants in the sum of €3,750, if it has not already done so. I also direct the Provider, if it has not already done so, to make a compensatory payment to the Complainants in the sum of €1,500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

- The Provider is also required to comply with ***Section 60(8)(b)*** 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

19 July 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.