



<u>Decision Ref:</u>	2021-0370
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Retail
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Poor wording/ambiguity of policy 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 locksmith, hereinafter ‘the Complainant Company’, holds a business insurance policy with the Provider. The complaint concerns a declined business interruption claim.

The Complainant Company’s Case

The Complainant Company, through its Broker, notified the Provider on **8 April 2020** of a claim for business interruption losses as a result of the temporary closure of its business, due to the outbreak of coronavirus (COVID-19).

The Broker later advised the Provider on 16 June 2020 that the Complainant Company’s business had been closed from **24 March 2020 to 18 May 2020**.

Following its assessment, the Provider wrote to the Complainant Company on **6 July 2020** to advise that it was declining indemnity.

The Complainant Company later emailed the Provider on **19 February 2021** to complain about the declination of its business interruption claim. Following its review, the Provider wrote to the Complainant Company on **15 March 2021** to advise that it was standing over its decision to decline indemnity.

The Complainant Company seeks for the Provider to admit its claim for business interruption losses as a result of the temporary closure of its business due to the outbreak of COVID-19 and in this regard, the Complainant Company states in the **Complaint Form** it completed:

"I think the cover is €60K".

In its letter of 8 April 2021, the Complainant Company's Accountants state that the loss of turnover due to the close of the Complainant Company's business premises from **24 March 2020** to **5 May 2020**, based on the turnover for the same period in 2019, was **€71,608** (seventy-one thousand six hundred and eight Euro).

The Provider's Case

The Provider says that its records indicate that on **8 April 2020**, the Complainant Company's broker submitted correspondence stating its intention to claim for losses attributed to COVID-19 under the business interruption section of the Complainant Company's business insurance policy.

The Provider says that the Business Interruption Notifiable Disease Extension of the policy provides cover for loss of income where the outbreak of the Notifiable Disease is at the Premises and the restrictions on the use of the premises, by order of a competent local authority, is as a direct result of the outbreak of the Notifiable Disease at the Premises.

The Provider refers to the 'Notifiable Disease' Business Interruption Extension at pg. 47 of the applicable **Business Insurance Policy Document** which it says states:

"The insurance by this Policy will extend to include loss resulting from interruption or interference with the Business carried on by the Insured at the Premises in consequence of:

1. (i) *any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises*

(ii) any discovery of an organism at the Premises likely to result in the occurrence of a Notifiable Disease ...

which causes restrictions on the use of the Premises on the order or advice of the competent local authority ...

Special Conditions

- (a) *Notifiable Disease means illness sustained by any person resulting from:*

- (i) *food or drink poisoning or*
- (ii) *any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent authority has stipulated will be notified to them”.*

The Provider says that on **9 April 2020**, it acknowledged receipt of the claim notification, by responding to the Complainant Company’s broker with a claim reference.

The Provider says it emailed the broker on **15 April 2020** with a letter for the Complainant Company dated **15 April 2020** which advised and asked, as follows:

“ ... To enable us to investigate and consider your claim please let us have details of the occurrence of COVID-19 at your premises. This should include the following:

- The date of the occurrence or when it was first brought to your attention;*
- The date on which the restrictions were put in place;*
- The period of the restrictions; and*
- Copies of any notices or relevant documents in support of the claim.*

Once we have the required information, we will come back to you as quickly as possible with a decision on cover”.

The Provider says that as it had received no response to its letter, it sent a reminder email to the Complainant Company’s broker on **15 June 2020**.

The Provider says that in response, it then received a reply from the Complainant Company through its broker by email on **16 June 2020**, in which the Complainant Company stated the following:

*“ ... The date first brought to our attention: Early March
Restrictions put in place 24/03/20
Period of Restrictions 24/03/2020 – 18/05/2020, Some restrictions still in place ... ”*

The Provider emailed the Broker on **22 June 2020** asking if the Complainant Company could confirm if there had been an incidence of COVID-19 at its premises. The broker responded on the same day to advise that the Complainant Company had confirmed that there had been no incidence of COVID-19 at the premises.

The Provider says that the Business Interruption Notifiable Disease Extension provides cover where there is an outbreak of a Notifiable Disease at the Premises causing an interruption or interference with the Business carried on at the Premises.

In order for this extension to apply, the Provider says that the following criteria must be satisfied:

1. The outbreak of the Notifiable Disease is at the Premises and
2. The restrictions on the use of the Premises is brought about on the advices of the competent authority as a result of an outbreak at the Premises
3. There is a verified financial loss directly resulting from 1. and 2. above.

The Provider says that based on the information on file, neither the first nor the second criterion outlined above, had been satisfied and, as a result, it wrote to the Complainant Company on **6 July 2020** to advise that it was declining indemnity, as follows:

"I regret to advise that your claim in respect of Business Interruption resulting from COVID-19 is not covered by your Policy for the following reason(s):

1. *There was no outbreak of the Notifiable Disease at the Premises, and;*
2. *The restrictions on the use of the Premises by the competent authority was not brought about as a direct result of an outbreak of the Notifiable Disease at the Premises ... "*

The Provider says that the Complainant Company next emailed the Provider on **19 February 2021** asking that it review the declinature of the business interruption claim. The Provider apologises that it failed to issue an acknowledgment of this complaint to the Complainant Company within 5 business days, as set out in the Central Bank of Ireland's **Consumer Protection Code 2012**.

Following its review of the complaint, the Provider wrote to the Complainant Company on **15 March 2021** to advise, as follows:

" ... I note that that (sic) we have not been advised of an occurrence of Covid-19 at your premises and that the restrictions on the use of the premises were not put in place on the order or advice of the competent authority.

Our position is that as with all claims we must be bound by the terms and conditions of your insurance policy. Having completed my review, our decision to decline your claim is correct and no cover can be provided".

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainant Company's claim for business interruption losses as a result of the temporary closure of its business between March and May 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 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 **21 September 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant Company submitted to the Provider on **8 April 2020** a claim for business interruption losses as a result of the temporary closure of its business from **24 March 2020**, due to the outbreak of COVID-19. I note that the Complainant Company subsequently reopened its business premises on **18 May 2020**.

Following its assessment, the Provider wrote to the Complainant Company on **6 July 2020** to decline indemnity, a decision it later stood over upon review on **15 March 2021**.

Like all insurance policies, the Complainant Company's business insurance policy does not provide cover for all possible eventualities. Instead, the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

I note that 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***.

In that context, I note that the 'Notifiable Disease' Business Interruption Extension at pg. 47 of the applicable **Business Insurance Policy Document** states:

"The insurance by this Policy will extend to include loss resulting from interruption or interference with the Business carried on by the Insured at the Premises in consequence of:

/Cont'd...

1. (i) *any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises*

(ii) any discovery of an organism at the Premises likely to result in the occurrence of a Notifiable Disease ...

which causes restrictions on the use of the Premises on the order or advice of the competent local authority ...

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(a) Notifiable Disease means illness sustained by any person resulting from:

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[Underlining added for emphasis]

I am satisfied therefore that the Complainant Company’s business insurance policy only provides cover for business interruption losses due to the outbreak of a notifiable disease in circumstances limited to where there is an occurrence of a notifiable disease at the insured premises and that the closure of the premises is brought about on the advice of the competent authority, as a result of that occurrence of the notifiable disease at the insured premises.

In this regard, I note from the documentary evidence before me that the Complainant Company’s broker emailed the Provider on **22 June 2020**, as follows:

“[The Complainant Company] has confirmed that there was no incidence of Covid 19 at their premises ... ”

As there was no occurrence of COVID-19 at the Complainant Company’s premises, I am satisfied that the Provider was entitled to decline the Complainant Company’s claim for business interruption losses, as a result of the temporary closure of its business between March and May 2020, due to the outbreak of COVID-19. For the reasons outlined above, I am satisfied that the Provider’s decision to decline that claim was in accordance with the policy terms and conditions, which formed part of the contract of insurance in place between the parties.

Accordingly, on the basis of the evidence made available by the parties, I do not consider it appropriate to uphold this complaint.

Conclusion

My Decision, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

13 October 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.