



<u>Decision Ref:</u>	2021-0449
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Rental Property
<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 landlord, holds a **Property Owners' Insurance Policy** with the Provider. This complaint concerns a declined business interruption claim for loss of rent receivable and the policy period in which this complaint falls, is from 30 January 2020 to 29 January 2021.

The Complainant's Case

The Complainant, by way of his broker, notified the Provider on **5 May 2020** of a business interruption claim for loss of rent receivable, as the tenant that he let his premises to, and which trades as a restaurant, was unable to pay rent as a result of its temporary closure due to the outbreak of coronavirus and the Government measures introduced to curb the spread of COVID-19.

In making its claim, the Complainant relied upon the following Extension to Section 2, 'Loss of Rent Receivable', at pg. 26 of the applicable **Policy Booklet**:

"Disease, Infestation and Defective Sanitation

This Section shall extend to apply to Consequential Loss arising from the occurrence at the Premises of: ...

- (b) *a notifiable human, infectious or contagious disease (other than Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) that is required by law to be reported to government authorities ...*

which results in closure or causes restrictions on the use of the Premises by order of any person or authority holding the appropriate statutory power”.

Following its assessment, the Provider-appointed Loss Adjuster wrote to the Complainant on **30 July 2020** to advise it was declining the claim because there was no evidence of an occurrence of COVID-19 at the insured premises, and it had concluded that the premises were closed as a result of the general Government order to close non-essential businesses, rather than due to the presence of COVID-19 at the premises.

The Complainant made a complaint to the Provider in writing on **10 September 2020**, as follows:

“I am appealing/complaining the decision to decline to insure me for the loss of rental income in the property.

I am doing so on the grounds that the direction by the Irish Government to instruct my tenants to close their restaurant on my premises, being of universal application to many such premises and others in the state gives rise to such a condition of civil commotion in the state due to the effects of Covid-19 that it triggers the cover in my policy as per the definition of a Defined Insured Event.

I believe that it is incorrect to seek to avoid cover on the basis of Extension 3. This is an extension of cover in limited and specific circumstances. It does not negate the general cover available to me under the terms of a Defined Insured Event”.

Following its review, the Provider issued its **Final Response Letter** to the Complainant on **14 October 2020** advising that it was standing over its decision to decline indemnity.

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

“My complaint is against [the Provider] for [its] decision to decline to insure me for the loss of my rental income due to business interruption because of Forced Closure due to Government advice to my tenant to close the restaurant on my premises due to Covid-19.

I believe that [the Provider] are in error to seek to avoid cover on [my policy] cover from 30/01/20 to 29/01/21. [My policy] product disclosure statement and schedule show all the particular details on my policy that cover me for all loss of all rental income covered in Section 2 of [my Policy] (Loss of Rent Receivable) with an indemnity period of 24 months. The Covid-19 was everyday news long before my renewal date 30/01/2020 on [my policy] and should have been Coronavirus Absolute Exclusion endorsed on it if the insurance company did not want to provide cover of any kind relating to Covid-19. It should also be noted that a new endorsement in relation to Covid-19 is now noted on my renewal...Policy Schedule for the period from the 30/01/21 to 29/01/22 ...

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It is my opinion that this new endorsement is there just to exclude from my [policy] renewal...dated 30/01/2021 the previous position of cover that I had with my [policy] from 30/01/20 to 29/01/21 and it is also my opinion that this inclusion of this new endorsement would not be inserted if my insurer thought that I did not have cover for the loss of all rental income due to me covered in Section 2 of my...policy (Loss of Receivable) as a result of an Incident [Covid-19] causing business interruption because of Forced Closure due to Government advice and instruction to my tenant to close the restaurant on my premises causing lockout of workers

- (1) The Cover: Loss arising from an incident. Loss of all rental income due to me as a result of The Incident (The Incident been Forced Closure by Government advice and instruction) causing business interruption because of Forced Closure due to Government advice and instruction to my tenant to close the restaurant on my premises and causing lockout of workers by the Government not allowing the workers to go to work to carry out their duties. The Damage is the Direct Physical Loss that impaired the usefulness or the function of the building (Rental Income).*
- (2) The Cover: Loss arising from, Defined Insured Event. The Defined Insured Event is Locked-Out Workers. Causing business interruption because of Forced Closure due to Government advice and instruction to my tenant to close the restaurant on my premises and causing lockout of workers by the Government not allowing the workers to go to work to carry out their duties. The effects. Loss that impaired the usefulness or the function of the building (Rental Income)".*

In addition, in his letter to this Office dated **11 July 2021**, the Complainant submits that:

"The reason of my complaint is because I am fully sure that [the Provider] are in complete error to seek to avoid cover on my [Provider] Property Owners Insurance Policy cover from 30/01/2020 to 29/01/2021 as shown in all the information that I have submitted.

The Damage is the Direct Physical Loss that impaired the usefulness or the function of the insured building which is my RENTAL INCOME.

Covid-19 triggered my cover when my tenant notified me on the 20th of March 2020 of been unable to make further rental payments due to the Irish Government direction to instruct (my tenant) to close the restaurant on my premises. [My policy] product disclosure statement and schedule show all the particular details on my policy that cover me for loss of all my rental income. The Indemnity period of cover I have with my policy dated from 30/01/2020 to 29/01/ 2021 is for 24 months.

[The Provider] say that it's their Opinion that no damage as defined (physical loss, damage or destruction) has occurred.

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This is not the case as:

Courts have determined that since the terms “physical loss” and “physical damage” were not defined in the Policies, Court could rely on the plain and ordinary meaning of such words and that the terms “loss” and “damage” as distinct terms with distinct meanings. Court also held that the words “physical loss” are not limited to physical destruction alteration and that physical loss may result when a property is “uninhabitable or unusable for its intended purpose.”

Judgements found that COVID-19 triggers damage defined as physical loss under business interruption policies showing correct application of policy-interpretation principles and awarded against [the insurers]. Courts rejected the argument often advanced by insurers that property insurance policies require a physical, structural alteration ...

In other jurisdictions in [their] judgements found that COVID-19 triggers damage defined as physical loss under business interruption policies showing correct application of policy-interpretation principles and awarded against [the insurers]. Courts rejected the argument often advanced by insurers that property insurance policies require a physical, structural alteration.

In my case The Damage is the Direct Physical Loss that impaired the usefulness or the function of the building which is my RENTAL INCOME. Covid-19 triggered my cover. [My policy] product disclosure statement and schedule show all the particular details on my policy that cover me for loss of all rental income due to me, covered in my [Provider] Policy which was triggered by Covid-19 causing business interruption because of Forced Closure due to Government advice and instruction to my tenant to close the restaurant on my premises causing lockout of workers. The Indemnity period of cover I have with my policy dated from 30/01/2020 to 29/01/ 2021 is for 24 months.

I have also said in my correspondence that it should also be noted that there was no specific incident of Covid-19 infection suspected or confirmed at my insured property. My claim is a Covid-19 triggered event not because Covid-19 was suspected or confirmed in my insured property”.

As a result, the Complainant submits in the **Complaint Form** he completed, as follows:

“I am seeking from [the Provider] the full amount of rent Three Hundred and Ninety Euro [€390] a week for every week the restaurant has been closed and will have to remain closed because of Forced Closure due to Government advice and instruction to my tenant to close the restaurant on my premises due to Covid-19”.

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The Provider's Case

The Provider says that the Complainant, through his broker, notified the Provider on **5 May 2020** of a business interruption claim for loss of rent receivable, as the tenant that he let his premises to, and which trades as a restaurant, was unable to pay rent as a result of its temporary closure due to the outbreak of coronavirus and the Government measures introduced to curb the spread of COVID-19.

The Provider understands that on 20 March 2020, the Complainant was notified by his tenant, a restaurant, that it would be unable to make further rental payments due to the Health Service Executive's Social Distancing Guidelines imposed on 12 March 2020, which had caused a significant downturn in trade. Later, on 24 March 2020, the Government officially declared that all non-essential businesses had to close.

The Provider notes that restaurants were not included as a non-essential business and were permitted to trade, as long as social distancing and other relevant measures were adhered to. In that regard, where feasible, restaurants could continue to provide takeaway service. However, the Provider understands that although the Complainant's tenant provided takeaway meals prior to the COVID-19 pandemic, it did not avail of this option and the business was closed for a period from 20 March 2020.

Following receipt of the claim notification on **5 May 2020**, the Provider assigned a Loss Adjuster to review and investigate the claim. The Complainant subsequently advised the Loss Adjuster by email on **24 June 2020**, as follows:

"Property Type: Restaurant

How long owned by Insured: More than twenty years

Is there a lease agreement in place? A letting agreement

How long tenants in premises?: More than three years

Is there a lease cessation clause in place: I have a six months cessation notice clause in place.

Has the restaurant completed closed (any take away service) and if so can it be confirmed why? Yes restaurant is completely closed and there is no takeaway service. Closed due to The Coronavirus (Covid-19) in Ireland".

Following its assessment, the Loss Adjuster wrote to the Complainant on **30 July 2020** to advise that it had declined the business interruption claim, as follows:

"Our understanding of your claim is based on the information you have kindly submitted to us. We note that you have sought to recover loss of rental income due to the COVID-19 pandemic.

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We understand that no specific cases of COVID-19 have been identified at the Property.

Your Insurer has given careful consideration to the facts and documents presented in support of your claim and we now write to confirm your Insurer's coverage position. Unfortunately, your Insurer has concluded that the Policy does not respond to your claim. We set out the reasoning for this decision below.

Policy Response

The Policy is a Property Owners Policy...We refer you to the below applicable Policy Wording (version 3.2019).

The Insuring Clause in the Policy states:

“In consideration of the Insured having agreed to pay the Premium, the Insurer will reimburse, pay or cover the Insured, on and subject to the terms, limits, conditions clauses and exceptions of this Policy, against the events set out in the Sections operative (specified herein) and occurring in connection with the Business during the Period of Insurance, or any subsequent period for which the Insurer agrees to accept payment of the Premium”.

The operative section in this instance is Section 2 - Loss of Rent Receivable. The Insuring Clause in Section 2 states as follows:

“The Cover

The Insurer will cover the Insured against Consequential Loss arising from an Incident occurring during the Period of Insurance”.

The covered loss in this instance, must arise from an “Incident” that is: “Damage from a Defined Insured Event to Building(s) or property situated at the Premises and used by the Insured for the purpose of the Business”.

In this regard:

- 1. “Damage” is defined as “physical loss, damage or destruction”. It is your Insurer’s opinion that no “Damage” (as defined) has occurred.*
- 2. A “Defined Insured Event” means “fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons other than thieves, earthquake, storm, flood, escape of water from any tank, apparatus or pipe, water freezing in any tank, apparatus or pipe, or impact by any vehicle or animal as more fully detailed under Section 1 Property Damage, Operative Covers 1 - 7”.*

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Section 1 Property Damage Operative Covers 1 - 7 includes fire, explosion, earthquake, riot, civil commotion, strikers, locked out workers etc, storm or flood, escape of water, water freezing, impact by any road vehicle but there is no reference to infectious diseases contained therein.

Considering the above, your Insurer does not believe that a covered loss has arisen under this Section.

Where cover is available under the Insuring Clause of Section 2 (which your Insurer does not believe to be the case), the cover available would be as follows:

“Item A - Loss of Rent Receivable

The insurance under this Item is limited to:

- (a) Loss of Rent Receivable; and*
- (b) Increase in Cost of Working.*

The amount payable by the Insurer as reimbursement in respect of this item shall be:

(1) in respect of Loss of Rent Receivable the amount by which the Rent Receivable during the Indemnity Period shall in consequence of the Incident fall short of the Standard Rent Receivable, and

(2) in respect of Increased Cost of Working the additional expenditure incurred by the Insured for the sole purpose of avoiding or diminishing the reduction in Rent Receivable which but for that expenditure, would have taken place during the Indemnity Period in consequence of the Incident but not exceeding the amount of the reduction in Rent Receivable avoided less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the business payable out of the Rent Receivable as may cease or be reduced in consequence of the incident”.

The above is then varied by the following Extension which is applicable in respect of “Item A - Loss of Rent Receivable”:

3. This Section shall extend to apply to Consequential Loss arising from the occurrence at the Premises of:

- (a) murder, suicide, or food or drink poisoning;*
- (b) a notifiable human, infectious or contagious disease (other than Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) that is required by law to be reported to government authorities;*

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which results in closure or causes restrictions on the use of the Premises by order of any person or authority holding the appropriate statutory power.

The maximum amount that would be paid by the Insurer under this Special Extension shall not exceed 10% of the total Sum Insured under this section or €60,000 whichever is the lesser unless otherwise stated in the Schedule”.

Extension 3 then applies to extend the cover afforded under Item 2 to cover “loss...resulting from interruption of, or interference with, the Business carried on by the Insured at the Premises” where there has been an occurrence “at the Premises” of a notifiable disease.

While COVID-19 may be a “notifiable human, infectious or contagious disease”, in this instance, we are advised that there has not been an outbreak of COVID-19 at the Property and in order for the Extension to respond, the proximate cause of your losses suffered must be because of a specific occurrence of COVID-19 at the Property. In other words, the loss claimed must directly result from the manifestation of COVID-19 at the Property.

As there is no suggestion that your losses claimed are because of a specific case of COVID-19 at the Property, your Insurer is of the view that this Extension is not triggered (in addition to the fact that Section 2 does not provide cover for the reasons stated above in any event). For the same reason, Extension 2 “Denial of Access” is also not triggered and does not provide cover (and the claim does not relate to “Damage” as defined either). Based on the information that you have provided, the view of your Insurer is that the proximate cause of your loss is the guidance and regulations issued by the Government, rather than a specific occurrence of COVID-19 at the Property.

In this regard, please note that the Policy is not intended to provide cover for a general loss of income caused by the negative effects of the global or national COVID-19 outbreak, for example, downturn in trade experienced by all businesses due to a reduction in customer footfall.

In the circumstances, and on the information provided to date, your Insurer has made the decision that the Policy does not respond to the claim presented and on behalf of Underwriters, we hereby decline the claim”.

The Provider says that following receipt of a complaint from the Complainant dated **10 September 2020** regarding its decision to decline his claim, it reviewed the matter and issued the Complainant with its **Final Response Letter** dated **14 October 2020**, in which it advised that it was standing over its decision to decline indemnity.

The Provider says that the policy cover relating to “*a notifiable human, infectious or contagious disease*” is an “on premises” hybrid clause, which is different from and outside the scope of the High Court case of *Hyper Trust Limited t/a The Leopardstown Inn v. FBD Insurance plc* [2021] IEHC 279 and the English Supreme Court decision in *The Financial Conduct Authority v Arch Insurance (UK) Ltd & others* [2021] UKSC 1.

The Provider agrees that COVID-19 is “*a notifiable human, infectious or contagious disease*”, and was classified as such within the Republic of Ireland on 20 February 2020.

The Provider says that in order for the “*notifiable human, infectious or contagious disease*” extension to respond, the proximate cause of the losses suffered must be a specific occurrence of COVID-19 at the insured property which results in closure or causes restrictions on the use of the premises. In other words, the loss claimed must directly result from the authorities closing or restricting the use of the premises, as a result of the occurrence of COVID-19 at the premises.

The Provider says, in this instance, there is no evidence of a disease outbreak at the insured premises. Rather, the tenant had advised the Complainant that they were unable to make rental payments due to their loss of business arising from the COVID-19 social distancing guidelines following Government advice on 12 March 2020 and later, the closure of non-essential businesses following a government directive issued on 24 March 2020.

The Provider is of the view that the premises were closed as a result of the general Government order to close non-essential businesses, not the presence of COVID-19 at the Complainant’s let premises. As a result, the Provider is satisfied that the Complainant’s losses do not trigger the cover provided by the “*notifiable human, infectious or contagious disease*” policy extension.

Separately, the Provider says it applied a coronavirus exclusion to all of its policies through March and April 2020, and this has been subsequently updated following the Provider’s underwriting directives to a communicable disease exclusion. Regardless of the insertion of an endorsement on the Complainant’s policy at its renewal in January 2021, the Provider is satisfied that the wording of the “on premises” hybrid clause relating to “*a notifiable human, infectious or contagious disease*” in his policy, applicable from 30 January 2020 to 29 January 2021, was not triggered by the Complainant’s loss, as there was no evidence of an occurrence of COVID-19 at the insured premises.

In relation to his letter to the Financial Services and Pensions Ombudsman of **11 July 2021**, the Provider says the Complainant appears to be asserting that his claim falls for cover under Section 1, ‘Property Damage’, and/or Section 2, ‘Loss of Rent Receivable’, on the basis that the inability of his tenant to use and trade from his premises was caused by the COVID-19 pandemic. In that regard, the Provider says the Complainant appears to assert that such loss of use amounts to “*physical loss or damage*”, as required by the definition of “*Damage*” in the policy (a requirement of cover at the insuring clauses in Section 1 and Section 2 (by means of the definition of Incident) of the policy) and he proceeds to submit that it has been determined by unspecified “Courts” that physical damage includes loss of use and does not require a physical alteration to the insured premises.

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The Provider says that in order to trigger cover under Section 1, '**Property Damage**', and Section 2, '**Loss of Rent Receivable**', of the policy, any damage to the property must be caused by a defined insured event, which is limited to a list of specified Operative Covers, none of which include a notifiable disease such as COVID-19, the virus that causes COVID-19, namely SARS-Cov-2, or restrictions introduced by governments to curb the spread of COVID-19. Indeed, this is why the policy contains an extension providing cover for financial loss caused by an occurrence of a notifiable disease at the premises which causes the closure or restrictions on the use of the premises by order of any person or authority holding the appropriate statutory power.

The Provider says it has already explained above why the requirements of this extension have not been met and, therefore, a discussion on whether the loss of use can be regarded as "*physical loss or damage*" is moot.

Nevertheless, to the extent that the Complainant is alleging that the Government's restrictions imposed on non-essential businesses in response to the COVID-19 pandemic amount to damage to the insured property, the Provider refers to the English High Court decision of **Bank of New York Mellon (International) Limited & Ors v. Cine-UK Limited & Ors** [2021] EWCH 1013, in which the Court held that the UK Government's national lockdown in response to the COVID-19 pandemic did not amount to "damage" or "destruction" to the leased property, so as to release the insured's tenant from its obligation to pay rent.

The Provider says that this decision supports its view that the national lockdown or the 'COVID-19 pandemic' do not satisfy the policy definition of "*Damage*" ("*physical loss, damage or destruction*"). Further, and notwithstanding this point, the Provider says that the case of **Bank of New York Mellon (International) Limited & Ors v. Cine-UK Limited & Ors** is also authority for the proposition, that in order for the landlord to have suffered a loss under the policy for loss of rent receivable, the tenant must be contractually entitled not to have to pay the rent (as is often the case where a leased property is damaged by fire whilst the property is being repaired) as opposed to the tenant simply withholding payment or having the inability to pay, because of reduced funds.

The Provider says that consequently, and notwithstanding that the Complainant has not demonstrated that a defined insured event has occurred as required by the principal insuring clauses at Sections 1 and 2 of the policy, the Provider considers that "*Damage*" as defined, does require a physical alteration to the characteristics of actual property. The Provider refers to a number of English, Australian and US State Court Decisions in support of its position.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined to admit and pay the business interruption claim made by the Complainant in May 2020, for loss of rent receivable, owing to the tenant that he lets his premises to, and which trades as a restaurant, being unable to pay rent (as a result of its temporary closure due to the outbreak of coronavirus and the Government measures introduced to curb the spread of COVID-19.)

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **3 November 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, a landlord, hold a **Property Owners' Insurance Policy** with the Provider.

I note that the Complainant, through his broker, notified the Provider on **5 May 2020** of a business interruption claim for loss of rent receivable, as the tenant that he let his premises to, and which trades as a restaurant, was unable to pay rent as a result of its temporary closure due to the outbreak of coronavirus and the Government measures introduced to curb the spread of COVID-19.

Following its assessment, the Provider-appointed Loss Adjuster wrote to the Complainant on **30 July 2020** to advise it was declining the claim because, it said, there was no evidence of an occurrence of COVID-19 at the insured premises, and it had concluded that the premises were closed as a result of the general Government order to close non-essential businesses rather than due to the presence of COVID-19 at the premises.

The Complainant made a complaint to the Provider on **10 September 2020** regarding its decision to decline his claim. Following its review, the Provider issued the Complainant with its **Final Response Letter** dated **14 October 2020**, advising that it was standing over its decision to decline indemnity.

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The Complainant's **Property Owners' Insurance Policy**, like all insurance policies, does not provide cover for every eventuality; rather the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

I note that the policy wording pertinent to the Complainant's claim is the following Extension to Section 2, '**Loss of Rent Receivable**', at pg. 26 of the applicable **Policy Wording**:

"Disease, Infestation and Defective Sanitation

This Section shall extend to apply to Consequential Loss arising from the occurrence at the Premises of: ...

(b) a notifiable human, infectious or contagious disease (other than Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) that is required by law to be reported to government authorities ...

which results in closure or causes restrictions on the use of the Premises by order of any person or authority holding the appropriate statutory power".

[underlining added for emphasis]

I note that COVID-19 and its virus agent SARS-CoV-2, were designated as notifiable diseases in Ireland on 20 February 2020.

However, in order for the cover provided by the "*notifiable human, infectious or contagious disease*" policy extension to be triggered, I am satisfied that the policy wording clearly stipulates that there has to have been an occurrence of the disease, in this case COVID-19, at the premises and that this occurrence of COVID-19 at the premises resulted in the authorities closing or restricting the use of the premises.

I note in its email to the Provider-appointed Loss Adjuster on **24 June 2020**, the Complainant's broker confirmed:

"... Yes restaurant is completely closed and there is no takeaway service. Closed due to The Coronavirus (Covid-19) in Ireland ..."

In addition, in its **Preliminary Report** to the Provider dated **21 July 2020**, I note the Loss Adjuster advised at pg. 2 that:

"... There was no specific incident of Covid-19 infection suspected or confirmed at the property ..."

As there is no indication or evidence that there was an occurrence of COVID-19 at the insured premises, I am satisfied that the cover provided by the "*notifiable human, infectious or contagious disease*" extension in the Complainant's policy was not triggered.

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I note in his letter to this Office of **11 July 2021** the Complainant suggests, among other things, that the loss of use of the rented property constitutes damage and he goes on to say that:

“...In my case The Damage is the Direct Physical Loss that impaired the usefulness or the function of the building which is my RENTAL INCOME. Covid-19 triggered my cover...”

The word “damage” is however, defined within the policy provisions. I note in that regard, that the ‘General Policy Definitions’ section of the **Policy Wording** defines “Damage” at pg. 6 as:

“Damage
means physical loss, damage or destruction”

In that regard, I accept the Provider’s position that “Damage” as defined by the Complainant’s policy, requires a physical alteration to the characteristics of the actual property.

I also accept the Provider’s position that in order to trigger cover under Section 1, ‘**Property Damage**’, and Section 2, ‘**Loss of Rent Receivable**’, of the Complainant’s policy, any damage to the property must be caused by a defined insured event, which is limited to a list of specified Operative Covers, none of which include a notifiable disease such as COVID-19, the virus that causes COVID-19, namely SARS-Cov-2, or restrictions introduced by governments to curb the spread of COVID-19. It is for this reason that the policy contains a specific extension providing cover for financial loss caused by an occurrence of a notifiable disease at the premises which causes the closure or restrictions on the use of the premises by order of any person or authority holding the appropriate statutory power.

In that regard, I have already set out why I am satisfied that the cover provided by the “notifiable human, infectious or contagious disease” policy extension has not been triggered in this instance. It is also worth noting that the events of 2020 may have reduced the rent which the Complainant received, from his tenant, but there is no evidence that the rent “receivable” and therefore due and owing to the Complainant from his tenant, was in any way reduced.

In addition, I note in the **Complaint Form** that the Complainant contends that the fact that “a new endorsement in relation to Covid-19 is now noted on my renewal...Policy Schedule for the period from the 30/01/21 to 29/01/22” suggests that in the absence of such an endorsement on his policy during the earlier period from 30 January 2020 to 29 January 2021 (the period during which his business interruption claim for loss of rent receivable fell) then the circumstances of his claim must be covered by the policy and should be admitted.

In that regard, I note the Provider applied a coronavirus exclusion to all of its policies renewing through March and April 2020, whether or not such policy wordings previously allowed for a claim relating to COVID-19 as a notifiable disease. This has been subsequently updated to a communicable disease exclusion.

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I accept that the inclusion of a communicable disease or a COVID-19 exclusion, in an insurance policy does not necessarily mean that the previous year's policy provided such cover. Rather, I accept that the exclusion was applied to all of the Provider's policies for clarity. As a result, I remain satisfied that the cover provided by the "*notifiable human, infectious or contagious disease*" policy extension in the Complainant's policy which was in place from 30 January 2020 to 29 January 2021, was not triggered by his loss, as there was no evidence of an occurrence of COVID-19 at the insured premises.

Accordingly, for the reasons outlined above, I am satisfied that the Provider was entitled to decline the Complainant's business interruption claim in accordance with the terms and conditions of the Complainant's **Property Owners' Insurance Policy**.

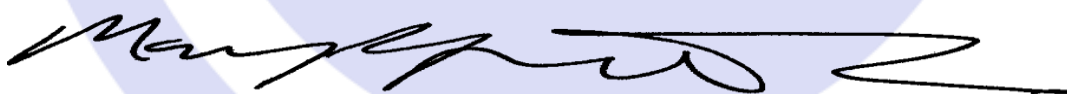
Having regard to all of the above, the evidence does not support the complaint that the Provider wrongly or unfairly declined to admit and pay the Complainant's business interruption claim for loss of rent receivable, as the tenant that he lets his premises to, and which trades as a restaurant, was unable to pay rent as a result of its temporary closure due to the outbreak of coronavirus and the Government measures introduced to curb the spread of COVID-19.

It is my Decision therefore, on the evidence before me that this complaint is not upheld.

Conclusion

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

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



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

25 November 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.

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