



<u>Decision Ref:</u>	2022-0045
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Service
<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 is a limited company and trades as a hair salon (“the Complainant Company”).

The complaint concerns a claim for business interruption losses under a retail insurance policy arising from the outbreak of coronavirus (COVID-19).

The Complainant Company’s Case

By email dated **11 October 2020**, the Policyholder’s Broker (“the Broker”) notified the Provider of a claim for business interruption losses, as follows:

“The above client wishes to claim for Business Interruption

Closed from the 16 March To the 29th of July”

Following its assessment, the Provider wrote to the Broker on **13 November 2020**, declining the claim, as follows:

"We have now received our Loss Adjuster's report and our understanding of the events which give rise to the claim are that the insured closed their premises on 16 March on foot of social distancing requirements and difficulty adhering to same. As you are aware, the Business Interruption section of the Policy is set out in Section 2(b).

The definition of DAMAGE is extended to include for section 2(b) only:-

"1 (a) an outbreak of any NOTIFIABLE DISEASE occurring at the PREMISES or which is attributable to food or drink supplied from the PREMISES."

NOTIFIABLE DISEASE is defined as:-

"Illness sustained by any person resulting from:-

- food or drink poisoning*
- any human infectious or human contagious disease [excluding Acquired Immune Deficiency Syndrome (AIDS)], an outbreak of which the competent local authority has stipulated must be notified to them."*

The loss insured is set out in Section 2(b) under the heading "WHAT IS INSURED". As is clear therefrom, for any loss to fall within cover, it must result from DAMAGE by an insured cause.

We have carefully considered the Policy and do not consider that the claim is covered. In particular, we are satisfied that the claim is not covered for the following reasons, each of which apply independently of each other:-

- 1. The closure of the Premises was not "resulting from" an outbreak of any Notifiable Disease occurring at the Premises. The closure arose from preventative measures taken by the Government, arising from national considerations due to the global pandemic including in particular, social distancing measures.*
- 2. Any loss which has occurred, has occurred as a result of the consequences of the pandemic and in particular the requirements of social distancing, including the restrictions on the gathering of persons, travel restrictions, requirements for remote working and the economic slowdown and has not occurred as a result of an outbreak of a Notifiable Disease occurring at the Premises.*

3. *It is clear that the agreement to indemnify in respect of the risk specified Section 2(b) Clause 1 (a) is provided only where the business interruption loss has been caused by the matters specified at Clause 1(a). Having regard to the Government directions as regards social distancing, including restrictions on travel and the widespread public concern regarding the risks of infection and the economic slowdown, any business interruption loss has been caused by such social practices and public concerns and not by the matters specified at Clause 1(a). [...]"*

The Complainant Company considers its claim for business interruption losses as result of the temporary closure of its business due to the outbreak of COVID-19 to be covered by the terms and conditions of its retail insurance policy. In this regard, the Complainant Company sets out its complaint in the Complaint Form, as follows:

"I sent an email last summer to my Business Insurance Broker [...] regarding claiming for Business interruption due to Covid. I own a Hair salon [...] and have been forced to close my business under Global Covid Pandemic from March 17th to June 29th. October 21st to December 1st. In total we were closed for 22 weeks.

See extract from my policy below. It does not state anything regarding global pandemic or Global Virus outbreak. My insurer is refusing to compensate for any loss of business. [...]

Under the circumstances that we find ourselves in I would like you please to investigate this further. Owning a small business having taken this policy out to ensure that my business is protected I feel now the insurance company is looking for a way out of compensating. I have been in business 30 years, never had a claim and it is important for my business to be reimbursed to protect its future. [...]"

As a result, the Complainant Company seeks for the Provider to admit its claim for business interruption losses as a result of the disruption to its business due to the outbreak of COVID-19.

The Provider's Case

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The Provider says the Complainant Company holds a retail insurance policy, which includes a '**Business Interruption**' section, section 2(b), covering the Complainant Company for loss of income on the occurrence of damage resulting from an insured cause.

The Provider says Damage under this section is extended to include an outbreak of any Notifiable Disease occurring at the Premises, or which is attributable to food or drink supplied from the Premises (Part 1(a) of Section 2(b)). The Provider says Premises is defined as the Buildings and the land within the boundaries belonging to them.

The Provider says the policy provides defined, specific and clear cover in respect of Notifiable Diseases. For cover to operate, the Provider says there would need to have been an outbreak of any Notifiable Disease occurring at the Premises. In the case of the Complainant Company's claim, the Provider says no Notifiable Disease occurred at the insured premises.

The claimed losses sustained by the Complainant Company, the Provider says, occurred as a result of the closure of the Complainant Company's premises which was not because of an outbreak of any Notifiable Disease occurring at the Premises. The closure of the premises was due to the Complainant Company being unable to carry out its business due to preventative measures taken by the Government arising from national considerations due to the COVID-19 pandemic including, in particular, social distancing measures which the Complainant Company had difficulty adhering to.

The Provider says while it remains sympathetic to the Complainant Company for the losses it has sustained, it must apply the policy cover in a fair manner and unfortunately, the claimed for losses are not covered by the Complainant Company's policy.

The Provider says it accepts that COVID-19 is a Notifiable Disease within the meaning of Section 2(b) of the policy. The Provider says this is not in dispute and this issue did not apply to the declinature of the claim.

In terms of whether there was an outbreak of COVID-19 at the Complainant Company's premises, the Provider says it has comprehensive procedures in place to ensure all claims related to COVID-19 are thoroughly investigated and reviewed, and that policy cover is considered in detail, prior to any decision being made in respect of policy cover.

In this case, the Provider says the Complainant Company's Managing Director confirmed to its Loss Adjuster that there was no outbreak of COVID-19 on the premises at, or leading up to, the time of closure.

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The Provider says Loss Adjusters were appointed on **12 October 2020** and made successful contact with the Complainant Company on **13 October 2020**. Following this, the Provider says the Loss Adjuster obtained all necessary information from the Complainant Company on **13 October 2020**. The Provider says the Loss Adjuster confirmed as part of the review that *“There was no outbreak of Covid-19 on the premises”* insofar as the Complainant Company was aware. The Provider says the closure of the premises and the loss of income claim was attributable to the Government instructions, to restrict mass gatherings and, in particular, the issuing of guidelines for social distancing as the Complainant Company had difficulty adhering to these requirements.

Therefore, the Provider says there was no indication or evidence of an outbreak of a Notifiable Disease on the Premises. As per the Loss Adjuster’s report, the Provider says the Complainant Company advised that the premises were closed on **16 March 2020** as the Complainant Company was concerned that it was unable to carry out its business due to difficulties adhering to social distancing requirements. The Provider says the Complainant Company therefore had to close, on foot of the advice issued by the Government.

The Provider also refers to the following passage from a Preliminary Report:

“The business subject to this claim closed on 16th March 2020 on foot of social distancing requirements and difficulty in adhering to this requirement. The managing Director advised that, at the time of closing, there was no recorded cases of Covid-19 on the premises.”

In terms of whether the Complainant Company’s claim satisfied the definition of ‘damage’ at Part 1(a), Section 2(b), the Provider says this issue was not considered in detail as part of the claim. As there was no outbreak of any Notifiable Disease occurring at the insured premises, the Provider says the Complainant Company’s claim was not covered. For Business Interruption cover to apply, the Provider says there must be an outbreak of a Notifiable Disease such as COVID-19 at the insured premises.

The Provider says it is satisfied that it correctly assessed the Complainant Company’s claim in accordance with the policy terms and conditions, and that the Complainant Company’s insurance policy does not provide cover for the circumstances of this particular claim.

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The Provider says its aim is to deal with claims promptly, efficiently and fairly. The Provider says it diligently gathered and carefully reviewed all information provided to the Loss Adjuster, prior to the decision being made. The Provider says its handling and management of COVID-19 related claims are the subject of much internal governance and oversight to ensure customers are treated fairly.

The Provider says it is acutely aware of, and fully empathises with, the enormous difficulties and financial loss the Complainant Company, and many others, have faced because of COVID-19. However, for a claim to be paid under a contract of insurance, it must be a result of an event that the policy provides cover for.

The Provider says it has applied the policy cover in a fair and reasonable manner and this has been detailed above. In addition, the Provider says it believes its decision on this claim is fair and reasonable as it is not inconsistent with case law and those findings of the Financial Services and Pensions Ombudsman which it is privy to.

The Complaint for Adjudication

It is stated in the Complaint Form that the Complainant Company closed its business during two periods: from **March to June 2020** and from **October to December 2020**. It is further stated that the Complainant Company contacted its Broker "*last summer*" (that is, summer 2020) regarding a claim for business interruption losses. The Provider's letter declining cover is dated **13 November 2020**. It appears that the Provider's assessment of the claim relates only to a claim for business interruption losses arising from a period of closure between **March and June 2020**, and there is no evidence before this Office of a further claim having been made, or further assessment by the Provider, for business interruption losses for the period **October to December 2020**.

Accordingly, the complaint to be adjudicated by this Office, is that the Provider wrongfully or unfairly declined the Complainant Company's claim for business interruption losses incurred, as a result of the temporary closure of its business between **March and June 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

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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 January 2022**, 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.

Analysis

I note that on **11 October 2020** a claim for business interruption losses for the period **March to June 2020** was made by the Complainant Company, on the policy the subject of this complaint. This arose due to the temporary closure of the Complainant Company's business on **16 March 2020** arising from the outbreak of COVID-19.

I note that on **12 October 2020**, the Provider appointed a firm of Loss Adjusters to investigate the claim.

A '**Site Inspection Report**' dated **13 October 2020** was prepared by the Loss Adjuster. This report states, in part, as follows:

"Insured details and Occupancy

[...]

The Insured's business is located at [...]. The business operates as a hairdresser and has been trading for 29 no years at the current location. The business trades as a [trading name] with [J] as the managing director. the company is [the Complainant

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Company], in this regard underwriters should note the policy is in the name of [J] who is the managing director and not the company.

The business employs 12 no staff who vary between full and part time staff and the business is registered for VAT. The Insured laid off staff during the period of closure who availed of COVID-19 payment.

[...]

Circumstances

[...]

Cause and Circumstances: *The business closed on 16th March 2020 on foot of social distancing requirements and difficulty in adhering to this requirement. At the time of closing there was no recorded cases of COVID-19 on the premises.*

Nature and Extent of Loss

Details: *The business has an approximate turnover of €44,000.00 per month, however the nature of the business fluctuates. The gross margin is approximately 85% with monthly wages at circa €6,000 per week."*

The Loss Adjuster prepared a '**Preliminary Report – Business Interruption**' dated **29 October 2020** in respect of the claim. This report states, in part, as follows:

"DESCRIPTION OF BUSINESS: [...] *The business operates as a hair salon and has been trading for 29 no years at the current location. The business trades under the name '[trading name]' with [J] as the managing director. This business is a private limited company. registered as [the Complainant Company].*

In this regard, your underwriters should note the policy is in the name of '[J]' who is the managing director and not the company, [the Complainant Company] who are a separate legal entity.

The business employs 12 no staff who vary between full and part time staff and the business is registered for VAT. The managing director advised that the business temporarily laid off staff during the period of closure, all of who availed of COVID-19 payment assistance.

[...]

CIRCUMSTANCES:

[...]

The business subject to this claim closed on 16th March 2020 on foot of social distancing requirements and difficulty in adhering to this requirement. The managing Director advised that, at the time of closing, there was no recorded cases of COVID-19 on the premises.

NATURE AND EXTENT OF LOSS: Section 2(B) – Business Interruption – Sums Insured €850,000.00

The managing director has advised the business has an approximate (and average) turnover of €44,000.00 per month, however revenues can fluctuate over the course of the year. The gross margin is approximately 85% with wages totalling approximately €6,000.per week. We were advised the business re-opened on 29th June 2020.

Noting the above the estimated loss in income as a result of closure would amount to approximately €40,000.00 (net of savings from COVID-19 payment and notional savings in relevant variable costs). [...].

POLICY LIABILITY:

The Insured's claim has been presented under the notifiable diseases contingency of the policy as outlined in Section 2 (B) [...]

In order for this contingency to be operable key 'triggers' are required namely closure by a competent authority coupled with the

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discovery of an outbreak of a notifiable disease on the premises.

The Managing Director advised that the business closed following difficulties in adhering to mandated government requirements surrounding social distancing. At the time of closing the Managing Director was not aware of any cases of COVID-19 on the premises.

In this regard, whilst COVID-19 is indeed a notifiable disease as there were no reported cases of COVID-19 on the premises at the time of closing we consider this loss falls outside of the policy cover as stated. [...].”

By letter dated **13 November 2020**, the Provider wrote to the Broker declining the claim.

This complaint is brought by the Complainant Company which trades as a named hair salon. However, I note that the retail insurance policy the subject of this complaint (with a period of insurance covering the period **15 October 2019** to **14 October 2020**) does not record the Complainant Company as the insured. The Policy Schedule identifies the ‘Insured’ as ‘J’, who is a director and shareholder of the Complainant Company, and acts as its managing director. The ‘Risk Address’ identified on the Policy Schedule is the same as the Complainant Company’s registered office and business address.

In the course of the Loss Adjuster’s assessment of the claim, it was noted in the Site Inspection Report and the Preliminary Report that the Complainant Company was not the policyholder. However, on reviewing these reports, it appears the Loss Adjuster assessed the claim based on information provided, in respect of the Complainant Company, which is stated as having been provided by the ‘managing director’. It also appears that the term ‘business’ was used in these reports to refer to the business of the Complainant Company, as the *de facto* insured. In this respect, the Site Inspection Report states that:

“The business trades as a [trading name] with [J] as the managing director. the company is [the Complainant Company]”

Further to this, the Preliminary Report states that:

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“The business trades under the name [trading name]’ with [J] as the managing director. This business is a private limited company. registered as [the Complainant Company].”

When assessing the nature and extent of the loss arising from the claim, the Loss Adjuster appears to have carried out this assessment based on the loss incurred by the Complainant Company and by reference to its financial information (in particular, monthly turnover and weekly wages).

In each of the above reports, the Loss Adjuster noted that the Complainant Company was not the policyholder. However, I note that when issuing its correspondence of **13 November 2020** to the Broker in respect of the claim, the Provider did not reference any issues surrounding the proper identity of the policyholder. It appears the Provider assessed the claim based on the information provided by the Loss Adjuster.

In the Summary of Complaint issued by this Office on **27 May 2020**, the Complainant Company was stated as holding the policy of insurance the subject of this complaint and that the claim the subject of this complaint was notified to the Provider on behalf of the Complainant Company.

The Provider delivered its Complaint Response under cover of letter dated **24 June 2021**. In response to Question 1 of the Schedule of Questions, the Provider stated that:

“The Complainant Company holds a Benchmark Retail policy with us.”

The Provider continued its Complaint Response in the context of the policy the subject of this complaint being held by the Complainant Company and the claim the subject of this complaint being made by/on behalf of the Complainant Company.

It is also important to note that the Provider did not, either during the assessment of the claim or in response to this complaint, take issue with the whether J or the Complainant Company was the appropriate policyholder or the appropriate complainant in respect of this complaint.

Accordingly, having considered the matter and the jurisdiction of this Office when dealing with complaints, in particular **section 12(11)** of the **Financial Services and Pensions Ombudsman Act 2017**, it is my opinion that the claim notified to the Provider on **11 October 2020** was in respect of Complainant Company’s business and the policy of insurance the subject of this complaint, which the Provider appears to accept as being *de facto* held by the Complainant Company.

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I note that in the 'Insurance Schedule' of the Policy Schedule, the following business interruption cover is stated as being in place during the period of insurance:

"SECTION 2B BUSINESS INTERRUPTION	<i>Sum Insured</i>	€850,000
	<i>Indemnity Period</i>	12 Months"

The business interruption cover provided by the policy is set out at 'Section 2(b) – BUSINESS INTERRUPTION' of the policy document at pages 20 and 21, as follows:

Section Definitions

INCOME

The money paid or payable to YOU in the course of YOUR BUSINESS at the trade PREMISES for goods sold or delivered and services provided less the purchase cost of the goods.

INDEMNITY PERIOD

The period beginning with the occurrence of the DAMAGE, and ending not later than 12, 24 or 36 months thereafter (as indicated in the Policy Schedule), during which the results of the BUSINESS shall be affected in consequence of the DAMAGE.

NOTIFIABLE DISEASE

Illness sustained by any person resulting from:

- *food or drink poisoning*
- *any human infectious or human contagious disease [excluding Acquired Immune Deficiency Syndrome (AIDS)], an outbreak of which the competent local authority has stipulated must be notified to them.*

DAMAGE - Section 2(b) only

For this Section 2(b) only the definition of DAMAGE is extended to include:

- (1) (a) *an outbreak of any NOTIFIABLE DISEASE occurring at the PREMISES or*
which is attributable to food or drink supplied from the PREMISES.
- (b) *the discovery of vermin or pests at the PREMISES which causes a competent local authority to restrict the use of the PREMISES*
- (c) *closure of the PREMISES by the appropriate local authority because of defects in the drains or other sanitary arrangements.*
- (d) *murder or suicide occurring at the PREMISES.*

Provided that the beginning of the INDEMNITY PERIOD will be:

- *in the case of (a) and (d), when the incident happens or is discovered*

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- *in the case of (b) and (c), the date when the restrictions on the PREMISES are applied for the period specified in the INDEMNITY PERIOD.*

[...]

WHAT IS INSURED

WE will pay for loss of INCOME occurring during the INDEMNITY PERIOD, resulting from DAMAGE by an insured cause under Section 2(a) to any of the following:

- *The TRADE CONTENTS or glass insured under this section*
- *the BUILDINGS of the PREMISES shown in the Schedule.*
- *property in the vicinity of the PREMISES which prevents or hinders the use of the trade PREMISES or access to it.”*

Having considered the wording of Section 2(b), it is my opinion that to trigger cover under the policy for a loss of income claim, the loss of income must result from “DAMAGE” from an insured cause. In the context of the present complaint, the definition of the term “DAMAGE” is extended at Part 1 of Section 2(b), in particular, in respect of ‘NOTIFIABLE DISEASE’.

Section 2(b) stipulates that there must be “*an outbreak of any NOTIFIABLE DISEASE occurring at the PREMISES*”. I note it is not disputed that COVID-19 constitutes a notifiable disease within the meaning of Section 2(b) of the policy.

In terms of the requirement for “*an outbreak*” of a notifiable disease, I note that this term is not defined in the policy document. However, in *Hyper Trust Limited v. FBD Insurance plc* [2021] IEHC 78, McDonald J. of the High Court referred to the Health Protection Surveillance Centre’s definition of outbreak, stating that:

“179. [...] In my view, reasonable persons in the position of the parties to the [Insurer’s] policy would consult the HPSC definition if they were in any doubt about the meaning of the word “outbreak” as used in the policy. None of the parties to the proceedings objected to the court availing of the HPSC definition in its interpretation of the policy.”

In the following paragraph, McDonald J. took the view that a single instance of COVID-19 was sufficient to come within the meaning of the term ‘outbreak’, stating:

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“180. [I]t is clear from the definition of “outbreak” that a single instance of a serious disease such as Covid-19 within the 25 mile radius would be sufficient to satisfy the definition [...].”

Section 2(b) also contains a requirement that the outbreak of the notifiable disease must occur *“at the PREMISES”*. In determining the correct meaning of this ‘at the premises’ requirement, I note the definition of damage at Part 1 extends to include damage under four sub-categories, Part 1(a) to 1(d). For Part 1(a), the outbreak of the notifiable disease must occur *at the premises* or be attributable to food or drink supplied *from the premises*. For Part 1(b), the discovery of vermin or pests must be *at the premises*; Part 1(c) requires the closure of the premises; and Part 1(d) requires murder or suicide to occur *at the premises*. As can be seen, the language used in each of these sub-categories is premises specific.

The Policy Schedule identifies the ‘Risk Address’ as the Complainant Company’s registered office and business address. In this respect, I note that the language used in the policy document in defining the term ‘PREMISES’ (and related terms) is quite specific and confined to the buildings and grounds comprising the Risk Address.

At the ‘DEFINITIONS’ section of the policy document, the term ‘PREMISES’ is defined as:

“the BUILDINGS and the land within the boundaries belonging to them.”

‘BUILDINGS’ is defined as:

“The word BUILDINGS shall mean the structure of the Retail Shop, including all OUTBUILDINGS, at the PREMISES and includes:

- (a) landlord’s fixtures and fittings therein and thereon*
- (b) walls gates and fences*
- (c) car parks yards and pavements*
- (d) telephone gas water and electric installations [...]*
- (e) foundations*
- (f) drains sewers within the perimeter of the PREMISES [...].”*

‘OUTBUILDINGS’ is defined as:

“BUILDINGS other than the main Retail Shop, which are not accessible to the public for retail trading purposes.”

Accordingly, it is my opinion that giving the words of the definition of “DAMAGE” at Part 1 of Section 2(b) their plain and ordinary meaning, reasonably interpreted, Part 1(a) requires there to be an outbreak of a notifiable disease actually and specifically at the Complainant Company’s premises, to trigger cover under Section 2(b) of the policy in respect of a loss of income claim arising from COVID-19.

In reaching this conclusion, I note the following passages from the judgment of McDonald J. in *Brushfield Limited (T/A The Clarence Hotel) v. Arachas Corporate Brokers Limited and AXA Insurance Designated Activity Company, Company* [2021] IEHC 263.

In his judgment, McDonald J. made certain remarks regarding an at the premises requirement contained in a clause similar to Part 1(c) above:

“167. [...] Those words “at the premises” are also to be found in paras. 2 and 3 of the MSDE clause where they are clearly used in a premises specific sense. The inclusion of the word’s “at the premises” strongly suggest to me that the relevant closure must be prompted by a specific defect in the drains or other sanitary arrangements at the premises in question and not as a consequence of concerns about the way in which public bars or hotels are run generally or their ability to contribute to the spread of COVID-19. In turn, it seems to me to follow that the order of the public authority envisaged by para. 5 is an order directed at the particular defect found at the premises. This suggests that the order will be a premises specific one.

168. For all of these reasons, I have come to the conclusion that para. 5 of the MSDE clause will only apply where there is a specific order of a public authority requiring closure of all or part of the premises as a result of a defect in the drains or other sanitary arrangements at the premises.”

Accordingly, I am satisfied that to trigger cover under Section 2(b), Part 1(a) requires an outbreak (a single incident) of any notifiable disease (COVID-19) occurring at the Complainant Company’s premises.

In terms of whether there was, on the balance of probabilities, an outbreak of COVID-19 at the Complainant Company’s premises, I note from the evidence that the Complainant Company closed its business on **16 March 2020**. In the Broker’s claim notification, the Broker did not state whether there was an occurrence of COVID-19 at the premises. Further to this, the Site Inspection Report and the Preliminary Report state that there were

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no recorded cases of COVID-19 on the premises. I note this is not disputed by the Complainant Company.

At the time the claim was notified to the Provider in **October 2020** and during the Provider's assessment of claim, there does not appear to have been any evidence of, and the Complainant Company does not appear to have been making a claim based on, an outbreak of COVID-19 at its premises. Further to this, I note from the evidence that the Complainant Company's motivation for closing its business does not appear to have been based on an outbreak or occurrence of COVID-19 at the premises.

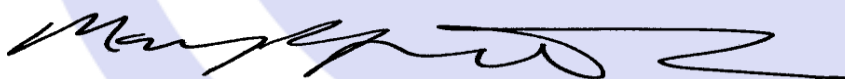
Therefore, having considered the evidence, I am not satisfied that there was an outbreak of COVID-19 at the Complainant Company's premises. As a result, in my opinion, the Provider was entitled to take the position that the cover provided by Section 2(b) in respect of a notifiable disease, was not triggered.

While I appreciate that the Complainant Company has likely suffered significant disruption to its business, as a result of COVID-19 and that this decision will come as a disappointment, I am satisfied that the Provider was entitled to decline the claim.

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

1 February 2022

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

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(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

