An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0093
Sector:	Insurance
Product / Service:	Service
Conduct(s) complained of:	Rejection of claim Failure to process instructions
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a limited company trading as a golf and country club ("the Complainant Company") holds a 'Combined Property Policy' of insurance with the Provider.

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

The Complainant Company's Case

By email dated **16 March 2020**, the Complainant Company's Broker ("the Broker") advised the Provider of the closure of the Complainant Company's business due to the outbreak of COVID-19, as follows:

> *"We wish to advise that* [the Complainant Company's business] *will close this evening until further notice due to the outbreak of Coronavirus. The hotel staff have been laid off from 6.00pm today.*
>
> *In light of the above can you confirm if there is any cover under the Business Interruption section for loss of revenue while the premises is closed?"*

Responding the same day, the Provider advised the Broker, as follows:

> *"Unfortunately, for the Notifiable Diseases extension on the Policy to become operative a Notifiable Disease must occur at the Premises and then the Premises must be subsequently closed by the authorities. As this is not the current scenario the extension does not apply."*

It appears the Broker notified the Provider on **16 April 2020** of a claim for business interruption losses as a result of the temporary closure of the Complainant Company's business in **March 2020** due to the outbreak of COVID-19.

Acknowledging the notification of the claim, the Provider wrote to the Broker on **20 April 2020**, as follows:

> *"The cover, provided under the Notifiable Disease Extension of your Policy, operates only where there is loss resulting from interruption or interference with the business as a result of any occurrence of a Notifiable Disease at the Premises, which causes restrictions on the use of the Premises on the order or advice of the competent authority. The Indemnity Period is from the date on which the restrictions on the Premises are applied for a maximum period up to three months, and is subject to a limit as noted in your Policy.*
>
> *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 of the Notifiable Disease at your Premises or when it was first brought* [to] *your attention;*
> - *The date on which the restrictions by the competent authority were put in place;*
> - *The period of the restrictions; and*
> - *Copies of any notices or relevant documents in support of your claim.*
>
> *Once we have the required information, we will come back to you as quickly as possible with a decision on cover."*

In response to the Provider's request for information, the Broker wrote to the Provider on **18 May 2020**, as follows:

/Cont'd…

"The Insured has confirmed the following:

1) *We have not had a confirmed case of the virus on the premises but as we were ordered to close by* [the Provider] *I think that we should be able to claim the Bl insurance.*
2) *We closed the bars and restaurant on 15th March on the recommendation of the government - although this was in fact more than a pure recommendation.*
3) *We closed the hotel on 17th March*
4) *We kept the golf course running and would have for much longer but for the fact that on 27th March we were instructed to close by* [the Provider] *as they would not provide cover after that date.*
5) *The golf course is re-opening today, 18th May 2020*
6) *The bars, restaurant, hotel & spa remain closed"*

In an email dated **27 May 2020**, the Provider queried point 1) in the Broker's email and requested that *"the insured elaborate on this? Did they receive a letter from* [the Provider] *or was there something in particular advised?"*

In response to the Provider's query, the Broker forwarded the Complainant Company's response in an email dated **27 May 2020**, which states, as follows:

"As you are aware Covid 19 has decimated the Hotel and Leisure industry since the beginning of March. We closed our bars and restaurant on 15th March and the hotel on 17/03/2020.

Golf continued to trade until 5pm on 27/03/2020 at which time we closed for golf on the instructions of the Government of Ireland and our Insurers [the Provider]*. We fully complied with these instructions to protect and safeguard our staff and customers. We were furthermore advised that unless we complied with instruction, that* [the Provider] *would not extend our policy from 27/03/2020.*

[The Provider] *appointed a claim handler on the 16/04/2020 requesting the following information.*

1) *Date of occurrence of the notifiable disease at our premises or when it was first brought to our attention? We closed our business due to Government, GUI and Insurers instructions. No Hotel, restaurant or Pub can state if a case of Covid-19 occurred on the premises.*

/Cont'd…

2) *The date on which the restrictions by a competent authority was put in place, and the period of the restrictions by a competent authority? The Government of Ireland issued a directive in March basically closing down all business with the exception of essential front line business. There is no higher authority than the Government of Ireland. Furthermore* [the Provider] *were strenuous in their instruction that we close our premises latest 5pm on 27th March.*

3) *We feel we have a genuine claim under our business interruption policy. Our business has been severely interrupted due to circumstances completely outside our control. We have been customers of* [the Provider] *since we opened in 2004-2005 paying in excess of €1.2 Million in premiums in the period. We understand that the Central Bank and Minister for Finance have asked insurance companies that in the event of any doubt in relation to B.I cover wording must be interpreted in favour of the customer.*

We are slowly re-opening our operations in line with the government instructions but our business is very seasonal and we have lost almost all of our business during what normally be out busiest period. […]*."*

The Provider wrote to the Broker by email on **28 May 2020** requesting that the Complainant Company provide the instruction given by the Provider to close, as it did not have any record of this on file. On **2 June 2020**, the Broker forwarded a Provider email dated **26 March 2020** sent to the Broker which the Complainant Company said represented the Provider's instruction to close. This email related to a 'Liability' policy ending 519 and states:

"We must advise that if we do not get confirmation immediately that the golf course is closed and that measures are in place to ensure that the course is not used whilst it is closed during the current period laid down by government and recommended by the GUI/ILGU, we will no longer to be (sic) *in a position to provide cover under the policy and all cover will cease under the policy from the end of the end of the current extension due to expire on 27th March 2020. We would also point out that the current extension was agreed on the basis of the Insured complying with GUI/ILGU recommendations and no cover is currently in place in respect of the golf course if it is currently open or being used given their latest recommendations."*

By letter dated **5 June 2020**, the Provider wrote to the Complainant Company advising it of the decision to decline the claim, 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):

/Cont'd…

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* […]*."*

In response to the Provider's letter, the Broker advised the Provider by email on **6 July 2020** that the Complainant Company wished to refer the matter to the Provider's 'Head of Customer Focus' as it did not accept the reasons for the declinature. The email set out the Complainant Company's position, as follows:

> *"As outlined in numerous emails, we followed the Government instructions to close our business as a result of COVID19, which has resulted in significant losses for the company. SI 120 was signed into law and it basically means that COVID19 was on our premises. It states It is hereby declared that the State (being every area or region thereof) is an area where there is known or thought to be sustained human transmission of Covid-19.*
>
> *We were subsequently instructed to close the golf course by* [the Provider]*, who advised that they would not offer renewal terms if we failed to comply with this directive. We are informed, that both the Minister for Finance and the Central Bank of Ireland has encouraged Insurance companies to handle claims where there is any doubt in the policy wording in the favour of the policyholder."*

Following its investigation into the complaint, the Provider wrote to the Broker on **27 July 2020**, as follows:

> *"We received notification of your claim on the 16th of April. On the 20th of April we wrote to you requesting information to support your claim.*
>
> *The cover, provided under the Notifiable Disease Extension of your Policy, operates only where there is loss resulting from interruption or interference with the business as a result of any occurrence of a Notifiable Disease at the Premises; which causes restrictions on the use of the Premises on the order or advice of the competent authority. The Indemnity Period is from the date on which the restrictions on the Premises are applied for a maximum period of up to three months; and is subject to a limit as noted in your Policy.*
>
> *In reviewing your claim I note that you advised that there was no outbreak at the premises and that certain parts of the premises closed on different dates. You advised that this was on the instructions of* [the Provider] *and the Government of Ireland and you feel that this should be a reason for cover to be in place.*

/Cont'd…

As there was no outbreak of the notifiable disease at the premises, and as 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, there is no cover under the policy.

In respect of the separate communication issued by [the Provider] *on the 26th of March, this related to your liability policy (*[policy number]*) only and not your property policy under which you have submitted this claim. This communication was issued to ensure that the business had closed in accordance with the Government and* [Golfing Union] *guidelines that were issued at the time.*

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."

On **25 February 2021**, the Broker notified the Provider of a further claim for business interruption losses due to COVID-19 as a result of the temporary closure of the Complainant Company's business on **24 October 2020**, as follows:

"We refer to the above entitled matter and in particular refer to your letter of 20 April 2020 in connection with the claim made by our client for business interruption on 16 April 2020.

Without prejudice to our continued stated position that cover does operate in respect of that notification we are now attaching for your attention a subsequent notification in respect of business interruption losses arising out of the closure of our client's property on foot of governmental order on the 24th day of October 2020 continuing to 4th day of December and subsequently from 26th Day of December to date.

We also enclose for your attention a copy of the relevant notifications that our client received from employees [three named individuals] *on their employee register who contracted Covid-19 and were clearly on the premises and as such an occurrence took place within the meaning of the policy itself.*

The date of the restrictions are similarly within your own knowledge. […]*."*

Attached to this email was a HSE document indicating a positive COVID-19 test result, an email dated **23 February 2021** where the author stated that they tested positive for COVID-19 and another email dated **23 February 2021** indicating a further positive test result for COVID-19.

/Cont'd…

In response to this claim notification, the Provider wrote to the Broker on **18 March 2021** declining cover, 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):*
>
> *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 Broker responded to this letter on **29 March 2021**, as follows:

> *"It appears that your claim manager did not read the content of our email dated the 25th February 2021 where we clearly outlined the bases for our client's claim.*
>
> *Our client closed the property as a result of the Government order on the 24th October 2020 to the 04th December 2020 and subsequently from the 26th December 2020 to date. We advised* [the Provider] *that three members of staff contracted COVID19 on the premises and therefore this occurrence took place as per the policy wording.* […] *We are all aware of the recent court case involving* [an Insurer] *and now other insurers who have treated their policyholders in a disgusting manner, the Governor of the Central Bank,* […] *has clearly outlined his position to Insurance Companies who fail to deal with their policyholders in a fair and reasonable manner.*
>
> *He commented "The Central Bank Of Ireland will not hesitate to take action against Insurers avoiding pay-outs on legitimate COVID19 Business Interruption claims after landmark rulings in both the Irish and UK Courts. If policy wordings are ambiguous, it should be interpreted in favour of the policyholder.*
>
> *There are two Business interruption claims lodged with* [the Provider] *as a result of COVID19. We request that this matter is forwarded to your chief executive* […] *with the urgency required to open discussions in order to settle this matter before our client proceeds to instruct his legal advisors."*

This correspondence was treated as a complaint by the Provider. The Provider responded to the complaint on **31 March 2021**, as follows:

> *"In addressing your complaint I think that it is helpful in the first instance to summarise the key events as the claim progressed and I have set these out below:-*

/Cont'd…

We received notification of the Business Interruption claim on the 25th February 2021. In this correspondence you refer to the previous claim for Business Interruption under the policy and that you were attaching a subsequent notification in respect of Business Interruption losses arising out of the closure of your client's property on foot of Government Order on the 24th day of October 2020 continuing to 4th day of December and subsequently from the 26th Day of December to date. You also enclosed a copy of notifications that your client received from employees on their register for tests carried out on the 24th and 27th October and an e-mail from another employee stating that he was unwell on the 19th October and took a week off.

On the 18th March 2021 we wrote to you advising the claim was being declined and outlining the reasons the policy does not provide cover.

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

On the 29th March 2021 we received correspondence from you disputing this decision and you refer to the recent [Irish High Court] *case.*

It is important to note that both the Financial Conduct Authority (FCA) case in the UK and the [Irish High Court] *case judgements are based on the specific wordings and policies tested. The judgements in both the FCA and* [Irish High Court] *cases confined themselves to the Notifiable Disease clause wording that concerned a 25 mile radius. They did not address the more specific 'at the Premises' wording. The cover, provided under the Notifiable Disease Extension of your client's Policy, operates only where there is loss resulting from interruption or interference with the business as a result of any occurrence of a Notifiable Disease 'at the Premises', which causes restrictions on the use of the Premises on the order or advice of the competent authority.*

I note that the restrictions on the use of the premises were not caused by an occurrence of a Notifiable Disease at the Premises.

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.

In relation to your comments regarding the previous claim reported to us on the 16th April 2020, we have already outlined our position to you in our correspondence of the 27th July 2020."

/Cont'd…

Following this, the Complainant Company wrote to the Governor of the Central Bank of Ireland on **7 April 2021** and copied the Provider on this correspondence. The Provider responded to this letter on **9 April 2021**, as follows:

> *"After carefully considering your submission to the Central Bank and reviewing the circumstances of this loss, we wish to inform you that we remain of the view that you are not entitled to indemnity under the policy.*
>
> *The proximate cause giving rise to the order or advice of a competent authority to restrict the use of* [the] *Hotel & Country Club, was not an outbreak of a notifiable disease at that Premises. The illness which befell one or more staff members did not 'cause' the issue of an order restricting the use of the hotel. No such order or advice ever issued to our knowledge. The composite elements of the insured peril ie. 'an occurrence of a Notifiable Disease at the Premises ….. which causes restrictions on the use of the Premises on the order or advice of the competent authority', have not been satisfied here and we regret to inform you that you are not entitled to indemnity under the policy.*
>
> *In your correspondence, you reference the* [Irish High Court] *judgement. At paragraph 177 of the judgement,* [the Judge] *did address the issue of the composite nature of the Insured Peril, noting that the "peril is a composite one which involves both an imposed closure and an outbreak of an infectious disease which is a cause (in the manner outlined above) of the imposed closure. All of the elements of the competent peril must be borne in mind"."*

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

> *"We have a business interruption policy with* [the Provider] *and we initially made a claim under the policy because of a business interruption arising out of Covid-19 and in particular the first closure under the first ministerial order in March of 2020.*
>
> *Our business was actually forced to close in stages and we could have kept golf open. We did in fact keep our golf business open but received correspondence directly from* [the Provider] *which instructed us to close and said if we did not they would withdraw insurance cover AND would not renew our policy on the anniversary.*

/Cont'd…

Our policy wording had a requirement that any claim for business interruption had to arise out of an occurrence of a notifiable disease […].

Having lodged that claim we were then informed by [the Provider]*, by letter dated 5 June 2020, that our claim would not be dealt with or covered under the policy on the following basis: -*

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 tire notifiable disease at the premises.

This despite the government (and in our case [the Provider]*) enforced closure.*

We appealed through [the Provider] *and received final decliniature* (sic) *in August 2020.*

Having taken advice and having regard to the fact that [the Irish Test Case] *was at that time being brought through the Courts, we deferred taking any further action on foot of our first claim but arising from the decision of the High Court we lodged a second claim in respect of the closure of the premises in October 2020.*

At that time, we were able to show that there had been an outbreak of a notifiable disease at the premises and produced all of the documentary evidence to show that was so to [the Provider]*.*

We have now been informed by [the Provider]*, as per the attached letter, dated 18 March 2021, that our claim for business interruption resulting from Covid-19 is not covered for the following reasons:-*

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.

This is of course an issue which has been dealt with by the High Court in their Judgment in the [Irish Test Case] *and more importantly has been dealt with by the Central Bank under the Central Bank's Covid-19 Business Interruption Insurance Supervisory Framework (the framework).*

/Cont'd…

The objective of the framework is to seek early identification a resolution of issues which have the potential to cause customer harm driving clarity for affected businesses as quickly as possible.

Under the framework the Central Bank indicated that they had a number of expectations of regulated financial service providers (RFSPs) of which [the Provider] *is one.*

Under paragraph 7 of the document it states where a Bl insurance policy wording provides that cover is dependent on there being an imposed closure of a business by reason of an Order (or other similar language) of a Government or of a Public Authority, it is their view that the Government's communication to the country in March 2020 to close businesses as a result of the outbreak of Covid-19 should be treated as an Order and/or direction and/or mandate for the purposes of determining the issue of cover.

As you know we have had subsequent lockdowns in respect of businesses by way of further extension by the Ministers responsible for the management of Covid-19 and that the current closure to which we refer in our claim application is such a stated closure.

At paragraph 15 the Central Bank express the view that it is their clear expectation that where a legal action has been concluded and the final outcome may have a wider beneficial impact for similar groups of customers then RFSPs should carry out an impact assessment to ascertain whether there is such a wider beneficial impact and take remedial action to ensure that those customers obtain the benefit of the final outcomes.

In this particular case clearly one looks at the responsive policies/issues of cover and causation are clear sections of the framework and it is absolutely clear to us that in this particular case cover and causation have been established under a BI insurance policy and yet [the Provider] *it would appear on a generalised basis are refusing to deal with any claims, notwithstanding the outcome of the* [Irish Test Case] *where the wording has already been determined as being favourable to policyholders generally.*

It also appears clear to us that having initially indicated to us that we failed to have a valid claim as a result of not having an outbreak of the infectious disease required at the premises that they have changed course and now say that even if there was an infectious disease outbreak at the premises, that that itself is not sufficient and that in those circumstances as our use of our premises has not been restricted or

/Cont'd…

brought about as a direct result of an outbreak of a notifiable disease at the premises we fail to have any cover.

This is an exceptional proposition and one which we believe flies in the face of both the [Irish Test Case] *Judgment and the Central Bank stated objectives for RFSP's.*

Furthermore there are 2 documents for our policy and one of those documents states that we are covered for an occurrence of a notifiable disease (no mention of at the premises - wording in attachment [Provider] *Policy wording on page 1 of 2 of Policy Summary Combined Property - at the bottom of the 67 pages in document) whilst the other states notifiable disease at the premises (page 49 of 67).* […]*."*

As a result, the Complainant Company seeks for the Provider to admit its claims for business interruption losses as a result of its temporary closures due to the outbreak of COVID-19, as follows:

"Our Business Interruption policy is limited to 1 claim in a year. The cover is for gross profit and is capped at 250K. Our losses were far in excess of the 250K in each of the periods where we were forced to close due to COVID 19. We want [the Provider] *to pay out 250K on the basis of our policy."*

The Provider's Case

The Provider says the Complainant Company, a limited company trading as a golf course, held a 'Combined Property' insurance policy with it since **11 March 2018**. On **16 April 2020** and on **25 February 2021**, the Provider says the Complainant Company's Broker submitted correspondence stating an intention to claim for losses attributed to COVID-19 under the Business Interruption section of the policy.

The Business Interruption Notifiable Disease Extension, the Provider says, provides cover for loss of income when an outbreak of a Notifiable Disease is at the Premises and the closure of the Premises, by order of a local or Government authority, is as a direct result of an outbreak of a Notifiable Disease at the Premises.

The Provider says the Business Interruption Notifiable Disease Extension of the Complainant Company's Combined Property insurance policy document issued on **22 March 2018** states, on page 49, as follows:

/Cont'd…

"The insurance by this policy shall subject to all the exclusions and conditions of the policy (except in so far as they may be hereby expressly varied) and the special conditions set out below extend to include loss resulting from interruption or interference with the Business carried on by the Insured at the Premises in consequence of:-

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

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

2. the discovery of vermin or pests at the Premises

3. any accident causing defect 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 local authority

4. any occurrence of murder or suicide at the Premises.

Special Conditions

1. Notifiable Disease shall mean illness sustained by any person resulting from

(a) food or drink poisoning or

(b) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent local authority has stipulated shall be notified to them.

2. For the purposes of this memorandum:

Indemnity Period shall mean the period during which the results of the Business shall be affected in consequence of the occurrence discovery or accident, beginning –

(a) in the case of 1, 2 and 3 above, with the date from which the restrictions on the Premises are applied

/Cont'd…

(b) in the case of 4 above, with the date of the occurrence or discovery and ending not later than the Maximum Indemnity Period thereafter.

Maximum Indemnity Period shall mean 3 months.

Premises shall mean only those locations stated in the Premises definition; In the event that the policy includes an extension which deems loss destruction or damage at other locations to be an incident such extension shall not apply to this memorandum.

3. The Company shall not be liable for any costs incurred in the cleaning, repair, replacement, recall or checking of property.

4. The Company shall only be liable for the loss arising at those Premises which are directly affected by the occurrence discovery or accident.

The liability of the Company shall not exceed €250,000 in respect of any one occurrence or €250,000 in any one Period of Insurance."

The Provider says it acknowledged receipt of the first claim notification and responded to the Broker with a letter on **20 April 2020**, requesting the following supporting information to allow it to consider the claim:

"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 your 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 it received an email notification from the Broker on **18 May 2020** advising that there was no occurrence of COVID-19on the Complainant Company's Premises. In this email, the Provider says the Complainant Company alleged it was forced to close by the Provider.

/Cont'd…

The Provider says the Complainant Company provided dates on which the different arears of its business closed and did not provide any evidence that the closure of the Premises was brought about on the advices of the competent authority as a direct result of an occurrence of a Notifiable Disease at the Premises.

The Provider says the Business Interruption Notifiable Disease Extension provides cover where there is an occurrence of a Notifiable Disease at the Premises causing an interruption or interference with the Business carried on at the Premises. It says that in order for this Extension to apply, the following criteria must be satisfied:

1. The outbreak of the Notifiable Disease is at the Premises and

2. The closure 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.

Based on the information on file, the Provider says the first and second criteria outlined above had not been satisfied. Subsequently, the Provider says it wrote to the Broker on **5 June 2020** advising that the claim was not covered under the policy because there was no outbreak of the Notifiable Disease at the Premises, and any 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 it received a second claim notification on **25 February 2021** and this notification indicated that the Complainant Company wished to claim for Business Interruption losses arising from closure on foot of governmental orders on **24 October 2020** and continuing until **4 December 2020**. The Provider says the notification referenced and provided evidence of positive COVID-19 tests for a number of staff members of the Complainant Company.

The Provider says the Complainant Company did not provide any evidence that the closure of the Premises was brough about on the advices of the competent authority as a direct result of an occurrence of a Notifiable Disease at the Premises.

Based on the information on file, the Provider says that whilst the first criterion has been satisfied, the second criterion had not been satisfied. Subsequently, the Provider says it wrote to the Broker on **18 March 2021** advising that the claim was not covered under the policy because any restrictions on the use of the Premises by the competent authority were not brought about, as a direct result of an outbreak of the Notifiable Disease at the Premises.

/Cont'd…

In respect of the definition of the term Notifiable Disease, the Provider refers to page 49 of the policy document dated **22 March 2018** and cites the following passage:

> *"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 it considers that COVID-19 falls within the definition of a Notifiable Disease as per the policy wording.

In terms of whether there was an occurrence of COVID-19 at the Complainant Company's premises in **March 2020**, the Provider says on **16 April 2020** the Broker submitted correspondence stating an intention to claim for losses attributed to COVID-19 under the Business Interruption section of the policy. The Provider refers to the information requested in its letter of **20 April 2020** and says it received an email from the Broker on **18 May 2020** where the Broker confirmed there had been no occurrence of COVID-19 on the Complainant Company's premises.

As per the above information, the Provider says it has not been provided with any evidence which supports the occurrence of a Notifiable Disease at the Complainant Company's premises and would therefore conclude that there had not been an occurrence of a Notifiable Disease at the premises prior to, at the time of, or shortly after its closure in **March 2020**.

In respect of the second claim received on **25 February 2021**, the Provider says the notification stated that:

> *"We refer to the above entitled matter and in particular refer to your letter of 20th April 2020 in connection with a claim made by our client for business interruption on 16th April 2020.*
>
> *Without prejudice to our continued stated position that cover does operate in respect of that notification we are now attaching for your attention a subsequent notification in respect of business interruption losses arising out of the closure of our clients property on foot of governmental order on the day of 24th of October 2020 and continuing until the 4th Day of December and subsequently from the 26th Day of December to date."*

/Cont'd…

The Provider says the notification referenced and provided evidence of positive COVID-19 tests for a number of staff members who were noted on the employee register of the Complainant Company. The Provider says one of the positive COVID-19 tests had been carried out prior to the date of the claim and this was noted as having been carried out on **19 October 2020**. The Provider says another was noted to have been carried out on **24 October 2020** and a third was noted to have been carried out on **27 October 2020**.

The Provider says it has been provided with evidence which supports the occurrence of a Notifiable Disease at the Complainant Company's premises and would therefore conclude that there had been an occurrence of a Notifiable Disease at the premises prior to, at the time of, and shortly after its closure in **October 2020**. The Provider says it was not however provided with evidence that any restrictions on the use of the Premises by the competent authority were brough about as a direct result of an outbreak of the Notifiable Disease at the Premises. As a result, the claim was declined.

In terms of whether there were any restrictions imposed on the Complainant Company's business premises arising from the occurrence of a Notifiable Disease at the premises in **March 2020**, the Provider refers to the information sought in its letter of **20 April 2020** and the response received from the Broker on **18 May 2020** where the Broker confirmed that there had been **no occurrence of COVID-19** at the Complainant Company's premises.

The Provider says the Complainant Company confirmed that there was no occurrence of any Notifiable Disease at the premises. In respect of the **March 2020** claim, the Provider says there was no evidence that the above claim criteria had been met. The Provider says it does not consider that there were any restrictions on the order or advice of a competent authority on the use of the Complainant Company's premises arising **from the occurrence of a Notifiable disease** at the premises.

In terms of the **October 2020** claim, the Provider refers to the following passage from the claim notification dated **25 February 2021**:

> *"The date of the restrictions by the Governmental authorities are well known and within your own knowledge but in respect of this claim are from the 24th Day of October until the 4th of December 2020*
> *The period of the restrictions are similarly within your own knowledge"*

The Provider says the above referenced dates are when the Government brought in nationwide lockdown measures aimed at controlling the spread of COVID-19 and **do not** provide information to confirm that any restrictions on the use of the Premises by the competent authority was brought about as a direct result of an occurrence of the Notifiable Disease at the Premises.

/Cont'd…

The Provider says it is satisfied that point 1 of the claim criteria has been met in this case. However, the Provider says it has not been provided with evidence to support point 2. The Provider says no evidence has been provided to show that any restrictions on the use of the Premises by the competent authority, was brought about as a direct result of an occurrence of the Notifiable Disease at the Premises and under the terms of the policy, the claim has not succeeded.

In the Complaint Form, the Complainant Company states that:

> *"Our business was actually forced to close in stages and we could have kept golf open. We did in fact keep our golf business open but received correspondence directly from* [the Provider] *which instructed us to close and said if we did not they would withdraw insurance cover AND would not renew our policy on the anniversary."*

In response to this statement, the Provider says it makes reference to an email sent to the Broker in respect of a separate liability policy which the Complainant Company also holds with the Provider. The Provider says this email was sent on **26 March 2020**. The Provider says this email did not instruct the Complainant Company to close its premises, but recommended that the Complainant Company adhere to the restrictions set down by their governing body the GUI (the Golfing Union of Ireland) and ILGU (Irish Ladies Golf Union) during the period laid down by the Government.

The Provider says it was drawing the customer's attention to the fact that, if it did not adhere to Government restrictions, then the Provider was not prepared to continue with cover on the liability policy. The Provider says this is not a matter material to the claims which have been subsequently made against the Combined Property policy.

In the Complaint Form, the Complainant Company states that:

> *"It also appears clear to us that having initially indicated to us that we failed to have a valid claim as a result of not having an outbreak of the infectious disease required at the premises that* [the Provider] *have changed course and now say that even if there was an infectious disease outbreak at the premises, that that itself is not sufficient and that in those circumstances as our use of our premises has not been restricted or brought about as a direct result of an outbreak of a notifiable disease at the premises we fail to have any cover."*

In response to this statement, the Provider says the **March 2020** claim was declined in a letter dated **5 June 2020**, which advised the following:

/Cont'd…

> *"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 it is of the view that this correspondence is very clear that its reasons for declinature of the claim were due to neither of the above triggers being met.

The Provider says it declined the **October 2020** claim in a letter dated **18 March 2021**, which advised that:

> *"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):*
>
> *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 the wording of this correspondence is very clear as to the reason for the declinature of the claim. The Provider says it is declining the claim by virtue of the second trigger not being met and the first trigger is not referenced as a reason for declinature, as it was met in this case.

Regretfully, the Provider says it cannot agree with the above statement of the Complainant Company in this instance. The Provider says it feels it has been very clear in both cases as to the reasons for declining the claim.

In the Complaint Form, the Complainant Company states that:

> *"Furthermore there are 2 documents for our policy and one of those documents states that we are covered for an occurrence of a notifiable disease (no mention of at the premises - wording in attachment* [Provider] *Policy wording on page 1 of 2 of Policy Summary Combined Property* […]*) whilst the other states notifiable disease at the premises (page 49 of 67)."*

In response to this statement, the Provider says the Complainant Company is referring to the Policy Summary. The Provider says this document is included in the New Business and Renewal packs and acts as a summary only for customers. The Provider says other

/Cont'd…

documents included in the pack are the full policy wording, policy schedule, Fair Processing Notice and terms of business agreement. On **1 March 2019**, the Provider says it invited the renewal of the Complainant Company's policy and in doing so, sent a Renewal Schedule, IPID (Insurance Product Information Document), Policy Summary, Payments Options and Fair Processing Notice.

The Provider acknowledges that the Policy Summary does not explicitly state that the occurrence of the Notifiable Disease must be at the Premises. The Provider says this document is a summary only and outlines the main benefits and restrictions associated with the policy. The Provider says this is clearly noted on the Policy Summary document which states that it does not list all of the benefits, terms, conditions, limitations, exceptions and exclusions associated with the policy. The Provider says it also states that the policyholder is required to read the policy and the schedule to ensure they understand the cover provided. In this respect, the Provider cites a passage from page 1 of the Policy Summary.

The Provider says the policy is a contract between the Provider and the Complainant Company, and comprises the introduction, schedule, specification, definitions, insuring clauses, extensions, exclusions, conditions and any endorsements shall be read as one contract.

The Provider says the Policy Summary **does not** form part of the contract and its position on the Notifiable Disease Extension is clearly and correctly set out on page 49 of the policy document.

The Provider says it considers its decision to decline the Complainant Company's claims to be fair and reasonable. Based on the policy wording, the Provider says there is no cover in either scenario and therefore, the claim was correctly declined. In both instances, the Provider says, the dual triggers required for cover to operate, have not been met. As a result, the decisions to decline were fair and reasonable.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainant Company's claims for business interruption losses as a result of its temporary closures in **March 2020** and **October 2020** due to the outbreak of COVID-19.

/Cont'd…

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 **8 February 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Analysis

I note that the Complainant Company incepted a 'Combined Property Policy' of insurance with the Provider in **March 2018**. The Complainant Company's 'Renewal Schedule' for the period **11 March 2020** to **10 March 2021** states on page five that the Complainant Company held business interruption cover in respect of 'Gross Profit' for a sum insured of **€2,600,00.00** with a 12-month indemnity period. I note that the 'Notifiable Disease' extension of the 'BUSINESS INTERRUPTION SECTION EXTENSIONS' ("the Notifiable Disease Extension") states on page 49 of the policy document dated **22 March 2018**, as follows:

> *"**Notifiable Disease***
>
> *The insurance by this Section shall subject to all the Exclusions and Conditions of the Policy (except in so far as they may be hereby expressly varied) and the special conditions set out below 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. *(a) <u>any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises</u>*

   (b) any discovery of an organism <u>at the Premises</u> likely to result in the occurrence of a Notifiable Disease

2. *the discovery of vermin or pests at the Premises*

3. *any accident causing defect in the drains or other sanitary arrangements at the Premises*

<u>which causes restrictions on the use of the Premises on the order or advice of the competent authority</u>

4. *any occurrence of murder or suicide at the Premises.*

[My underlining for emphasis]

Special Conditions

2. *Notifiable Disease shall mean illness sustained by any person resulting from*

   (a) food or drink poisoning or

   (b) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent authority has stipulated shall be notified to them.

2. *For the purposes of this memorandum:*

   Indemnity Period shall mean the period during which the results of the Business shall be affected in consequence of the occurrence, discovery or accident, beginning

   (a) in the case of 1, 2 and 3 above with the date from which the restrictions on the Premises are applied or

   (b) in the case of 4 above with the date of the occurrence

   and ending not later than the Maximum Indemnity Period thereafter.

/Cont'd…

Maximum Indemnity Period shall mean 3 months.

Premises shall mean only those locations stated in the Premises definition; In the event that the Policy includes an extension which deems loss destruction or damage at other locations to be an incident such extension shall not apply to this memorandum.

3. *The Company shall not be liable for any costs incurred in the cleaning repair replacement recall or checking of property.*

4. *The Company shall only be liable for the loss arising at those Premises which are directly affected by the occurrence discovery or accident.*

The liability of the Company shall not exceed €250,000 in respect of any one occurrence or €250,000 in any one Period of Insurance."

In the Complaint Form, it is stated that:

> *"there are 2 documents for our policy and one of those documents states that we are covered for an occurrence of a notifiable disease (no mention of at the premises - wording in attachment* [Provider] *Policy wording on page 1 of 2 of Policy Summary Combined Property - at the bottom of the 67 pages in document) whilst the other states notifiable disease at the premises (page 49 of 67)."*

It appears that two '**Policy Summary – Combined Property'** documents have been supplied by the Complainant Company, dated **22 March 2018** and **16 March 2020**. However, these documents appear essentially the same.

On considering the Policy Summary document, I note that the description of the extensions appliable to business interruption does not contain an 'at the premises' requirement in respect of Notifiable Disease. However, the Policy Summary states that:

> *"This document outlines the main benefits and restrictions associated with* [a Provider] *Combined Property Policy. It* ***does not*** *list all of the benefits, terms, conditions, limitations, exceptions and exclusions associated with the Policy. Please take time to read the Policy and Schedule to ensure that you understand the cover provided."*

/Cont'd…

Further to this, it is stated on page two of the policy document that:

> *"In consideration of the Insured having paid or agreed to pay the Premium*
>
> [The Provider] *will indemnify the Insured in the manner and to the extent described within this Policy on the terms set out and subject to its terms Definitions Extensions Exclusions and any Endorsements.*
>
> […]
>
> *The Policy comprising the Introduction Schedule Specification Definitions Insuring Clauses Extensions Exclusions Conditions and any Endorsements shall be read as one contract and any word and expression to which specific meaning has been attached therein shall bear such specific meaning wherever it may appear."*

I accept that the above cited passages set out the documents forming part of the Complainant Company's contract of insurance with the Provider, which does not include the Policy Summary. The Policy Summary is simply a summary of the cover available under the Provider's Combined Property Policy. The Policy Summary states clearly, in plain language and using bold underlined font that it is an 'outline' of the cover offered by the Combined Property Policy. The Policy Summary also expressly refers the Complainant Company to the 'Policy' and the 'Schedule' as containing the full terms and conditions of cover associated with the policy.

Accordingly, I am not satisfied that the Policy Summary has any bearing on the proper interpretation of the Notifiable Disease Extension.

Returning to the Notifiable Disease Extension, it can be seen from the wording of clauses 1 to 4 of the Notifiable Disease Extension that the perils identified under each of those sub-clauses must occur *at the Premises*; and in the context of clauses 1 to 3, the Notifiable Disease Extension further requires the imposition of restrictions on the *use of the Premises*. Accordingly, it is my opinion that the Notifiable Disease Extension wording is clear and unambiguous in terms of imposing a premises specific, *at the Premises/use of the Premises*, requirement.

The 'Special Conditions' of the Notifiable Disease Extension expressly state that *"Premises shall only mean those locations stated in the Premises definition"*. The term 'Premises' is defined (at page 16) of the policy document as: *"the location of Property Insured as stated in the Schedule."*

/Cont'd…

'Property Insured' is defined (at page 17) as:

> *"(a)* ***Buildings at the Premises***
>
> *buildings being built mainly of brick, stone or concrete and roofed* […] *including:*
>
> *(i) landlord's fixtures and fittings*
>
> *(ii) outbuildings*
>
> *(iii) walls, gates and fences*
>
> *(iv) piping ducting cables wires* […]
>
> *(v) yards car-parks roads and pavements."*

In this respect, I note that the location of the Property Insured as stated on the Complainant Company's Renewal Schedule appears to be its golf course and country club premises.

Given the very clear premises specific requirement in the Notifiable Disease Extension, the definition of the terms 'Premises' and 'Property Insured', and the express identification of the Complainant Company's golf course and country club as the insured premises, it is my opinion that giving the words of clause 1 of the Notifiable Disease Extension their plain and ordinary meaning, reasonably interpreted, clause 1 requires there to be an occurrence of a Notifiable Disease actually and specifically at the Complainant Company's premises or the discovery of an organism actually and specifically at the business premises, which is likely to result in the occurrence of a Notifiable Disease.

In reaching this conclusion, I note the following passages from the judgment of McDonald J. in the High Court case of *Brushfield Limited (T/A The Clarence Hotel) v. Arachas Corporate Brokers Limited and AXA Insurance Designated Activity Company* [2021] IEHC 263 (delivered on **19 April 2021**), where McDonald J. made certain remarks regarding an *at the premises* requirement contained in a clause somewhat similar to clause 3 of the Notifiable Disease Extension above:

> *"167.* […] *Those words "at the premises" are also to be found in paras. 2 and 3 of the MSDE* [Murder, Suicide or Disease] *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*

/Cont'd…

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."

Therefore, I accept that for cover to become operative pursuant to clause 1(a), the Complainant Company must show there was an occurrence of a Notifiable Disease at its premises. Similarly, in respect of clause 1(b), the Complainant Company must show that an organism was discovered, at its premises, which was likely to result in the occurrence of a Notifiable Disease. When the Complainant Company satisfies these requirements, it must be shown that either of the instances in clause 1(a) or clause 1(b) were the cause of restrictions being imposed on the use of the premises by a competent authority.

The basis for the Provider's declinature of the Complainant Company's **March 2020** claim is that there is no evidence of the occurrence of COVID-19 at the premises and that 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. In this respect, I note it is not disputed that COVID-19 is a Notifiable Disease for the purposes of the Notifiable Disease Extension.

The basis for the Provider's declinature of the Complainant Company's **October 2020** claim is that 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.

As stated above, it is my opinion that to trigger the cover provided by clause 1 of the Notifiable Disease Extension, the Complainant Company must, in essence, show there was an occurrence of COVID-19 <u>at its premises</u> which result in <u>restrictions being imposed on the use of the premises</u> by the competent authority.

In terms of the **March 2020** claim, in an email dated **18 May 2020**, the Broker acknowledged that the Complainant Company *"have not had a confirmed case of the virus on the premises"*.

In an email dated **6 July 2020**, it is stated on behalf of the Complainant Company that:

"SI 120 was signed into law and it basically means that COVID19 was on our premises."

/Cont'd…

In a submission dated **22 July 2021**, the Complainant Company stated that:

> *"As I understand it SI 120 (Health Act 1947 (affected Areas) Order 2020) stated that there were outbreaks of COVID everywhere in the state – hence the reason they (as the competent authority) could close down businesses across the country"*

Pursuant to SI 120/2020, the Health Act 1947 (Affected Areas) Order 2020, the Minister for Health declared that:

> *"the State (being every area or region thereof) is an area where there is known or thought to be sustained human transmission of Covid-19."*

This Order declares the State as an area where COVID-19 is known or thought to be. However, it provides no details as to where COVID-19 is known to be within the State or where it is thought to be within the State.

In its submissions following the Preliminary Decision of this Office, the Complainant Company had stated:

> *"I am at a loss to understand how the Ombudsman can state in relation to SI120*
>
> *However, it provides no details as to where COVID-19 is known to be within the State or where it is thought to be within the State. Consequently, I do not consider that this enactment is sufficient to demonstrate to a sufficient standard that the presence or suggested presence of COVID-19 in the State is sufficient to demonstrate, on the balance of probabilities, that there was an occurrence of COVID-19 at the Complainant Company's premises on a particular date.*
>
> *Especially as this SI was used to close every premises in the country –* ***I believe the Ombudsman erred or does the ombudsman know something that the AG does not?"***
>
> [highlighting appearing in the Complainant Company's submission]

As the statutory instrument in question provides no details as to where COVID-19 is known to be within the State, or where it is thought to be within the State, I do not accept that this enactment in itself, was sufficient for the Complainant Company to demonstrate to the Provider, for the purpose of a making a claim under the policy that, on the balance of probabilities, that there was an occurrence of COVID-19 at the Complainant Company's premises on a particular date.

/Cont'd…

It is the Complainant Company's position that the Provider instructed it to close its golf course on **27 March 2020**. I note that in the Broker's email dated **18 May 2020**, it is stated that the Provider instructed the Complainant Company to close its golf course. In an email dated **27 May 2020**, the Complainant Company stated that the golf course closed on **27 March 2020** on the instructions of the Government and the Provider. Later in this email, the Complainant Company stated that:

"We closed our business due to Government, GUI and Insurers instructions."

The Complainant Company refers to an email sent by the Provider to the Broker on **26 March 2020** as the basis its position that the Provider instructed it to close. However, I note that the Government's announcement on **24 March 2020** that all sporting activities and non-essential businesses were to cease, pre-dates the Provider's email. Further to this, I understand that the Golfing Union of Ireland ("the GUI") issued a statement on **24 March 2020** (again pre-dating the Provider's email) recommending the closure of all golf courses.

On considering the contents of the Provider's email, I do not accept that this was in fact an instruction to close. It is my opinion that the Provider was seeking confirmation that the golf course was closed and would not be used during the period stated by the Government and recommended by the GUI. Accordingly, I do not accept that the Provider instructed the Complainant Company to close its golf course on **27 March 2020**.

On considering the Provider's declinature of the **March 2020** claim, I note that the Complainant Company has not provided any evidence to show there was an occurrence of COVID-19 at its premises at the time of its closure on **16 March 2020**. In such circumstances, I am satisfied that the Provider was entitled to decline its **March 2020** claim.

In terms of the **October 2020** claim, I note that the Provider accepts that there were occurrences of COVID-19 at the insurance premises. However, the Provider declined the claim because restrictions were not imposed on the premises, as a result of these occurrences of COVID-19.

Around **19 October 2020**, the Government announced that the country would be placed on Level 5 of the National Framework for Living with COVID-19. This, in essence, involved the closure of almost all businesses. This decision was taken by the Government in response to the rapid spread of COVID-19.

/Cont'd…

To give effect to these measures, on **20 October 2020**, the Minister for Health (having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of COVID-19 and to the broad ranging matters specified in subsection (2) of section 31A of the Health Act 1947) introduced SI 442 of 2020 - the Health Act 1947 (Section 31A – Temporary Restrictions) (COVID-19) (No. 7) Regulations 2020.

The provisions of the Notifiable Disease Extension require the imposition of restrictions on the use of the insured premises, as a result of the occurrence of COVID-19 at the premises. On considering the Government's decision to more to Level 5 restrictions and the enactment of SI 442 of 2020, I am of the view that this was not in response to an occurrence of a notifiable disease at the insured premises. Furthermore, in light of the proper interpretation of the Notifiable Disease Extension, I do not accept that the imposition of Level 5 restrictions and the introduction of subsequent regulations are sufficient to trigger the cover contained in this extension. As discussed above, for cover to become operative, there must be an occurrence of COVID-19 at the Complainant Company's premises and, as a result of this occurrence, restrictions must be imposed on the premises by the competent authority. While restrictions were imposed on the use of the premises, I am not satisfied these restrictions were in response to or caused by an occurrence of COVID-19 at the Complainant Company's premises.

In its submissions after the Preliminary Decision of this Office was issued in February 2022, the Complainant Company has offered a number of comments regarding, and it has sought to rely upon, the High Court Decision in *Hyper Trust Limited trading as The Leopardstown Inn and Ors v. FBD Insurance plc* [2021] IEHC 279. I am conscious that this High Court decision concerned entirely different policy wording which was not premises specific, and I do not accept that this judgment supports the Complainant Company's position.

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 comes as a disappointment, I am satisfied that the Provider was entitled to decline its claims, and I do not consider it appropriate to uphold the complaint made.

Conclusion

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

/Cont'd…

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
Financial Services and Pensions Ombudsman (Acting)

14 March 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.