An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0242
Sector:	Insurance
Product / Service:	Service
Conduct(s) complained of:	Rejection of claim
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants trade as a public house and hold a commercial insurance policy with the Provider.

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

The Complainants' Case

By email dated **17 March 2020**, the First Complainant contacted the Complainants' Broker to advise, amongst other matters, that the Complainants had closed their business *"in accordance with current legislation."*

On **26 March 2020**, the Broker emailed the First Complainant with the following update regarding the cover provided under the policy, as follows:

> *"*[The Provider] *has issued the attached advice document to all insurance brokers in respect of all their Commercial Property & Business Interruption policyholders.*
> *Their position is very similar to most other insurers as I explained previously in that COVID19 losses are not covered by their policies.*
> *It will be interesting to see if they will change position as the Insurance Industry in Ireland comes under external pressure from Government & Central Bankers to be pay COVID19 claims."*

The Broker notified the Provider on **17 April 2020** of a claim for business interruption losses as a result of the temporary closure of the First and Second Complainant's public house on **16 March 2020** due to the outbreak of COVID-19, as follows:

> *"The insured wishes to make a formal business interruption claim due to their losses suffered from Covid-19."*

By email dated **21 April 2020**, the Provider wrote to the Broker to advise that the claim was not covered by the policy, as follows:

> *"I am very sorry to hear about the difficulties your client is experiencing at this time. Unfortunately, the Business Interruption section of the policy does not respond to closure as a result of COVID-19, and I am writing to explain why this is the case.*
>
> *Having reviewed your client's policy (attached for your ease of reference), the cover available to them under the policy includes an extension to the Business Interruption section for losses due to the prevention of access to insured premises, see Business Interruption - Extension 1 Prevention of Access.*
>
> *However, despite this, the losses in this case are due to an excluded cause, that being the decision of Government to take certain measures to seek to control the spread of the pandemic. This action is not an event which is insured under the policy.*
>
> *Whilst, therefore, there is cover for prevention of access there is an express exclusion as follows:*
>
> *Page 48, Extension 1 Prevention of Access, Exclusion (iii):*
>
> *"...closure or restriction in the use of the **premises** due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease) food poisoning defective drains or other sanitary arrangements or vermin or pests"*
>
> *Therefore, our Prevention of Access extension excludes business interruption losses due to prevention of access caused by the occurrence of an infectious disease, where the closure is on the order or advice of the competent local authority.*
>
> *Unfortunately, subject to any further information or representations you may wish to provide us with on behalf of your client, for this reason it appears that your client's claim is not covered under the policy.*

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> *We do provide businesses with cover for established infectious diseases whose impact is assessable (known as Specified Disease Cover). These diseases are set out in the current policy schedule (see pages 5-7 of the attached schedule) and only those listed are covered: COVID-19 is not included on the list of diseases covered by this insurance. This is because, in common with most of the market, our insurance policies are not designed and priced to cover pandemics. A key principle of insurance is that the losses of the few are paid by the many. In a pandemic situation the losses are many and the market is not designed to cover such scenarios.* […]*."*

By email dated **24 April 2020**, the Broker wrote to the First Complainant notifying her of the Provider's decision to decline the claim. The Broker included the above email from the Provider in the body of its email, as follows:

> *"Further to the below please see the following I have received from your insurers* [the Provider] *in relation to the formal BI claim we lodged on your behalf.*
>
> [Provider's email of **21 April 2020**]
>
> *As per the above from* [the Provider] *unfortunately the COVID-19 losses are not covered by their policies."*

Solicitors on behalf of the First and Second Complainants (stated to be trading under a certain title) wrote to the Provider on **15 June 2020** in respect of its decision to decline the claim, in part, as follows:

> *"The declinature is based upon a mis-interpretation of the exclusion in question and the reason give* (sic) *is vague and unsatisfactory. We reserve our client's position in this regard and the right to advance further grounds for challenging the declinature of cover.*
>
> *As such, our client now seeks to trigger arbitration under the Policy in respect of this declinature of cover."*

By letter dated **8 July 2020**, the Provider wrote to the First and Second Complainants' solicitors, as follows:

> *"The core Business Interruption cover provided by the policy responds to physical property damage at the insured premises resulting in the business being interrupted or interfered with. We understand that there has been no damage to property in this instance.*

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There are two extensions which can, in certain circumstances, provide cover for business interruption losses where there is no damage to property: "Prevention of access" (Extension 1(b)) and the "Specified Disease" extension (as set out in the policy schedule). We have explained the cover available under these extensions below.

Specified Disease Extension

The policy schedule extends business interruption cover to loss directly resulting from an interruption or interference with business at the insured premises in consequence of any occurrence of a Specified Disease being contracted by a person at the premises which causes restrictions in the use of the premises on the order or advice of the competent local authority. As set out in our letter of 21 April 2020, the cover is limited to diseases which are expressly listed in the policy schedule and the diseases for which cover is available do not include COVID-19. There is therefore, in principle, no cover available for claims relating to an occurrence of COVID-19 under this extension.

Prevention of Access (extension 1(b))

The "Prevention of access" extension (Extension 1(b)) covers loss directly resulting from an interruption or interference with the business at the insured premises in consequence of access to or use of the premises being prevented or hindered by an action of government, the Gardai, or a local authority due to an emergency which could endanger human life or neighbouring property.

This cover is subject to an exclusion (exclusion (ii) where the "closure or restriction in the use of the premises [was] due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease), food poisoning, defective drains, or other sanitary arrangements or vermin or pests". Extension 1(b) does not therefore extend [the Provider's] *coverage to Specified Diseases or to any other human infectious diseases. The only cover provided in respect of Specified Diseases is that provided by the extension in the policy schedule, which as explained above does not cover COVID-19.* [The Provider's] *policies are not designed to cover losses arising from the occurrence of a general pandemic such as COVID-19 in the circumstances which arise at present.*

The reference to "competent local authority" in the exclusion distinguishes the "local authority" referred to in the exclusion from the "local authority" referred to in the operative clause. In the context it is used, it means any of "government, the Gardai, emergency services or a local authority" and it therefore would apply to exclude cover, if cover was triggered.

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Directly resulting from

In addition, even if the policy did in principle extend to COVID-19, cover would still only be available under Extension 1(b) where the loss ***directly results from*** *an interruption of or interference with you client's business and the interruption or interference* ***directly results from*** *access to / use of the premises being prevented or hindered by the defined action of government or other specified authority. Losses that your client would have suffered in any event as a result of the downturn in economic activity and the general lockdown are therefore, in principle, not covered. In particular if the losses your clients have suffered did not result from access or use of the premises being prevented or hindered your clients would not be covered in respect of those losses.*

Next steps

We are satisfied your interpretation of the policy is not correct. We are aware that the COVID-19 pandemic is causing economic difficulties and is an unprecedented situation. […] *We are happy to conduct a further review of your clients' claim and if your clients' would like us to re-assess the claim, we request that your clients please submit the information outlined below to facilitate this review.* […]*."*

It appears the next contact with the Provider was a letter dated **8 February 2021** from a different firm of solicitors representing the Third Complainant (trading as a different public house), requesting an indemnity and interim payment in respect of the policy the subject of this complaint. Solicitors acting on behalf of the Provider responded to this letter on **16 February 2021**. In terms of the cover provided by the policy, the letter stated, as follows:

"The POA Extension must be read as a whole with reference to both what is covered and what is not covered. The POA Extension covers loss directly resulting from an interruption or interference with the business at the insured premises in consequence of "access to or use of the premises being prevented or hindered by … (b) any action of government the Gardai or Local Authority due to an emergency which could endanger human life or neighbouring property".

However, this insuring clause is subject to an exclusion (exclusion iii) and does not provide cover where the "closure or restriction in the use of the premises [was] due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease) food poisoning defective drains or other sanitary arrangements or vermin or pests".

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That being so, the scope of the cover under the insuring clause is delineated by an exclusion (exclusion (iii)) and cover under this extension is not extended to an occurrence of an infectious disease. Alternatively, if cover is triggered under the POA Extension, cover is excluded under exclusion (iii).

*When the Extension is read as a whole and in conjunction with the Specified Disease murder food poisoning defective sanitation vermin extension (the "**Specified Diseases Extension**") set out in the policy schedule which also uses the phrase "competent local authority", it is clear that the government comes within the definition of "competent local authority" within the meaning of the exclusion. The "competent local authority" is any one of the authorities referred to in the insuring clause (i.e., the government, Gardaí, or local authority).*

We note that the foregoing interpretation of the POA Extension has now been approved by the English Divisional High Court in the FCA Test Case. [The Provider] *was one of the eight insurers who participated in the FCA Test case and the* [Provider] *wording considered by the court was similar to the wording in your client's policy with an identical exclusion. The Divisional High Court found that there was no cover under* [the Provider's] *wordings for business interruption claims arising from COVID-19. Although aspects of the judgment were appealed to the UK Supreme Court, which delivered its judgment on 15 January 2021, the particular finding concerning cover under* [the Provider's] *wordings was not appealed by any party.*

We note that the judgment of Mr Justice McDonald in the FBD Test Case concerns the interpretation of an entirely different clause and the findings on coverage are not therefore applicable to the interpretation of the POA Extension.

In the circumstances our client is satisfied that your client's claim does not fall to be covered under the policy […]*."*

The First Complainant submitted a complaint to the Provider through the Broker on **2 March 2021**, *"for not considering our business disruption claim to be valid"*, as follows:

"We feel that the policy, covering the period in 2020 when government closed all businesses such as ours, does cover a claim for disruption to business, due to government demanding us to close our business because of the world wide covid 19 pandemic.

We feel the decision made not to cover this claim is incorrect […]*."*

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By letter dated **5 March 2021**, the Provider responded to the complaint advising that there was no cover under the policy, as follows:

> *"Your email states in summary that our decision not to provide coverage for your business interruption claim as a result of disruption to business due to Covid-19 was incorrect.*
>
> *In a letter dated 8 July 2020 to the solicitors that you had previously instructed* […] *we explained the cover under your policy and requested further information in order to review your claims. We did not receive any reply to this letter or any further correspondence until we received a letter from another firm of solicitors on your behalf* […] *on 8 February 2021. Our solicitors* […] *responded* […] *on 16 February 2021, explaining the cover under the policy and the finding of the English High Court in the FCA test case that there was no cover under* [the Provider] *policies considered by the court.* […]
>
> *On the basis of the information provided, and as explained in previous correspondence and in particular our letter to* [the Third Complainant's] *Solicitors (enclosed) we are satisfied that that there is no cover under the policy for your claim.*
>
> *We recognise that this is a difficult time for our customers. Unfortunately your policy does not respond to provide cover for this claim* […]*."*

The Complainants consider that their claim for business interruption losses is due to their compliance with a Government direction regarding the closure of public houses as a result of the outbreak of COVID-19 and is covered by the terms and conditions of their insurance policy. In this regard, the Complainants set out their complaint in their Complaint Form, as follows:

> *"We have made a claim on this insurance policy for disruption to business, caused by the Covid 19 pandemic. The government instructed all hospitality to close, which is well documented. The insurance providers have denied our claim as they say it is not covered in the policy. We believe this to be wrong and they should honour our claim.*
>
> *We first made the broker aware that we were making a claim in April 2020, we were informed that the policy did not cover the complaint.*
>
> *So to confirm this in writing again, I sent a letter of complaint to my broker on 2 march 2021, got an acknowledgement of my complaint on 3 march 2021 and a letter from* [the Provider] *on 5th March 2021 again stating their final response as to why they did not believe we had an legitimate cliam* (sic)*, which we dispute."*

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As a result, the Complainants seek for the Provider to admit their claim for business interruption losses as a result of the temporary closure of their public house in **March 2020** due to the outbreak of COVID-19, as follows:

> *"we are seeking payment, by a sum of money, I do not know a fair equation on to how to work out a fair payment"*

The Provider's Case

The Provider says it declined the Complainants' claim for business interruption losses because it does not fall to be covered under the Complainants' policy. The Provider says the Complainants claimed for business interruption losses under the prevention of access extension ("POA Extension") of their insurance policy. However, the Provider says there is no cover for claims arising from COVID-19under the POA Extension.

Background

The Provider says the Complainants trade as a gastro pub and restaurant, music bar and off license. The Provider says the Complainants purchased an insurance policy covering the period **2 June 2019** to **1 June 2020**.

On **17 April 2020**, the Provider says it was notified of a claim under the policy by the Complainants' Broker. By letter dated **21 April 2020**, the Provider says it responded, explaining that there was no coverage under the policy for the loss, and in particular, there was no coverage under the POA Extension.

On **15 June 2020**, the Provider says it received a letter from the Complainants' solicitors challenging the declinature of the claim and seeking to refer the matter to arbitration under the policy. The Provider says the Complainants' solicitors issued further correspondence on **23 June** and **1 July 2020**. The Provider says it responded on **8 July 2020** apologising for the delay in responding and explained its position on cover. However, the Provider says it also informed the Complainants' solicitors that it was prepared to review the Complainants' claim should they wish to submit additional information, and it attached a list of questions setting out the information needed to carry out the review. The Provider says that neither the Complainants nor their legal advisers responded to this letter, to provide any additional information in support of the claim.

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The Provider says it did not receive any further correspondence from or on behalf of the Complainants until **8 February 2021** when a different firm of solicitors wrote to it advising that they were now acting for the Complainants. The Provider says there was no reference in this letter to the Complainants' former solicitors or to previous correspondence. In this letter, the Provider says the Complainants' solicitors sought an indemnity under the policy for losses incurred as a result of the closure of the Complainants' premises due to COVID-19, and an interim payment. The Provider says the letter advised that should the Provider fail to confirm an indemnity and interim payment within seven days, that the Complainants would make an application to the High Court for injunctive relief as required, without further notice.

The Provider says its solicitors responded to the above correspondence on **16 February 2021**, referring to previous correspondence from the Complainants' former solicitors and noting that the Complainants had been provided with an opportunity to provide additional information in support of the claim but that such information had not been supplied. The Provider says its solicitors also noted that the Complainants' former solicitors had advised of the intention to refer the matter to arbitration, but that no further steps had been taken in this regard. The Provider says the letter went on to explain the coverage position and to address two cases which the Complainants' solicitors had sought to rely on, namely, *Financial Conduct Authority v. Arch Insurance Ors* [2020] EWHC 2448 (Comm) ("the FCA Test Case") and *Hyper Trust Limited trading as Leopardstown Inn v. FBD Insurance plc* [2021] IEHC 78 ("the FBD Test Case").

The Provider says the Complainants' solicitors responded on **19 February 2021** noting they had been unaware of the previous correspondence with the Complainants' former solicitors, noting the position in relation to the FCA Test Case and indicating they would further review their clients' policy and would be in contact once they were in receipt of instructions to arbitrate the matter. The Provider says that it did not receive any further correspondence from the Complainants' solicitors, and neither did its solicitors.

The Provider says the Complainants made a formal complaint through their Broker on **2 March 2021**. The basis of the complaint was that the Provider's decision to decline cover was incorrect. The Provider says it acknowledged the complaint on **3 March 2021**, confirming the relevant point of contact and providing a complaint reference number. The Provider says the letter advised that it would conduct a thorough investigation into the issue raised and provide a response as soon as possible. The Provider says it issued a final response on **5 March 2021**.

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Cover

The Provider says the core business interruption cover provided by the policy responds to physical property damage at the insured premises resulting in the business being interrupted or interfered with. The Provider says there has been no damage to the property in this instance. The Provider says there are two extensions which can, in certain specified circumstances, provide cover for business interruption losses where there is no damage to property. These are the POA Extension and the 'Specified Disease Murder Food Poisoning Defective Sanitation Vermin' extension ("Specified Disease Extension"). The Provider says the Specified Disease Extension is not included in the standard commercial insurance policy wording, but it was added to the Complainants' policy as an endorsement and is noted in the policy schedule.

The Provider says the Specified Disease Extension, which was not invoked by the Complainants, provides:

> *"The insurance in this section is extended to cover loss as insured hereunder directly resulting from interruption of or interference with the BUSINESS carried on by YOU at the PREMISES in consequence of*
>
> *(a) any occurrence of a SPECIFIED DISEASE being contracted at the PREMISES*
> *(b) any discovery of an organism at the PREMISES likely to result in the occurrence of a SPECIFIED DISEASE being contracted by a person at the PREMISES*
>
> *(c) any injury or illness by any person arising from or traceable to foreign or injurious matter in food or drink provided at the PREMISES*
>
> *(d) any accident causing defects in drains or other sanitary arrangements at the PREMISES*
>
> *Which causes restrictions in the use of the PREMISES on the order or advice of the competent local authority."*

The Provider says the POA Extension, which was invoked by the Complainants, covers loss resulting from an interruption or interference with the business at the insured premises as a result of:

> *"[a]ccess to or use of the **premises** being prevented or hindered by*

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*(a) **damage** to neighbouring property by any of the **insured events** by this section*

(b) any action of Government the Gardaí or Local Authority due to an emergency which could endanger human life or neighbouring property
Excluding

(i) any restriction of use of less than four hours

*(ii) any period when access to the **premises** was not prevented or hindered*

*(iii) closure or restriction in the use of the **premises** due to the order to advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery or an organism resulting in or likely to result in the occurrence of an infectious disease) food poisoning defective drains or other sanitary arrangements or vermin or pests"*

The Provider says that on a proper construction of the POA Extension, it is clear that in order to be potentially on cover, the closure or restriction must be as a result of an action of Government, the Gardaí or Local Authority, which in turn must be as a result of an emergency which could endanger human health. In the current instance, the Provider says the Complainants rely on the nationwide health emergency the subject of the advice of An Taoiseach on **15 March 2020** and subsequently.

That advice, the Provider says, was in the context of the nationwide danger posed by COVID-19, an infectious disease. The Provider says it follows that the restriction in the use of the premises invoked by the Complainants is the closure due to the order or advice of the Government as a result of an emergency caused by the occurrence of an infectious disease. As the Government comes within the definition of competent local authority within exclusion (iii) above, the Provider says there is no cover. That interpretation, the Provider says, which informed the declinature of **5 March 2021**, was/is entirely consistent with the decision of the Divisional High Court of England and Wales in the FCA Test Case (where a clause materially identical to (iii) was referred to as "the infectious diseases carve out").

In the claim notification, the Provider says the Complainants indicted that they closed on **16 March 2020**. The Provider says it understands the closure arose from the statement of An Taoiseach on **15 March 2020**, in which he advised that, amongst other measures, all pubs were to close from that evening until **29 March 2020**. Subsequent to that announcement, the Provider says there was a further post-cabinet statement from An Taoiseach on **24 March 2020** in which he advised that, amongst other measures, all cafes and restaurants were to limit supply to take away food or delivery and following that, several different enactments and pronouncements.

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The Provider says the Complainants allege, and the Provider accepts, that those statements by An Taoiseach were *"an order or advice"* within the meaning of the POA Extension and were directed to the nation.

(The Provider says it reserves its position as to whether the Complainants' business was required to close on **16 March 2020**. While the business is described in the Summary of Complaint as a public house, the Provider says the policy schedule notes that it is "Gastro pub/restaurant, music bar, off licence and property owner".)

The Provider says the Divisional Court of the High Court of England and Wales in the FCA Test Case discussed this issue in detail and found there was no cover for COVID-19 including finding that "*competent local authority*" included the Government.

The Provider says the FCA Test Case was a test case brought by the UK Financial Conduct Authority seeking the court's interpretation of various business interruption covers. The Provider says that eight insurers participated in the test case, including the Provider. The Provider says the Divisional Court found that there was no cover for COVID-19 provided by the Provider policies considered by the court, the wording of which is almost identical to the wording of the clauses above.

The Provider says the key sections of the FCA Test Case decision regarding its cover, delivered on **15 September 2020**, begins at paragraph 373 of the judgment, where the court stated:

> *"we agree with* [Counsel for the Provider] *that the question of the construction of the infectious disease carve-out has to be approached on the basis that it is a provision delineating the scope of cover, not in any sense an exemption clause. The applicable principles are as summarised by the judge in Crowden and there is no place for the application of the principle of contra proferentum, to the extent that principle has any application in the modern law of construction of contracts."*

In considering the term "competent local authority", the Provider says the Divisional Court found that this term referred to whichever authority was competent to impose the relevant restrictions in the locality, on the use of the premises. The Provider says the Court's reasoning as to the proper interpretation of the clause was, as follows:

> *"374. We also agree with [Counsel] that the phrase "competent local authority" must mean the same in the carve-out as it does in the specified disease clause. In the latter, given the legislative background which can legitimately be taken into account in construing the phrase, we consider it inherently unlikely that the parties intended the scope of cover provided by the clause to be limited to local outbreaks of a specified*

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disease for which only the local district council or other local authority […] issues orders or advice. A number of the specified diseases are […] on the list of notifiable diseases under the 2010 Regulations, no doubt at least in part because of their capacity to lead to more widespread infection or contagion than in a particular locality. Many of those diseases, at least historically, have been widespread, not just the plague or diphtheria or tuberculosis but in more recent times, measles, mumps and rubella.

375. […] The narrow meaning for which the FCA contends leads to an artificial and illogical result. In our judgment, [Counsel] is right that the phrase "competent local authority" means whichever authority is competent to impose the relevant restrictions in the locality on the use of the premises, including central government.

376. Given that the phrase has that meaning in the specified disease clause, as we have said it must have the same meaning in the infectious disease carve-out. The order or advice contained in the 20 and 23 March government advice and in the 21 and 26 March Regulations was the order or advice of the competent local authority, and was as a result of an occurrence (in fact many occurrences) of an infectious disease. Accordingly, the carve-out applies and there is no cover under either [Provider] wording in respect of the closure of or restriction in the use of the premises."

The Provider says the Court's decision that there was no cover under its wording is reflected in the declarations ordered by the court, in particular declaration 16.1, as follows:

"16.1 In relation to the provision in [the Provider policy] *1.1-1.2 excluding "closure of restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious diseases" ("the infectious disease carve-out"):*

(a) "competent local authority" means whichever authority is competent to impose the relevant restrictions in the locality on the use of the premises, including central government;

(b) The actions of the government in response to COVID-19, including the 20 and 23 March government advice and the 21 and 26 March Regulations, were "the order or advice of the competent local authority as a result of an occurrence of an infectious disease"; and

(c) Accordingly, the infectious disease carve-out applies and there is no cover in respect of the closure of or restriction in the use of the premises."

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The Provider says these conclusions of the Divisional Court, given in its judgment dated **15 September 2020**, and the declarations in relation to its policy, were not appealed. The Provider says this reflects the coverage position in the current complaint.

The Provider says applications were brought for a leapfrog appeal to the English Supreme Court and the appeals were heard on **16 November 2020**. The Provider says it is important to note that it did not appeal the decision and the FCA did not appeal the finding as regards the Provider's wording. The Provider says the FCA Test Case is an important judgment which has been relied upon as a persuasive authority in this jurisdiction in both the FBD Test Case and the AXA Test Case.

The Provider says it acknowledges that McDonald J. in *Brushfield Limited v. Arachas and AXA* [2021] IEHC 263 ("the AXA Test Case"), found that the clause which the court was interpreting should be construed strictly as an exclusion clause rather than as a clause delineating cover. That reasoning, the Provider says, is not apposite here. (It should be observed, the Provider says, that McDonald J. would have reached the same result construing the provision as a delineation of cover so clear was the language. Further, the Provider says in that case McDonald J. found there was no cover under the relevant policy.)

The Provider says the Divisional Court in the FCA Test Case considered the infectious disease carve out in the Provider's POA-ND Extension to be a delineation of the cover provided under the PAO-ND Extension. However, even if the provision in the POA Extension commencing with the word "Excluding" is considered to be an exclusion which should be construed strictly rather than a delineation of cover, the Provider says this simply puts the onus on the insurer to establish the facts that fall within the ambit of the exclusion clause. The Provider says the facts clearly do here: the closure/restriction in the use of the premises was *"due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease …."*

The Provider says that, giving these words their plain and ordinary meaning, the exclusion (assuming it to be such) does not seek to impose any requirement as to where the occurrence of infectious disease must take place. In such circumstances, the Provider says the occurrence of the infectious disease is not required to be at the insured premises or within a particular distance of the insured premises, and the facts here plainly fall within the exclusion (assuming it to be such).

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Causation

The Provider says that because there is no coverage under the policy, there is no need to consider causation. However, if there was cover under the policy, the Provider says its position is that cover would only be available under the POA Extension where:

> *"the loss **results from** an interruption of or interference with your business and the interruption or interference **results from** access to / use of the premises being prevented or hindered by the defined action of government or other specified authority."*

The Provider says given its position on cover, the losses of the Complainants have not been analysed to confirm whether they result from the interruption of or interference to the business.

Quantum

The Provider says the sum insured in the policy schedule for business interruption is **€1,700,00.00**, with a maximum indemnity period of 12 months. The Provider says the Complainants indicated in the Complaint Form that they are seeking *"payment, by a sum of money, I do not know a fair equation on to how to work out a fair payment"*.

The Provider says that if there was cover for the losses claimed for under the policy (and it says that there is not) then the Complainants will need to prove the quantification of their losses in accordance with the policy terms and conditions. In the event that this Office intends to deal with quantification of losses, the Provider says it would need to fully consider any relevant financial information and request additional information if required and provide expert evidence in relation to quantification. Furthermore, the Provider says it should be noted that if cover is triggered under the policy, the claim must be adjusted to the relevant provisions of the policy, including the Basis of Settlement provisions in the Business Interruption section, including the business trends adjustment, which would require the losses claimed to be reduced. In particular, the losses are to be:

> *"adjusted as necessary to provide for the trend of the business and for variations in or other circumstances affecting the business either before or after the damage or which would have affected the business had the damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the damage would have been obtained during the relative period after the damage."*

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The Provider reserved the right to make further submissions in this regard and says that a detailed adjustment exercise would be necessary which would require the Complainants to provide additional financial information.

Concluding Submissions

In response to a question of whether the Complainants' claim would be payable if Exclusion (iii) of the POA Extension were found not to apply, the Provider says this is a purely hypothetical question. The Provider says it accepts that if Exclusion (iii) were not in the POA Extension, there would be cover in principle, however, this exclusion is included in the extension and to disapply the provision, would be to re-write the clause.

The Provider says its decision to decline the Complainants' claim was in accordance with the provisions of the policy and that its decision was fair and reasonable. The Provider says it understands this is a difficult time for the Complainants and for many of its customers. However, the Provider has an obligation to act in the best interests of all its policyholders. This obligation, the Provider says, includes not paying claims which do not fall to be covered under the policy, and also includes defending complaints where it is satisfied that the position it has taken on cover, is correct.

The Provider says it is also satisfied that it dealt with the Complainants' claim in a timely and appropriate manner and that all deadlines under the Consumer Protection Code were adhered to. The Provider says it considers the decision of the Divisional Court in the FCA Test Case to be clear and while there was an appeal of the Divisional Court's decision to the Supreme Court, the relevant aspects of the decision relating to cover under the Provider's policy wording were not appealed. The Provider says this is a persuasive authority in Ireland which has been referred to with approval in the FBD Test Case and the AXA Test Case, and it should therefore be followed by this Office.

The Provider says that it acknowledges that ***section 12(11)*** of the ***Financial Services and Pensions Ombudsman Act 2017*** provides that the Ombudsman shall act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality or legal form.

The Provider submits however, that in circumstances where the issue for consideration is one of contractual interpretation and a purely legal question, this Office must have regard to the legal principles and that both parties should be given the opportunity to submit written legal submissions on these issues and the jurisdiction of this Office in relation to questions of legal interpretation, in advance of the adjudication of this complaint.

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The Provider also says that the Complainants have included a 'Combined Liability Insurance' policy with their Complaint Form which is underwritten by another financial service provider. The Provider says this policy is not one which is held with the Provider and it is not relevant to this complaint.

The Complaint for Adjudication

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

Decision

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

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

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. I am conscious in that regard that the Complainants have indicated their preference that the adjudication of this complaint include an Oral Hearing "*as there is a clear dispute as to the legal interpretation of the policy, which by necessity prior to any determination requires all sides to be heard*".

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Section 12 of the ***Financial Services and Pensions Ombudsman Act 2017*** (the **2017 Act**) provides as follows:

> "*The principal function of the Ombudsman shall be to investigate complaints in an appropriate manner proportionate to the nature of the complaint by:*
>
> *(a) informal means,*
> *(b) mediation,*
> *(c) formal investigation (including oral hearings if required), or*
> *(d) a combination of the means referred to in paragraphs (a) to (c).*"

No regulations have been made under ***Section 47(4)*** of the ***2017 Act*** and in that context, ***Section 47(5***) of the ***2017 Act*** provides as follows:

> "*Subject to any regulations made under section 4, the procedure for the making of complaints and the conduct of investigations shall be such as the Ombudsman considers appropriate in all the circumstances of the case, and he or she may, in particular, obtain information from such persons and in such manner, and make such enquiries, as he or she thinks fit.*"

I further note that ***Section 56(1)*** of the ***2017 Act*** provides as follows:

> "*The conduct of investigations under this Part shall be undertaken as the Ombudsman considers appropriate in all the circumstances of the case and in a manner that is appropriate and proportionate to the nature of the complaint.*"

It was open to this Office, when determining the most appropriate procedure for the conduct of the investigation of the present complaint, to consider holding an Oral Hearing to that end, bearing in mind what is appropriate and proportionate to the nature of the complaint. It has been the consistent practice of this Office to conduct oral hearings where there are conflicts of material fact arising in the dispute. This is in keeping with principles of natural justice. In J*&E Davy v Financial Services Ombudsman* [2010] 3 IR 324 at para 135, the Supreme Court noted that:

> "*[c]onflicting evidence of fact . . . generally does not admit of resolution on written submissions and will generally require some form of oral hearing appropriate to the issues which arise*."

Within the same judgment, Finnegan J quoted from the judgment of Costello P, in Galvin v Chief Appeals Officer [1997] 3 IR 240, as follows:

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> *"There are no hard and fast rules to guide the appeals officer, or on an application for judicial review, this Court, as to when the dictates of fairness require the holding of an oral hearing. This case (like others) must be decided on the circumstances pertaining, the nature of the inquiry being undertaken by the decision-maker, the rules under which the decision-maker is acting, and the subject matter with which he is dealing and account should also be taken as to whether an oral hearing was requested."*

It has further been held that an oral hearing is only necessary where the resolution of the dispute of fact will assist materially in resolving the dispute, or if the facts in issue cannot be resolved without such hearing; *Coleman v Financial Services Ombudsman* [2016] IEHC 169 at para 24.

Having examined the facts of the present complaint, I have not identified any conflict of material fact between the parties to the dispute such that I consider an Oral Hearing to be desirable, or to be required to resolve a dispute of fact. I agree with the Complainants that "*there is a clear dispute as to the legal interpretation of the policy*" as between the parties, but I am satisfied that the dispute of interpretation is one which can be resolved without oral evidence, and I am satisfied that both parties' respective positions have been heard by this Office, in arriving at the decision set out below.

The insured parties

I note that a claim for business interruption losses was made in **April 2020,** in respect of the commercial insurance policy which is the subject of this complaint. On reviewing the policy schedule in respect of this policy (issued on **13 June 2019**), I note that the insurance covered the period **2 June 2019** to **1 June 2020**. Under this policy schedule, the 'Insured' were stated as the First and Second Complainants.

The Complaint Form received in respect of this complaint, states on page three that the complaint was being made by the First and Second Complainants on behalf of a business, the Third Complainant (a limited company).

By letter dated **25 June 2021**, this Office wrote to the First and Second Complainants noting that, on reviewing the policy documentation submitted, the Third Complainant was not an insured party. A further copy policy schedule was then supplied with an issue date of **20 July 2021**. On reviewing this policy schedule, I note the period of insurance covered the period **2 June 2019** to **1 June 2020**. Furthermore, the 'Insured' was stated as the First, Second and Third Complainants. The policy schedule issued on **20 July 2021** is referred to below as "the Policy Schedule".

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The business interruption claim

The 'Business Description' on the Policy Schedule is stated as '*Gastro pub/restaurant, music bar, off licence and property owner*'.

On **15 March 2020**, the Government called on all public houses and bars (including hotel bars) to close from that evening, until at least **29 March 2020**. Following this, on **24 March 2020**, the Government adopted certain NPHET recommendations for the nationwide closure of non-essential businesses. In particular, the Government recommended that all cafes and restaurants were to limit supply to takeaway food or delivery and all organised social indoor and outdoor events of any size, were not to take place.

By email dated **17 April 2020**, the Broker notified the Provider of the Complainants' business interruption claim, due to losses suffered from the outbreak of COVID-19. By email on **21 April 2020**, the Provider informed the Broker that the cover under the policy did not respond to a closure due to COVID-19 and that the losses claimed were due to an excluded cause, being the decision of the Government to take certain measures to seek to control the spread of COVID-19. This was followed by certain correspondence between the Provider/the Provider's solicitors and solicitors acting on behalf of the Complainants.

In the correspondence issued by/on behalf of the Provider, the basis on which the Provider considered there to be no cover in respect of the Complainants' claim, was set out. A formal complaint was made regarding the Provider's declinature of claim on **2 March 2021**.

The Provider issued a Final Response Letter dated **5 March 2021** maintaining the position that there was no cover under the policy in respect of the claim.

Business interruption cover

In this respect, I note that section 4, '**Business interruption'**, of the Policy Schedule states that the Complainants had business interruption cover in respect of 'Estimated gross profit' with a sum insured of **€1,700,000.00** and a maximum indemnity period of 12 months.

Section 4 of the Policy Schedule also states that the Complainants had business interruption cover in respect of certain specified diseases. Section 4 of the Policy Schedule states, in relevant part, as follows:

> *"**Specified disease murder food poisoning defective sanitation vermin***
>
> *Section 4 Business Interruption*

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Extensions

Definitions specific to this extension

SPECIFIED DISEASE

means

Acute encephalitis Acute poliomyelitis Anthrax Cholera Diphtheria Dysentery Legionellosis Legionnaires' disease Leprosy Leptospirosis Malaria Measles Meningitis Meningococcal septicaemia (without meningitis) Mumps Ophthalmia neonatorum Paratyphoid fever Plague Rabies Relapsing fever Rubella Scarlet fever Smallpox Tetanus Tuberculosis Typhoid Fever Typhus fever Viral haemorrhagic fever Viral hepatitis Whooping cough Yellow fever

[…]

The insurance by this section is extended to cover loss as insured hereunder directly resulting from interruption of or interference with the BUSINESS carried on by YOU at the PREMISES in consequence of

(a) any occurrence of a SPECIFIED DISEASE being contracted by a person at the PREMISES

(b) any discovery of an organism at the PREMISES likely to result in the occurrence of a SPECIFIED DISEASE being contracted by a person at the PREMISES

[…]

which causes restrictions in the use of the PREMISES on the order or advice of the competent local authority [….]*"*

("the Specified Disease Extension")

The terms of the business interruption cover provided by the Complainants' policy are set out at section 4, 'Business interruption', of the applicable policy document. The cover provided under section 4 is set out at pg. 44 of the policy document, as follows:

*"If any building or other property used by **you** at the **premises** specified in the schedule for the purpose of the business is destroyed or damaged during the period of insurance by any of the **insured events** (destruction or damage so caused being*

/Cont'd…

*termed **damage**) and the **business** carried on by **you** at the **premises** is in consequence interrupted or interfered with*

***We** will pay **you** in respect of each item in the schedule the amount of loss occurring during the **indemnity period** resulting from such **damage** in accordance with the terms of this section* […]*"*

The term 'insured events' is also defined on pg. 44, as follows:

*"**Insured events***
*means unless stated otherwise in the schedule those events which are insured by the Property damage section provided that for the purpose of this section 'explosion' shall include explosion of any boiler or economiser on the **premises**"*

In this respect, the 'Insured events' noted in section 1, 'Property damage', of the Policy Schedule, include the following:

Fire, lightning and explosion; Aircraft, Riot; Malicious persons; Earthquake; Subterranean fire; Storm; Escape of water; Impact; Fallings trees; Falling aerials; Escape of oil; Accidental damage; Subsidence; Theft or attempted theft; and Glass and sanitary fixtures

I note that the business interruption cover provided by the Complainants' policy is also extended by a number of extensions which are set out at pg. 48 of the policy document. In the context of the present complaint, Extension 1 ("the POA Extension") states, as follows:

*"**Extensions***

*The insurance by this section is extended to cover loss as insured hereunder directly resulting from interruption of or interference with the **business** carried on by **you** at the **premises** in consequence of the following*

[…]

1 Prevention of access

*Access to or use of the **premises** being prevented or hindered by*

*(a) **damage** to neighbouring property by any of the **insured events** by this section*
(b) any action of Government the Gardaí or Local Authority due to an emergency which could endanger human life or neighbouring property

/Cont'd…

Excluding

(i) any restriction of use of less than four hours

(ii) any period when access to the ***premises*** *was not prevented or hindered*

(iii) closure or restriction in the use of the ***premises*** *due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease) food poisoning defective drains or other sanitary arrangements or vermin or pests*

Provided that our liability under this extension in respect of any one occurrence shall not exceed the sum insured by the items or any limit of liability shown in the schedule"

The Specified Disease Extension

The Specified Disease Extension provides cover in respect of interruption or interference with the business in consequence of a specified disease being contracted by a person at the insured premises, or the discovery of an organism at the insured premises which is likely to result in the occurrence of a specified disease being contracted by a person at the insured premises.

On considering the Specified Disease Extension, I note that this extension expressly identifies a list of the diseases coming within the term 'specified disease'. Furthermore, this list is an exhaustive and definite list of diseases, and the Specified Disease Extension does not appear to allow for the amendment of this list upon the discovery of any new diseases (such as COVID-19) or the mutation of any of the listed diseases, for example.

Further to this, I note that in the High Court decision of McDonald J. in *Brushfield Limited v. Arachas Corporate Brokers Limited and AXA Insurance DAC* [2021] IEHC 263, the Court considered whether a clause containing a list of specified diseases, would respond to a business interruption claim arising from COVID-19. In essence, the Court found that where a policy specifies a list of diseases for the purpose of a business interruption claim, cover is limited to the specified diseases and cover does not extend to COVID-19:

> *"115.* [T]*he clause in the* [Insurer's] *policy is restricted to the specific diseases listed. Business interruption which arises as a consequence of the occurrence of a disease which is not on that list will not give rise to cover under para. 1 of the MSDE* [Murder, Suicide or Disease] *clause. This is a crucially important aspect of the MSDE clause in the* [Insurer's] *policy. In terms of its specificity, the MSDE clause is different to a number of disease clauses to be found in other policies available on the Irish market at the time this policy was put in place in April 2019.* […]

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> *118.* […] *Critically, neither COVID-19 nor any variant thereof is included in the list of specified diseases contained in para. 1 of the MSDE clause. In those circumstances, it seems to me to follow that* […] *para. 1 of the MSDE clause does not provide cover for business interruption losses caused by an occurrence of COVID-19 even where that occurs on the hotel premises or within a 25-mile radius of it. It cannot be disputed that the cover available under the first paragraph of the MSDE clause is limited to business interruption which arises as a consequence of the occurrence of one of the specific diseases expressly listed in the clause. In circumstances where COVID-19 is not listed, it must follow that there is no cover for business interruption losses which are attributable to cases of COVID-19 per se whether or not they manifested themselves either on the premises or within the relevant 25-mile radius."*

Accordingly, I am not satisfied that cover was triggered under the Complainants' policy in respect of the Specified Disease Extension.

Section 4 – business interruption

Section 4 of the policy document provides cover where the insured premises is destroyed or damaged by any of the insured events.

In this respect, I note that a number of insured events are specified in the Policy Schedule, none of which include damage caused by disease, virus or Government imposed restrictions in response to a disease or virus. Further to this, I do not accept, on any reasonable construction of the insured events specified in the Policy Schedule, that the cover provided by section 4 was triggered in the context of the Complainants' claim.

Accordingly, I am satisfied that the Provider was entitled to conclude that cover was not triggered under the Complainants' policy in respect of the cover provided by section 4.

The POA Extension

The POA Extension provides cover where access to or use of an insured premises is prevented or hindered, arising from actions of certain authorities due to an emergency which could endanger human life or neighbouring property. However, I note that the scope of this cover is subject to, and limited by, a number of exclusions. Of particular relevance to the Complainants' claim and this complaint is exclusion (iii) which excludes cover under the POA Extension arising from the closure or restriction in the use of an insured premises due to an order or advice of the competent local authority as a result of an occurrence of an infectious disease or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease ("the Infectious Disease Exclusion").

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In determining whether the Provider is required to admit a claim under the POA Extension, it is first necessary to determine whether the Infectious Disease Exclusion is triggered. If this is the case, then it is my opinion that the Provider was entitled to decide that the Complainants were not entitled to an indemnity pursuant the POA Extension.

In *The Financial Conduct Authority v. Arch Insurance (UK) Limited & ors* [2020] EWHC 2448 (Comm), the FCA Test Case, the English High Court considered the proper interpretation of a clause very similar to the POA Extension and an exclusion which is essentially identical to the Infectious Disease Exclusion contained in the policy the subject of this complaint. In this respect, the Court in the FCA Test Case was of the view that the exclusion in question applied in the context of Government advice and Regulations introduced in response to Covid-19. In considering the term 'competent local authority', the Court took the view that this term referred to whichever authority was competent to impose the relevant restrictions in the locality on the use of the premises. The Court's reasoning as to the proper interpretation of the exclusion clause was, as follows:

> *"374. We also agree with* [Counsel] *that the phrase "competent local authority" must mean the same in the carve-out as it does in the specified disease clause. In the latter, given the legislative background which can legitimately be taken into account in construing the phrase, we consider it inherently unlikely that the parties intended the scope of cover provided by the clause to be limited to local outbreaks of a specified disease for which only the local district council or other local authority* […] *issues orders or advice. A number of the specified diseases are* […] *on the list of notifiable diseases under the 2010 Regulations, no doubt at least in part because of their capacity to lead to more widespread infection or contagion than in a particular locality. Many of those diseases, at least historically, have been widespread, not just the plague or diphtheria or tuberculosis but in more recent times, measles, mumps and rubella.*
>
> *375.* […] *The narrow meaning for which the FCA contends leads to an artificial and illogical result. In our judgment,* [Counsel] *is right that the phrase "competent local authority" means whichever authority is competent to impose the relevant restrictions in the locality on the use of the premises, including central government.*
>
> *376. Given that the phrase has that meaning in the specified disease clause, as we have said it must have the same meaning in the infectious disease carve-out. The order or advice contained in the 20 and 23 March government advice and in the 21 and 26 March Regulations was the order or advice of the competent local authority, and was as a result of an occurrence (in fact many*

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> *occurrences) of an infectious disease. Accordingly, the carve-out applies and there is no cover under either* [Provider] *wording in respect of the closure of or restriction in the use of the premises."*

Further guidance as to the proper interpretation of the Infectious Disease Exclusion can be seen in the Irish High Court decision of McDonald J. in *Brushfield Limited (T/A The Clarence Hotel) v. Arachas Corporate Brokers Limited & Or* [2021] IEHC 263, delivered on **19 April 2021**. In particular, the Court dealt very briefly with the term 'other competent authority' and stated, in a manner consistent with the views expressed in passages from the FCA Test Case cited above, as follows:

> *"209.* […] *It seems to me that there is a significant point of distinction between the language of the clause in the* [Insurer 1] *policy and the language of the* [Insurer 2] *clause which referred not only to the police but also to "other competent … authority". The use of the words "competent" is striking. It immediately suggests that the action taken would be competent (i.e. within the powers of the relevant body concerned).* […]*."*

On considering the wording of the Infectious Disease Exclusion, it is my opinion that, reasonably interpreted, the Irish Government comes within the meaning of the term 'competent local authority' for the purposes of this exclusion.

It is also my opinion that the Government's call for all public houses and bars (including hotel bars) to close on **15 March 2020** and the Government's adoption of the NPHET recommendations and subsequent announcement on **24 March 2020** that all non-essential businesses close, constituted an 'order or advice' of the competent local authority. Furthermore, it is quite clear that the measures announced by the Government on **15 March** and **24 March 2020** were in response to an 'infectious disease' (that is, COVID-19).

In this respect, I note that on **20 February 2020**, the Infectious Diseases (Amendment) Regulations 2020 amended and provided for the inclusion of COVID-19on the list of *"Diseases specified to be infectious diseases"* contained in the Infectious Disease Regulations 1981. The Infectious Disease Exclusion requires the order or advice of the competent local authority to be *"as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease)"*. However, on considering the language used in this exclusion and giving these words their plain and ordinary meaning, I am of the view that this exclusion does not seek to impose any requirement as to where the occurrence or discovery must take place. In such circumstances, I do not consider that the occurrence of the infectious disease or discovery of the organism must be at the insured premises or within a particular distance of the insured premises.

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In terms of the closure of the Complainants' business, the First Complainant emailed the Broker on **17 March 2020** advising that:

> *"We have closed our business in accordance with current legislation."*

When notifying the Provider of the claim in **April 2020**, the Broker recorded the date of loss as **16 March 2020**.

In the Complaint Form, it is stated that:

> *"The government instructed all hospitality to close, which is well documented."*

Also on the Complaint Form, it is stated that the conduct complained of occurred on **15 March 2020**. In an email from the First Complainant to the Broker on **2 March 2021**, it is stated that:

> *"We feel that the policy, covering the period in 2020 when the government closed all businesses such as ours, does cover a claim for disruption to business, due to government demanding us to close our business because of the world wide covid 19 pandemic."*

Having considered the evidence, it appears that the Complainants closed their business in response to the Government's announcement made on **15 March 2020**. Accordingly, in light of the above discussion in respect of the Infectious Disease Exclusion, I am satisfied that the Provider was entitled to take the view that the Infectious Disease Exclusion was triggered in respect of the Complainants' claim, thereby excluding cover. In these circumstances, I am satisfied that the Provider was entitled to maintain its position that the criteria for the claim to be covered under the POA Extension were not met by the Complainants.

While I appreciate that the Complainants have likely suffered significant disruption to their business as a result of COVID-19 and that this decision will come as a significant disappointment, I am satisfied for the reasons explained above, that the Provider was entitled to decline the claim for business interruption losses.

Conclusion

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

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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)

25 July 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.