



<b><u>Decision Ref:</u></b>	2022-0280
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Retail
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainant, a limited company trading as a hotel, hereinafter ‘the Complainant Company’, held a **Commercial Combined Insurance Policy** with the Provider. The policy period in which this complaint falls, is from **1 June 2019** to **1 June 2020**. This complaint concerns the Provider’s decision to decline the Complainant Company’s business interruption claim.

#### **The Complainant Company’s Case**

The Complainant Company, by way of its Representative, notified the Provider on **27 March 2020** of a claim for business interruption losses as a result of the temporary closure of its hotel, due to measures imposed by the government to help curb the spread of the coronavirus (COVID-19).

In making its claim, the Complainant Company relied upon the following wording of Section 2, ‘Business Interruption’, at pg. 36 of the applicable **Commercial Combined Insurance Policy Document** (‘the **Policy Document**’):

*“EXTENSIONS TO THE BUSINESS INTERRUPTION SECTION ...*

#### ***(6) Murder, Suicide & Notifiable Diseases***

*Interruption of or interference with your Business in consequence of Damage as insured by this Section shall include loss resulting from Murder, Suicide or notifiable*

*Diseases. For the purpose of this extension notifiable diseases are those listed under The Infectious Diseases (Amendment) Regulations 2011.”*

The Complainant Company's **Policy Schedule** confirms a limit of indemnity for Business Interruption by way of Murder, Suicide & Notifiable Diseases of **€50,000.00**.

Following its claim assessment, the Provider wrote to the Complainant Company's Representative on **22 June 2020** to advise that because cover for business interruption caused by a notifiable disease is limited to those diseases listed under the ***Infectious Diseases (Amendment) Regulations 2011***, it was declining indemnity as COVID-19 was not so listed.

The Complainant Company raised a complaint with the Provider on **19 August 2020** regarding its decision to decline the claim and following its review, the Provider wrote to the Complainant Company's Representative on **14 September 2020** to advise that it was standing over its decision to decline indemnity.

The Complainant Company notes that both "*Severe Acute Respiratory Syndrome (SARS)*" and its causative pathogen "*SARS-associated coronavirus*" are listed as infectious diseases in the ***Infectious Diseases (Amendment) Regulations 2011***. In that regard, in its email to this Office on **3 November 2021**, the Complainant Company submits that:

*" ... Covid-19 is a new strain of Coronavirus, not a new disease and that Covid-19 belongs to the same family of viruses (coronaviruses) that are covered under the Infectious Diseases Regulations 2011".*

The Complainant Company seeks for the Provider to admit and pay its claim for business interruption losses and in that regard, when it submitted its **Complaint Form** to this Office, the Complainant Company submitted that in order to resolve this matter it seeks:

*"Full claim plus interest rate [and] Full compensation".*

### **The Provider's Case**

The Provider says that the Complainant Company's Representative first notified it on **27 March 2020** of a claim for business interruption losses as a result of the temporary closure of its hotel, due to measures imposed by the Government to help curb the spread of COVID-19.

The Provider says that following its claim assessment, it wrote to the Complainant Company's Representative on **22 June 2020** to advise that it was declining indemnity, as follows:

*"... The Policy provides cover for:*

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*“... interruption of or interference with your Business in consequence of Damage as insured by this Section shall include loss resulting from ... notifiable Diseases. For the purpose of this extension notifiable diseases are those listed under The Infectious Diseases (Amendment) Regulations 2011 ...”*

*The Policy may therefore cover business interruption losses resulting from those diseases that are listed in Ireland’s Infectious Diseases (Amendment) Regulations 2011 (SI 452/2011) ...*

*Those Regulations - which came into effect on 8 September 2011 - do not list Covid-19 as a notifiable disease. They could never have done so, as it only became a notifiable disease on 20 February 2020 under the Infectious Diseases (Amendment) Regulations 2020 (SI 53/2020). Coverage under the Policy does not extend to diseases listed by subsequent amendment to the 2011 Regulations. There is accordingly no cover under the Notifiable Diseases Extension in your Policy for the Covid-19-related business interruption losses you have claimed.*

*Further, and in any event, it is a key requirement that the business interruption losses suffered must be caused by/be a direct consequence of the occurrence of the insured event (a notifiable disease), a requirement which is not met on the presented facts where loss has in fact been caused by Government order”.*

The Complainant Company raised a complaint with the Provider on **19 August 2020** regarding its decision to decline the claim and following its review, the Provider wrote to the Complainant Company’s Representative on **14 September 2020** to advise that it was standing over its decision to decline the claim, as follows:

*“... As previously confirmed by the Claims Team, the Business Interruption section of the policy in question has an extension which does provide cover for interruption caused by Notifiable diseases, but goes on to advise that the list is limited to the those listed under Ireland's Infectious Diseases (Amendment) Regulations 2011 (SI 452/2011).*

*I understand that from your email you feel that there are many prominent scientific papers published on this stating that Covid-19 is a new strain of Coronavirus not a new disease. Covid-19 belongs to the same family of viruses (coronaviruses) which are covered under the Infectious Diseases Regulations 2011.*

*Having reviewed all of the information available to me, I am sorry to advise that I cannot agree with your interpretation.*

*The Schedule to the Regulations lists various diseases which are covered under the Extension, one of the diseased (sic) listed is “Severe Acute Respiratory Syndrome (SARS)”, “SARS-associated coronavirus”; another name for “SARS-associated coronavirus” is “SARS-CoV”.*

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*On this basis it is not correct to say that "SARS-CoV-2" is an associated coronavirus, and therefore that it is captured by the Regulations and covered under the Extension.*

*"SARS-associated coronavirus" is "SARS-CoV", not "SARS-CoV-2". They are separate and distinct. "SARS-CoV" / "SARS-associated coronavirus" causes SARS; that is separate and distinct from SARS-CoV-2, which causes Covid-19.*

*Unfortunately, it is not the case that Covid-19 or SARS-CoV-2 can be regarded as listed in the notifiable disease Schedule to the 2011 Regulations: on this basis, there is no coverage under the Notifiable Disease Extension. Indeed, if it were the case that Covid-19 and SARS-CoV-2 were already contemplated in the 2011 Schedule, there would have been no need for the Infectious Diseases (Amendment) Regulations 2020 to be introduced to specify Covid-19 as a notifiable disease.*

*For the above reasons I cannot accept that Covid-19 is listed in the 2011 Regulations, and is therefore covered under the Notifiable Disease Extension and therefore I'm sorry to advise I cannot recommend settlement is made on this claim".*

The Provider notes that the claim which has been presented by the Complainant Company is in relation to the loss of income that its business faced, following restrictions which were put in place to try to prevent the spread of COVID-19 and meant that its hotel business was forced to close.

The Provider says it is satisfied that the Complainant Company's claim is not covered under the Notifiable Diseases Extension contained in the **Policy Document**.

The Provider says the Complainant Company's policy only extends to provide cover for claims as a result of those infectious disease listed under the **Infectious Diseases (Amendment) Regulations 2011**.

The Provider is satisfied that COVID-19 and its virus agent SARS-CoV-2 are separate and different from the disease Severe Acute Respiratory Syndrome (SARS) and its causative pathogen SARS-associated coronavirus, that are both listed under the **Infectious Diseases (Amendment) Regulations 2011**.

In that regard, the Provider says that SARS-CoV-2 (COVID-19) first presented in 2019 whereas SARS has been around since before 2003, and it notes that the World Health Organisation, on its website page titled '**Naming the coronavirus disease (COVID-19) and the virus that causes it**' produced the following information:

ICTV announced "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)" as the name of the new virus on 11 February 2020. This name was chosen because the virus is genetically related to the coronavirus responsible for the SARS outbreak of 2003. While related, the two viruses are different.

The Provider notes the Complainant Company's contention that it was reasonable for it to have considered that the intent of the Notifiable Diseases Extension, was to provide cover for all infectious diseases as regulated by the Government, including an outbreak of any new infectious diseases not listed under the ***Infectious Diseases (Amendment) Regulations 2011***, namely COVID-19 and its virus agent SARS-CoV-2, which were designated as notifiable diseases in Ireland by way of the ***Infectious Diseases (Amendment) Regulations 2020*** on **20 February 2020**, prior to the Complainant Company's date of loss.

In response to this contention, the Provider says that the Complainant Company's policy was designed to provide cover for a closed list of infectious diseases, and the policy was not underwritten or priced, to provide cover for an unknown or new infectious disease.

The Provider says the Complainant Company's policy is clear in relation to the fact that it will only extend to provide cover for the known diseases as described in the ***Infectious Diseases (Amendment) Regulations 2011***. The Provider maintains that if the policy had intended to provide cover for amendments to that regulation, it would have clearly stated that, as it has in other areas of the **Policy Document** where amendments to Acts are specially covered.

In that regard, the Provider notes, for example, that under the 'L36 - Toxic and Hazardous Goods Exclusion' at pg. 83 of the **Policy Document**, the policy wording specifically refers to the ***Waste Management Act 1996*** and any amendments to that Act thereafter, as follows:

*"... Hazardous goods are defined as follows:*

*(a) as defined in the Waste Management Act 1996 and any amendment to the Act thereafter ..."*

The Provider recognises that the claims process took longer than it would have expected under normal circumstances and that it should have updated the Complainant Company more regularly. The Provider says that the Complainant Company's claim was registered at the very outset of the COVID-19 pandemic and was subject to some delays, whilst legal advice was being sought to determine how the policy responded in each situation and also whilst team members relocated to working from home. In addition, at the time, the Provider says it also received an unexpected influx of claims due to COVID-19 which resulted in it revisiting its claims resourcing model.

### **The Complaints for Adjudication**

The complaint is that the Provider wrongly or unfairly declined to admit and pay the Complainant Company's claim for business interruption losses as a result of the temporary closure of its hotel in March 2020, due to measures imposed by the government to curb the spread of COVID-19.

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## **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant 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 **28 July 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Complainant Company notified the Provider on **27 March 2020** of a claim for business interruption losses as a result of the temporary closure of its hotel, due to measures imposed by the government to help curb the spread of COVID-19.

It should be noted that the Complainant Company's **Commercial Combined Insurance Policy**, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

Section 2, 'Business Interruption', at pg. 36 of the applicable **Commercial Combined Insurance Policy Document** provides, among other things, that:

*"EXTENSIONS TO THE BUSINESS INTERRUPTION SECTION ...*

***(6) Murder, Suicide & Notifiable Diseases***

*Interruption of or interference with your Business in consequence of Damage as insured by this Section shall include loss resulting from Murder, Suicide or notifiable Diseases. For the purpose of this extension notifiable diseases are those listed under The Infectious Diseases (Amendment) Regulations 2011"*

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I am satisfied that the wording of this Notifiable Diseases Extension clearly limits itself to only providing cover for those notifiable diseases that are listed under the ***Infectious Diseases (Amendment) Regulations 2011***, which came into operation on **21 September 2011**.

I note the Complainant Company maintains that COVID-19 is not a new disease but rather is a new strain of coronavirus, belonging to the same family of coronaviruses as Severe Acute Respiratory Syndrome (SARS) and its causative pathogen SARS-associated coronavirus, both of which are listed as infectious diseases under the ***Infectious Diseases (Amendment) Regulations 2011***. It therefore maintains that policy cover should extend to COVID-19.

I am, however, of the opinion that it is reasonable for the Provider to conclude that COVID-19 and its virus agent SARS-CoV-2 is, as it is widely accepted, a separate and distinct disease from Severe Acute Respiratory Syndrome (SARS) and its causative pathogen SARS-associated coronavirus that only first came to light, in 2019.

I note too that on **20 February 2020**, the Minister for Health signed ***Statutory Instrument No. 53/2020 - Infection Diseases (Amendment) Regulations 2020***, to include the new diseases of COVID-19 and its virus agent SARS-Cov-2, on the list of notifiable diseases. I therefore accept that until that juncture, COVID-19 had not been so categorised.

I also accept the Provider's position that if it had been its intention to provide cover for all infectious diseases as regulated by the Government, including those that came to light after the implementation of the ***Infectious Diseases (Amendment) Regulations 2011*** and those that may come to light in the future, then it would have worded the Notifiable Diseases Extension differently.

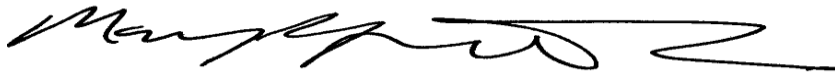
Having regard to all of the above, I take the view that the evidence does not support the complaint that the Provider wrongly or unfairly declined to admit and pay the Complainant Company's claim for business interruption losses as a result of the temporary closure of its hotel in March 2020, due to measures imposed by the Government to curb the spread of COVID-19.

As I take the view that it was reasonable for the Provider to decline the Complainant Company's claim, it is my decision therefore on the evidence before me, that this complaint cannot reasonably be upheld.

### **Conclusion**

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

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



MARYROSE MCGOVERN  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

22 August 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.