



Decision Ref: 2021-0072

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 Complainant, a sole trader trading as a dentist, holds an office insurance policy with the Provider.

The Complainant's Case

The Complainant's Broker notified the Provider by way of email on **30 March 2020** of a claim for business interruption losses as a result of the temporary closure of her dental practice from 16 March 2020, due to the outbreak of coronavirus (COVID-19), as follows:

"Please be advised that [the Complainant] has advised that the practice is closed since the 16th March 2020".

In making this claim, the Complainant was relying upon the following wording of the 'Business Interruption Extensions of cover' section of her applicable Office Insurance Policy held with the Provider:

"We will also pay for: ...

(5) Disease, vermin and suicide extension

Loss of INCOME and/or INCREASED COST OF WORKING as insured by this section incurred by YOU as a result of interruption or interference with the BUSINESS caused by:

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

Following its assessment, the Provider-appointed Loss Adjuster emailed the Complainant's Broker on **29 April 2020** to advise that it was declining indemnity in this matter as the circumstances of the Complainant's claim did not fall within the scope of policy cover provided by the relevant notifiable disease extension, insofar as the policy provides business interruption cover arising from a closure due to a notifiable disease, only where there is an outbreak of that notifiable disease at the insured premises.

The Complainant was dissatisfied with this decision and emailed a complaint to both the Provider and its Loss Adjuster on **7 May 2020**, as follows:

"I understand that you accept that COVID-19 is a notifiable disease.

In your letter, you mentioned the following as one of the circumstances which have given rise to this business interruption claim:

"The Insured was concerned for the health of her staff and customers and as such, the Insured closed the business from Monday 16th March 2020, and has not been trading since".

But I think you have misunderstood here. It is more than personal concern that has caused me to stop trading, I have been directed by official orders to stop trading.

Following the Taoiseach's announcement of restrictions to help stop the spread of COVID-19, the Government published a list of essential services. Under this, the practice of dentistry is limited to emergency dental practice activities only.

And adding to that order, the Dental Council by whom we are regulated has issued notification of and inserted the following statement at Section 2.3.1.4 of its Code of Practice regarding Infection Prevention and Control:

"Interim Measure During COVID-19 Pandemic: Aerosol-generating procedures should only be undertaken with an appropriate level of personal protection equipment (PPE), which includes a respirator mask to a minimum standard of FFP2".

But Dentists do not have PPE. No dentist, public or private, has hospital-grade PPE to my knowledge. And there is no avoiding Aerosol-generating procedures from tools such as the drill, the three-in-one syringe used to dry/rinse a patient's mouth, and the ultrasonic scaler that removes plaque from teeth and these are all dangerous in a Covid-19 scenario. Virtually every procedure generate sprays that fly directly up into the dentist's and nurse's faces. These sprays linger in the air - above staff, patient and dental chair - before falling back down on surrounding work surfaces. If a patient is infected with Covid-19 or is an asymptomatic carrier, the virus is carried in the aerosol spray. The nurse and dentist are inhaling this and, because it's in the atmosphere or on surfaces, patients coming in afterwards could potentially become infected. Thus the Dental Council instruction to only work with PPE but it is not available. This creates an impossible situation.

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So either one of these instructions mean that my practice or business has been closed down by official orders to prevent the spread of a notifiable disease.

You also mentioned the following as one of the circumstances which have given rise to this business interruption claim:

“The Insured has outlined that no outbreak of Covid-19 has occurred on her premises. The Insured has highlighted the possibility that staff, or customers may have had the disease unbeknownst to her, however the Insured has been unable to show a direct link to any person or outbreak”.

I dispute that no direct link has been shown to the disease outbreak. It is the authorities who have reached a judgment that there is a direct link between the outbreak and my premises which they have indicated by their official orders causing me to stop trading. The authorities’ issuing of those orders demonstrates their judgment that there is a direct link to the disease outbreak.

Secondly, you provided an extract of the relevant wording under the policy document but it does not mention any requirement re persons, only that there be “an outbreak of any NOTIFIABLE DISEASE occurring at the PREMISES” and it is the authorities that have decided this question by issuing their orders to force me to stop trading at my premises.

You conclude:

“Whilst COVID19 is a notifiable disease, our understanding of the circumstances as outlined by your Policyholder is that there was no outbreak occurring at her premises and as such her Business Interruption losses are not covered”.

I take issue with this reasoning. The authorities’ orders to stop trading indicates their judgment that the outbreak is occurring at my premises, otherwise why issue the orders that stop trading at the premises?

The COVID-19 outbreak is occurring nationwide and many cases have been recorded in the [location] city area where my practice is located. So my premises are located inside an outbreak area not outside one as you seem to be alluding.

Either a) the outbreak is occurring on my premises and thus giving rise to the orders that have caused my premises to stop trading or else b) the outbreak is not occurring on my premises (your argument) in which case there would not have been orders to stop trading.

Respectfully, your argument seems to be denying the government’s judgment that the disease does occur at my premises”.

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Following its review, the Provider emailed the Complainant on **12 June 2020** to advise that it was standing over its decision to decline indemnity in this matter.

The Complainant sets out her complaint in the **Complaint Form** she completed, as follows:

"I have a Business Insurance policy with [the Provider] but they are declining to cover business interruption losses arising from official orders to stop trading due to the COVID-19 Pandemic. I believe my business interruption losses should be covered".

The Complainant's complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainant's claim for business interruption losses as a result of the temporary closure of her dental practice due to the outbreak of coronavirus (COVID-19).

The Provider's Case

Provider records indicate that the Complainant, who hold an office insurance policy with the Provider, submitted a claim on **30 March 2020** for business interruption losses as a result of the temporary closure of her dental practice from 16 March 2020.

The Provider says that in order to assist and to provide context, it set out a chronology of the material facts relevant to, and measures taken in respect of, the COVID-19 pandemic in Ireland, including where the Complainant's business interruption claim fits into that chronology, as follows:

- 20 February 2020: COVID-19 became a notifiable disease in Ireland, as did its virus agent SARS-CoV-2, by way of the Infectious Diseases (Amendment) Regulations 2020.
- 29 February 2020: First diagnosis of COVID-19 in Ireland.
- 11 March 2020: First death in Ireland attributable to COVID-19.
- 12 March 2020: On the advice of the National Public Health Emergency Team (NPHE), the Irish Government announced the following measures to control the spread of COVID-19:
 - a. the closure was ordered of museums, galleries, tourism sites, schools, creches, other childcare facilities and higher education institutions; and
 - b. no mass gatherings involving more than 100 people indoors or 500 people outdoors.

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In addition, a statement from the Taoiseach also stated:

“... Public transport will continue to operate ... Shops will remain open ... Businesses are to take a sensible and level-headed responsible approach ... Restaurants, cafes, and other businesses can stay open but should look at ways to implement the public health advice on social distancing”.

- 14 March 2020: Second death in Ireland attributable to COVID-19. By this date, there were 129 confirmed cases of COVID-19 in the country.
- 15 March 2020: Following discussions with the Licensed Vintners Association and the Vintners Federation of Ireland and with their support, the Government requested that all public houses and bars, including hotel bars, close from 15 March 2020 to at least 29 March 2020.
- 16 March 2020: The Complainant closed her dental practice.
- 20 March 2020: The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 was enacted, which at that time was valid until 9 November 2020. This Act empowered the Minister for Health, on an emergency basis, to prohibit and restrict the holding of certain events and to close certain premises.
- 24 March 2020: The Government adopted the following NPHET recommendations:
- a. non-essential retail outlets were closed to members of the public;
 - b. all theatres, clubs, gyms/leisure centres, hairdressers, betting shops, marts, markets, casinos, bingo halls, libraries and other similar outlets were closed;
 - c. all hotels were limited to non-social and non-tourist occupancy;
 - d. all playgrounds and holiday or caravan parks were closed;
 - e. all organised social indoor or outdoor events of any size were not to take place; and
 - f. all cafes and restaurants were to operate on a take-away or delivery basis, with strict physical distancing measures applied to queuing for this service.

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27 March 2020: From midnight, strict public health measures came into force requiring all members of the public to stay at home, excluding essential service workers.

28 March 2020: The Department of An Taoiseach published the 'List of Essential Service Providers under New Public Health Guidelines', which detailed essential services that could remain open and whose workers were permitted to attend the workplace. This included, under the section titled 'Human Health and Social Work Activities', "*emergency dental practice activities*". In addition, Schedule 2, 'Essential Services', of the Health Act 1947 (Section 31A – Temporary Restrictions) (COVID-19) Regulations (S.I. 121 of 7 April 2020), hereinafter 'the 7 April 2020 Regulations', again listed "*emergency dental services*".

8 April 2020: An Garda Síochána given additional powers under the 7 April 2020 Regulations to levy fines for not complying with the above restrictions.

In the context of emergency dental procedures, the Dental Council of Ireland added an addendum to its 'Code of Practice on Infection Prevention and Control' at <http://www.dentalcouncil.ie/covid.php>, as follows:

"The Dental Council has agreed to insert an interim sentence of guidance at the bottom of Section 2.3.1.4 of [the] Code of Practice regarding Infection Prevention and Control with effect from 8 April 2020 ...

The revised Section states:

"The use of PPE must be guided by risk assessment. It must be used to protect DHCWs from exposure to or contact with infections or potentially infectious microorganisms. Items of PPE include gloves, gowns, face masks, goggles and face shields. These must not be worn outside the area in which they are used. Hand hygiene must be carried out after removal and appropriate disposal of PPE. Most PPE items are regarded as single use (but refer to the manufacturer's instructions). Aerosol-generating procedures should only be undertaken with an appropriate level of PPE, which includes a respirator mask to a minimum standard of FFP2".

The Council believes that this approach, which errs on the side of caution, protects the health of patients, dental healthcare professionals and the community at large until the scientific

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evidence on the appropriate precautions become clearer. This measure is in addition to the environmental and organisational precautions necessary to protect against cross-infection within the dental practice”.

1 May 2020: The Government published its ‘**Roadmap for Reopening Society and Business**’, setting out its plans for easing COVID-19 restrictions and enabling a phased reopening of Ireland’s economy, with Phase 1 on 18 May 2020, Phase 2 on 8 June 2020, Phase 3 on 29 June 2020, Phase 4 on 20 July 2020 and Phase 5 on 10 August 2020.

18 May 2020: The Health Act 1947 (Section 31A – Temporary Restrictions) (COVID-19) (Amendment) (No. 3) Regulations (S.I. 174 of 17 May 2020), hereinafter ‘the 17 May 2020 Regulations’, amended the 7 April 2020 Regulations by classifying dental services as an essential service so as to enable routine dental care to resume from that date. The Dental Council confirmed on 20 May 2020 on its website that this:

“... allowed dental professionals, including dental technicians and other support staff, to leave their residence to provide or assist in the provision of dental services (with the word “emergency” deleted)”.

It also stated that the resumption of routine services should proceed subject to adherence to the Health Protection Surveillance Centre guidelines on Managing Infection Related Risks in Dental Services.

The Provider says it was notified by the Complainants’ Broker by email on **30 March 2020** of a claim for business interruption losses as a result of the temporary closure of the Complainant’s dental practice on 16 March 2020 for a period, as follows:

“Please be advised that [the Complainant] has advised that the practice is closed since the 16th March 2020”

The Provider says that it appointed a Loss Adjuster on **7 April 2020** to investigate the claim on its behalf. Following its assessment, the Loss Adjuster emailed the Complainant’s Broker on 29 April 2020 to advise that it was declining indemnity, as follows:

“During our discussion, we were advised of the following circumstances which have given rise to this business interruption claim:

- *The Insured was concerned for the health of her staff and customers and as such, the Insured closed the business from Monday 16th March 2020, and has not been trading since.*
- *The Insured has outlined that no outbreak of Covid-19 has occurred on her premises. The Insured has highlighted the possibility that staff, or customers*

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may have had the disease unbeknownst to her, however the Insured has been unable to show a direct link to any person or outbreak.

As we advised the Insured in this telephone discussion, her policy provides cover in respect of the interruption of her business as the result of an outbreak of a notifiable disease occurring at her premises ...

Whilst COVID-19 is a notifiable disease, our understanding of the circumstances as outlined by your Policyholder is that there was no outbreak occurring at her premises and as such her Business Interruption losses are not covered”.

The Provider says that the Complainant emailed a complaint to the Loss Adjuster and the Provider on **7 May 2020** regarding this declinature. Following its review, the Provider emailed the Complainant on 12 June 2020 to advise that it was standing over its decision to decline indemnity, as follows:

“Whilst COVID19 is a notifiable disease in our opinion, our understanding of the circumstances as outlined by you is that there was no specific outbreak occurring at your premises and as such your Business Interruption losses are not covered. Referring to your email of the 7/05/20, I confirm having reviewed same and while we acknowledge the points raised by you, these points do not change the position on policy cover. I note your conclusion that the Government decision to introduce special measures as a result of the disease spreading equates to an outbreak on your premises, however this is not what the policy covers”.

The Provider says that the Complainant completed a Financial Services and Pensions Ombudsman Complaint Form on **29 June 2020**. As she was claiming for business interruption losses arising from the temporary closure of her dental practice due to the outbreak of COVID-19, the Provider notes that the only potential basis for cover was under the ‘Disease, vermin and suicide extension’ of the ‘Business Interruption Extensions of cover’ section of the Office Insurance Policy Document, which provides that:

“We will also pay for: ...

(5) Disease, vermin and suicide extension

Loss of INCOME and/or INCREASED COST OF WORKING as insured by this section incurred by YOU as a result of interruption or interference with the BUSINESS caused by:

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

(b) the discovery of vermin or pests at the PREMISES which causes a competent local authority to restrict the use of the PREMISES

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(c) *closure of the PREMISES by a competent local authority because of defects in the drains or other sanitary arrangements at the PREMISES*

(d) *murder or suicide occurring at the PREMISES:*

Provided that the beginning of the INDEMNITY PERIOD will be:

(i) *in the case of (a) and (d), when the incident happens or is discovered, in the case of (b) and (c), the date when the restrictions on the PREMISES are applied*

For the period specified in the INDEMNITY PERIOD".

[Emphasis added]

The Provider says that 'Business Interruption Section - Meaning of Words' section of this Policy Document defines the term "NOTIFIABLE DISEASE" at pg. 28, as follows:

"Notifiable Disease

Illness sustained by any person *resulting from:*

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

[Emphasis added]

In this regard, the Provider notes that COVID-19, and its virus agent SARS-CoV-2, were designated as notifiable diseases in Ireland on **20 February 2020**. It therefore maintains that, reading the provisions relevant to this matter together, the policy, by way of the notifiable disease extension, provides cover for loss of income and extra expenses:

- (i) *"as a result of" an interruption of or interference with the business;*
- (ii) *"caused by an outbreak of [COVID-19 "illness sustained by any person"] occurring at the PREMISES".*

For the purposes of the notifiable disease limb, the indemnity period commences when *"the incidence happens or is discovered"*.

As a result, the Provider says that for cover to be triggered, it must be proved that an instance of COVID-19 illness in a person, occurred at the premises, and it was that *"outbreak"/occurrence* at the premises – as opposed to anywhere else – that caused the business interruption suffered.

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The Provider says that this interpretation is not merely evident on the face of the clause; it is also entirely consistent with the notifiable disease extension providing that the indemnity period only commences for notifiable disease purposes when “the incident happens or is discovered”. The Provider says that the Cambridge English Dictionary defines:

- (i) an “incident” as “an event that is either unpleasant or unusual”; and
- (ii) an “event” as “anything that happens, especially something important or unusual”;

The Provider therefore says it is clear that there must be a specific happening, a specific occurrence, of COVID-19 illness “at the PREMISES” for cover to be triggered and for the indemnity period to commence. This interpretation is further supported by the fact that as a matter of law, an ‘event’ is defined as something that happens at a particular time, at a particular place and in a particular way [as per *Axa Reinsurance v. Field* [1996] 1 WLR 1026].

The Provider says that it is also important to appreciate what the notifiable disease extension does not say: it does not simply provide cover for business interruption “caused by an outbreak of any NOTIFIABLE DISEASE”; if it did, then business interruption losses caused by the simple fact of COVID-19, or its virus agent SARS-CoV-2, in the country would be recoverable. Rather, the Provider says that the notifiable disease extension only covers business interruption “caused by an outbreak of any NOTIFIABLE DISEASE occurring at the PREMISES”.

[Emphasis added]

The Provider says that the essence of the cover, therefore, is that it is local, in that it is limited to coverage of business interruption caused by incidents of illness in persons which happen, or are discovered, at the insured premises.

The Provider notes that this is also consistent with the other clauses contained in the ‘Disease, vermin and suicide extension’ to which regard can legitimately be had when interpreting clause (a), consistent with the Irish law interpretation principles of *ejusdem generis* (of the same kind) and *noscitur a sociis* (known by its associates). Specifically those other clauses provide cover for business interruption caused by:

- (i) the discovery of vermin or pests “at the PREMISES”;
- (ii) drain or sanitary arrangement defects “at the PREMISES”; and
- (iii) murder or suicide “at the PREMISES”.

The Provider notes, against the background of the above points, that the Complainant has provided no evidence (the burden of proof being on the Complainant) that proves for clause (a) purposes, whether on a balance of probabilities (i.e. more likely than not) or otherwise, that a person who had been “at the PREMISES” prior to its closure by the Complainant on 16 March 2020 was ill with COVID-19.

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The Provider notes that in this context, the Complainant stated in her correspondence to the Provider of 7 May 2020, as follows:

"[The Provider] also mentioned the following as one of the circumstances which have given rise to this business interruption claim:

"The Insured has outlined that no outbreak of Covid-19 has occurred on her premises. The Insured has highlighted the possibility that staff, or customers may have had the disease unbeknownst to her, however the Insured has been unable to show a direct link to any person or outbreak".

I dispute that no direct link has been shown to the disease outbreak. It is the authorities who have reached a judgment that there is a direct link between the outbreak and my premises which they have indicated by their official orders causing me to stop trading. The authorities' issuing of those orders demonstrates their judgment that there is a direct link to the disease outbreak ...

The authorities' orders to stop trading indicates their judgment that the outbreak is occurring at my premises, otherwise why issue the orders that stop trading at the premises?

The COVID-19 outbreak is occurring nationwide and many cases have been recorded in the [location] city area where my practice is located. So my premises are located inside an outbreak area, not outside ... Either a) the outbreak is occurring on my premises and thus giving rise to the orders that have caused my premises to stop trading or else b) the outbreak is not occurring on my premises ([the Provider's] argument) in which case there would not have been orders to stop trading.

Respectfully, your argument seems to be denying the government's judgment that the disease does occur at my premises".

The Provider, whilst appreciating the Complainant's position, observes that:

- (i) it simply cannot be stated that because the Government officially required dental practices to stop carrying out routine surgery, and limited them only to emergency care, that that somehow constitutes proof that there was an "outbreak of [COVID-19] occurring at the [Complainant's dental practice] PREMISES" for the purposes of the notifiable disease extension. If that was in fact the case, the Provider asks why then would the Government have still permitted emergency care at the Complainant's dental practice?;
- (ii) the correct position is that the introduction of the restrictions had nothing to do with proving, or disproving, the existence of COVID-19 at any particular premises; rather, as stated in Section 31A(2)(v) of the Health Act 1947 (as inserted by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020), the restrictions were imposed

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through regulations (ultimately commenced on 8 April 2020) premised on the Minister for Health

“... having regard to ...

(iii) the fact that COVID-19 poses significant risks to human life and public health by virtue of its potential for incidence of mortality; ...

(v) the need to act expeditiously in order to prevent, limit, minimise or slow the spread of COVID-19 ...”;

(iii) accordingly, the fact that restrictions were imposed on dental practices, like many other sectors of the economy, is not in any way proof that every one, or indeed any one, of the affected premises in Ireland had had an outbreak of COVID-19 illness at those premises. Rather, the restrictions were introduced to keep people apart and thereby stop person-to-person spread of the disease as referenced in the legislation above.

The Provider notes that in its ‘Expectations of Insurance Undertakings in Light of COVID-19’ correspondence to Insurers dated 27 March 2020, the Central Bank of Ireland stated:

“The Central Bank is of the view that where a claim can be made because a business has closed, as a result of a Government direction due to contagious or infectious disease, that the recent Government advice to close a business in the context of COVID-19 should be treated as direction”.

The Provider fully agrees with and accepts these expectations. However, it is important to note that clause (a) of the notifiable disease extension does not provide indemnity for business interruption losses arising solely from a government direction to close: as above, the peril that is insured is interruption *“caused by an outbreak of [COVID-19 “illness sustained by any person”] occurring at the PREMISES”*.

Subject to this, the Provider says that it is obviously not the case (and the Provider does not take it as being suggested) that the Complainant closed her dental practice on 16 March 2020 as a result of government advice, as no such advice had issued to dental practices at that time. The closure direction from government in relation to dental practices (and then only for routine services, not emergency services) issued on 28 March 2020. The Provider fully accepts that the Complainant was required to close on that date, notwithstanding that this direction only formally became law (under the 7 April 2020 Regulations) on 8 April 2002.

The Provider also fully accepts that insofar as the business was already closed as at 28 March 2020, closure from that date was as a result of the 28 March 2020 government direction. However, as the closure direction was not *“caused by an outbreak of [COVID-19 “illness sustained by any person”] occurring at the PREMISES”*, the insured peril, but rather would have issued in any event irrespective of the position at the insured premises, the losses due to the closure direction are not covered under the notifiable disease extension.

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In addition, the Provider also notes that the Complainant stated in her correspondence to the Provider of **7 May 2020**, as follows:

“ ... the Dental Council by whom we are regulated has issued notification of and inserted the following statement at Section 2.3.1.4 of its Code of Practice regarding Infection Prevention and Control:

“Interim Measure During COVID-19 Pandemic: Aerosol-generating procedures should only be undertaken with an appropriate level of personal protection equipment (PPE), which includes a respirator mask to a minimum standard of FFP2”.

But Dentists do not have PPE. No dentist, public or private, has hospital-grade PPE to my knowledge. And there is no avoiding Aerosol-generating procedures from tools such as the drill, the three-in-one syringe used to dry/rinse a patient’s mouth, and the ultrasonic scaler that removes plaque from teeth and these are all dangerous in a Covid-19 scenario. Virtually every procedure generate sprays that fly directly up into the dentist’s and nurse’s faces. These sprays linger in the air - above staff, patient and dental chair - before falling back down on surrounding work surfaces. If a patient is infected with Covid-19 or is an asymptomatic carrier, the virus is carried in the aerosol spray. The nurse and dentist are inhaling this and, because it’s in the atmosphere or on surfaces, patients coming in afterwards could potentially become infected. Thus the Dental Council instruction to only work with PPE but it is not available. This creates an impossible situation”.

In this regard, the Provider says that the actions of the Dental Council of Ireland have no bearing on whether the Complainant’s policy responds to the business interruption claim that has been made. The sole issue is whether the Complainant has incurred business interruption that is proximately *“caused by an outbreak of [COVID-19 “illness sustained by any person”] occurring at the PREMISES”*. The Provider does not consider this to be the case, for the reasons set out extensively above.

For completeness, the Provider says that it does not accept that the Complainant’s dental practice was closed or significantly limited in its ability to trade, as a result of a direction from the Dental Council of Ireland. Instead, any closure and/or limitation of the Complainant’s ability to trade derived from the Government direction on 28 March 2020 that dental practices had to cease providing routine services and could only provide emergency dental services.

The Provider says that the full background to the Complainant’s observations as quoted above in her correspondence of 7 May 2020 is, as taken from the Dental Council of Ireland’s website entry at 8 April 2022, at <http://www.dentalcouncil.ie/covid.php>, as follows:

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“Addendum to Dental Council’s Code of Practice on Infection Prevention and Control

The Dental Council has agreed to insert an interim sentence of guidance at the bottom of Section 2.3.1.4 of [the] Code of Practice regarding Infection Prevention and Control with effect from 8 April 2020.

It is important to note that a decision on the appropriate PPE to use in the clinical setting must be guided by a risk assessment. The revised Section states:

“The use of PPE must be guided by risk assessment. It must be used to protect DHCWs from exposure to or contact with infections or potentially infectious microorganisms. Items of PPE include gloves, gowns, face masks, goggles and face shields. These must not be work outside the area in which they are used. Hand hygiene must be carried out after removal and appropriate disposal of PPE. Most PPE items are regarded as single use (but refer to the manufacturer’s instructions). Aerosol-generating procedures should only be undertaken with an appropriate level of PPE, which includes a respirator mask to a minimum standard of FFP2”.

The Council believes that this approach, which errs on the side of caution, protects the health of patients, dental healthcare professionals and the community at large until the scientific evidence on the appropriate precautions become clearer. This measure is in addition to the environmental and organisational precautions necessary to protect against cross-infection within the dental practice”.

[Emphasis added]

The Provider notes that the Dental Council of Ireland’s statement is referred to as “*guidance*”, not a direction or an instruction. The Provider has no dealings with the Dental Council of Ireland and cannot therefore comment authoritatively as to why this guidance was given; it can only infer that the reasons for the guidance are those set out in the final paragraph of the section quoted above from its website.

The Provider says, in conclusion, that it declined the Complainant’s claim because there was no evidence provided, the burden being on the Complainant, to prove under clause (a) of the notifiable disease extension that a person who had been “*at the PREMISES*” prior to its closure by the Complainant on 16 March 2020 was ill with COVID-19, this being the insured risk.

The Provider therefore concluded that the Complainant’s ensuing losses did not fall within the scope of cover provided by the relevant business interruption notifiable disease extension of the office insurance policy.

Accordingly, the Provider is satisfied that it declined indemnity in this matter, in accordance with the terms and conditions of the Complainant’s office insurance policy.

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The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainant's claim for business interruption losses as a result of the temporary closure of her dental practice due to the outbreak of coronavirus (COVID-19).

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant 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 **25 February 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant, who held an office insurance policy with the Provider, closed her dental practice on **16 March 2020**, due to the outbreak of COVID-19. As a result, the Complainant's Broker notified the Provider by email on 30 March 2020 of a claim for business interruption losses as a result of the temporary closure of her dental practice.

I note that following its claim assessment, the Provider's Loss Adjuster emailed the Complainant's Broker on 29 April 2020 to advise that it was declining indemnity as the circumstances of the claim did not fall within the scope of policy cover provided by the relevant notifiable disease extension, because the policy only provides business interruption cover arising from a closure due to a notifiable disease where there is an outbreak of that notifiable disease at the insured premises, a decision it upheld upon review in its email of 12 June 2020.

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The Complainant's office 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.

In that context, I have examined the specific policy wording relevant to the Complainant's claim, which can be extracted from the 'Business Interruption Extensions of cover' section at pg. 34 of the applicable Office Insurance Policy Document, as follows:

"We will also pay for: ...

(5) Disease, vermin and suicide extension

Loss of INCOME and/or INCREASED COST OF WORKING as insured by this section incurred by YOU as a result of interruption or interference with the BUSINESS caused by:

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

Provided that the beginning of the INDEMNITY PERIOD will be:

... when the incident happens or is discovered ...

For the period specified in the INDEMNITY PERIOD".

[Emphasis added]

The 'Business Interruption Section - Meaning of Words' section of the Policy Document defines the term "NOTIFIABLE DISEASE" at pg. 28, as follows:

"Notifiable Disease

Illness sustained by any person resulting from ...

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

[Emphasis added]

I note that COVID-19, and its virus agent SARS-CoV-2, were designated as notifiable diseases in Ireland on 20 February 2020, by way of the Infectious Diseases (Amendment) Regulations 2020. I am satisfied however, that it is clear from the above notifiable disease extension of the Complainant's policy of insurance, that for cover to be triggered, there must be a loss to the policyholder, arising from the interruption of or interference with the business as a result of the insured peril, in this instance, because of an occurrence of the notifiable disease COVID-19 at the Complainant's dental practice.

/Cont'd...

Having regard to the specific wording “*an outbreak of any NOTIFIABLE DISEASE occurring at the PREMISES*” [*emphasis added*], I am satisfied that it was the clear intention of the underwriters, that the occurrence of the notifiable disease is location specific, insofar as the occurrence of the notifiable disease must be at the insured premises, in order for the particular insured peril at the notifiable disease extension to operate.

I am conscious of the submissions contained in the complaint the Complainant emailed to the Provider on 7 May 2020, in which she advanced a number of different reasons as to why she considered her office insurance policy might provide cover in the circumstances of its claim. In this regard, however, notwithstanding that:

- (i) there was a general outbreak of COVID-19 in Ireland at the time the Complainant closed her dental practice on 16 March 2020; and
- (ii) the Government issued a direction on 28 March 2020 for dental practices to cease providing routine dental services and to only carry out emergency dental treatments; and
- (iii) the Dental Council of Ireland issued guidance on 8 April 2022 in relation to the use of Personal Protection Equipment (PPE) equipment, which I note the Complainant submits was “*not available*” at that time and thus “*create[d] an impossible situation*” for her to safely carry out dental treatment;

I accept the Provider’s position that these events, regardless of the consequences they may have had on the Complainant’s ability to continue the business of her dental practice, are not insured perils listed in the office insurance policy which she holds with the Provider.

Instead, for the purposes of the relevant notifiable disease extension, the specific insured peril is that there is a loss as a result of a business interruption caused by “*an outbreak of [COVID-19 “illness sustained by any person”] occurring at the [Complainant’s dental practice] PREMISES*”.

I note from the documentary evidence before me that the Complainant has not supplied the Provider with any evidence indicating that there was a confirmed case of COVID-19 at her dental practice, as a result of which she was required to close her dental practice on 16 March 2020.

Accordingly, I am satisfied that the Provider was entitled, in strict accordance with the terms and conditions of the contract of insurance in place between the parties, to decline the Complainant’s claim for business interruption losses as a result of the temporary closure of her dental practice. I accept in that regard that the Provider did not act wrongfully in declining the Complainant’s claim. It is my Decision therefore, on the evidence before me that this complaint cannot 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

22 March 2021

Pursuant to **Section 62** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

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