



<b><u>Decision Ref:</u></b>	2022-0097
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Rental Property
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim
<b><u>Outcome:</u></b>	Rejected

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

The Complainant, a landlord, held a **Business Complete Insurance Policy** with the Provider. This complaint concerns the Provider's declination of the Complainant's business interruption claim.

#### **The Complainant's Case**

The Complainant notified the Provider on **16 April 2020** of a claim for loss of rental income when her tenant, which traded as a beauty salon, was unable to pay her the rent due, as a result of the tenant's closure arising from the outbreak of Coronavirus and the Government measures introduced to curb the spread of coronavirus (COVID-19).

Following its assessment, the Provider wrote to the Complainant on **21 April 2020** to advise that it had declined her claim, as follows:

*"We have carefully considered your insurance policy to assess whether it provides cover in circumstances where your business had to close to assist nationwide measures introduced by the Government to slow the spread of the COVID 19 pandemic. The business interruption section of the policy is normally triggered following physical damage to the premises or stock caused by one of the insured events listed in the policy. There is also an extension against business interruption resulting from a case or cases of specifically named notifiable diseases (listed in the policy) at the premises or caused by food or drink supplied from the premises or any organism likely to cause one of the named listed notifiable diseases being discovered at the premises.*

We have determined for the reasons outlined in detail below that your policy does not provide cover in these circumstances and unfortunately, we must decline your claim as a result.

The relevant wording of the policy in so far as relates to your claim, is as follows:

1. Section 2 of the Policy provides cover for business interruption. "Business Interruption" is defined as:-

*"Interruption of or interference with the **business** carried on by the Insured at the **premises** in consequence of **damage** to property used by the Insured at the **premises** for the purpose of the **business**".*

2. The Policy specifies a number of additional extensions that apply to section 2 business interruption cover, one of which at clause H ("**the clause**") provides:-

*"This extension provides cover against **business interruption** resulting from the following.*

1. A case or cases of any of the notifiable diseases (as listed below) at the premises, or caused by food or drink supplied at the premises.
2. Any organism likely to cause a notifiable disease (as listed below) being discovered at the premises.
3. Murder or suicide at the premises.

**Notifiable diseases**

Acute encephalitis  
Anthrax  
Chickenpox  
Conjunctivitis  
Dysentery  
Legionnaires disease  
Leptospirosis  
Measles  
Mumps  
Rabies  
Scarlet fever  
Tetanus  
Typhoid fever  
Whooping cough

Acute poliomyelitis  
Bubonic or pneumonic plague  
Cholera  
Diphtheria  
Legionellosis  
Leprosy  
Malaria  
Meningitis  
Paratyphoid fever  
Rubella  
Smallpox  
Tuberculosis  
Viral hepatitis  
Yellow fever".

3. [The Provider] have carefully considered your claim and do not consider that the claim falls within cover under the Policy. In particular, [the Provider] is satisfied that the claim notified is not covered for the following reasons, each of which apply independently of each other.

3.1 The definition of notifiable diseases covered by the extension does not include Covid-19. Accordingly, it cannot be said on any view that business interruption has resulted from any of the matters specified at 1, 2 or 3.

3.2 The extended business interruption cover is specifically limited by reference to the insured property. In particular, the relevant sub clauses which relate to notifiable diseases require that the notifiable disease should be at the premises or be caused by food or drink supplied from the premises or result from an organism likely to cause a notifiable disease "being discovered at the premises". None of these events occurred and accordingly, it cannot be said on any view that business interruption has resulted from any of the matters specified at 1, 2 or 3.

3.3 It is clear that the agreement to indemnify in respect of the risks at 1, 2 or 3 is provided only where the business interruption loss has been caused by the matters specified at 1, 2 or 3. It is quite clear having regard, inter alia, to social distancing practices (including now the restrictions on more than 4 people gathering together outdoors) and the widespread public concern regarding the risk of infection, any business interruption loss has been caused by such social practices and public concerns and not by the matters at 1, 2 or 3".

Following its subsequent review of the matter, the Provider wrote to the Complainant on **4 June 2021** to advise that it was standing over its decision to decline indemnity, as follows:

*"I note that your dissatisfaction arises from a Business Interruption claim made under your Business Complete policy ("the Policy") arising from the Covid-19 pandemic. Your business description was noted as Property Owner Business let as storage for [a newsagent shop] with part of this area let to tanning shop with [a beauty salon upstairs]. We note that the business description was amended from 12 May 2020 to reflect the upstairs had become unoccupied. This policy was lapsed from 16 February 2021. You have advised that following the outbreak of Covid-19 you have suffered a loss of rental income and your claim was reported to [the Provider] on 16 April 2020.*

*In order to fully investigate the complaint, I have examined the cover, terms and conditions of your Business Complete policy. This claim was considered under Section 2 of the policy which provides cover for business interruption. "Business Interruption" is defined as:*

***“Business interruption***

*Interruption of or interference with the business carried on by the Insured at the premises in consequence of damage to property used by the Insured at the premises for the purpose of the business”.*

*You have advised that following the introduction of the Covid-19 restrictions in March 2020 your business has been unable to operate as normal and the loss reported to [the Provider] relates to a loss of rent receivable.*

*Section 2 of the Policy provides cover in respect of loss of Rent Receivable with a sum insured of €26,500 for a 12-month indemnity period as outlined on your policy schedule. The Policy will only respond to claims presented for loss of Rent Receivable following damage caused to the property used in connection with the Insured’s business by any of the perils covered under Section 1(a): Buildings, Trade Contents, Stock of the policy. Business interruption policy cover becomes operative upon a payment made or liability admitted under the property damage section of the policy. For ease of reference, the relevant policy wordings are outlined below:*

***“Section 2: Business Interruption***

***Cover***

*[The Provider] will indemnify the Insured for the amount of loss against each item insured shown in the schedule, in the manner and to the extent as described under “Basis of settlement” below, following damage caused to property used in connection with the Insured’s business at the premises by any of the perils insured against under section 1(a): Buildings, Trade Contents, Stock of this policy.*

*Provided that the following conditions are met:*

- 1. Payment is made or liability admitted for the damage under an insurance covering the interest of the Insured in the property, or payment would have been made or liability admitted for the damage but for the operation of a policy excess.*
- 2. The total liability under this section is restricted to:*
  - the total sum insured shown in the schedule in respect of any item listed in the schedule; or*
  - the sum insured remaining after deducting any amount [the Provider] has already paid under this section during the same period of insurance, unless [the Provider] shall have agreed to reinstate such sum insured; whichever is less.”*

***“Basis of settlement***

***D For loss of rent receivable***

*[The Provider] will pay as indemnity the amount of rent receivable lost due to (a) loss of rent receivable and (b) additional expenditure, as described below, less any savings in costs or expenses which cease or reduce as a result of the damage.*

***(a) In respect of loss of rent receivable:***

*The amount by which the rent receivable during the indemnity period shall in consequence of the damage fall short of the insurable amount of rent receivable.*

***(b) In respect of additional expenditure:***

*The additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of rent receivable and which, but for that expenditure, would have taken place during the indemnity period in consequence of the damage, but not exceeding the amount of the reduction in rent receivable thereby avoided.*

*Provided that should the amount shown against this item in the schedule be less than the insurable amount of rent receivable, the amount payable shall be proportionately reduced”.*

*[The Provider] have carefully considered your claim and do not consider that the claim falls within cover under the Policy. In particular, [the Provider] is satisfied that the claim notified is not covered on the following basis:*

*Cover for loss of rent receivable only applies following damage caused to the property used in connection with the Insured’s business by any of the perils insured under Section 1(a) Buildings, Trade Contents, Stock of the policy. Business interruption cover for loss of rent receivable becomes operative upon a payment made or liability admitted under Section 1(a) of the policy.*

*We note that following the notification of this loss on 16 April 2020, the claim was declined by way of letter dated 21 April 2020. Following a review of this letter we note that reference was made to the “Additional extensions that apply to Section 2 Business Interruption”, in particular extension H - Human Notifiable Diseases. We must advise that the additional extensions that apply to Section 2 Business Interruption are only applicable where gross profit or gross revenue (or estimated gross profit or estimated gross revenue) are insured. As outlined earlier, the cover applicable under your policy is for loss of rent receivable. For ease of reference, I refer to the relevant policy wording below (Page 43 of your policy document):*

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***“Additional extensions that apply to Section 2: Business Interruption***

*The insurances provided by the extensions in this section shall only be applicable where gross profit or gross revenue (or estimated gross profit or estimated gross revenue) are insured.”*

*We therefore apologise for this error in the letter of declinature which may have led you to believe that the Additional Extensions applied to your policy when in fact this was not the case as outlined in the policy wording above. Even had this extension applied to your policy, we are satisfied for the reasons outlined in the declinature letter that the claim would not fall within the terms of the cover provided under this extension.*

*Please be advised that the judgment handed down by the Commercial Court on 05 February 2021 has clarified that cover for business interruption claims relating to Covid-19 does apply under [the Provider’s] Public House Insurance policy only. However the judgment has no implications for customers with a Business Complete policy as the wording of the policy under consideration in [the Provider] test case is very different to the wording in the Business Complete Policy.*

*[The Provider] fully appreciates that some policyholders may find the claims procedure frustrating particularly if it is unfamiliar to them. In this regard, I can assure you that [the Provider] investigate and verify every claim and that each and every claim is approached with an open mind. Any inconvenience caused during the course of the claim is regretted however having reviewed this matter carefully I am satisfied that the correct decision has been made to decline this claim on the basis the loss presented does not fall within the scope of the cover provided under the Policy.*

*With that being said, owing to the fact that an error was made in the declinature letter issued to you on 21 April 2020 which referenced additional policy extensions that did not apply to your individual policy we are pleased to offer you a goodwill payment in the sum of €500 on account of the error made. Should you wish to accept this good-will offer, please contact the undersigned to make the necessary arrangements”.*

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

*“Loss of rental income and associated expenses as a result of COVID-19. The tenant’s business closed due to Covid-19 ...”*

The Complainant seeks for the Provider to admit and pay her claim in the amount of **€8,937.30 (eight thousand nine hundred and thirty-seven Euro and thirty Cent).**

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In this regard, when she completed the **Complaint Form** to this Office in **March 2021**, the Complainant submitted as follows:

*"I am seeking compensation as outlined below:*

*Loss of Rent €145.00 x 48 = €6,960.00*

*Electricity €1,540.71*

*Insurance Premium 25% of €1,746.36 = €436.59*

*Total €8,937.30".*

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

The Provider that the Complainant contacted it on **16 April 2020** to register a claim for loss of rental income when her tenant, which traded as a beauty salon, was unable to pay her the rent due, as a result of the tenant's closure arising from the outbreak of Coronavirus and the Government measures introduced to curb the spread of COVID-19.

The Provider says the Complainant's business description in the **Policy Schedule** dated **17 February 2020** is declared as:

*"Property Owner Buildings let as storage for [a newsagent shop] with part of this area let to tanning shop [name redacted] with Upstairs Beauty Salon".*

The Provider says that business interruption is only covered by the Complainant's **Business Complete Insurance Policy** in certain defined circumstances, none of which include closure or interruption as a result of COVID-19.

The Provider says in that regard that the Complainant's claim was declined because the claim did not come within the terms of the business interruption cover as set out in Section 2, 'Business Interruption', of the applicable **Business Complete Insurance Policy Document**, which defines business interruption at pg. 36, as follows:

#### ***"Business interruption***

*Interruption of or interference with the **business** carried on by the Insured at the **premises** in consequence of **damage** to property used by the Insured at the **premises** for the purpose of the **business**".*

The Provider says it is apparent from this definition that cover is only provided in circumstances where the business is interrupted as a result of damage to the property.

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The Provider says that this is repeated at pg. 39 of the **Policy Document**, as follows:

***“Cover***

*The Company will indemnify the Insured for the amount of loss against each item insured shown in the schedule, in the manner and to the extent as described under ‘Basis of settlement’ below, following **damage** caused to property used in connection with the Insured’s **business** at the **premises** by any of the perils insured against under section 1(a): Buildings, Trade Contents, Stock of this policy”.*

The Provider says the bold highlighting, as it appears in the **Policy Document**, emphasises in as clear a way as possible, the fact that a business interruption claim can only be made as a result of damage to the premises and not in any other circumstance, and also that those highlighted words have specific definitions under the policy and must be considered in light of same.

The Provider says it is quite clear that the interruption to the Complainant’s business as a landlord in this case arose, not as a result of damage to the premises, but rather as a result of both the suite of public health measures including social distancing measures introduced in mid-March 2020 and other governmental restrictions which prohibited the making of unnecessary journeys by the public.

In summary, the Provider says the policy only responds to claims for business interruption arising from damage caused to the premises and as the Complainant’s claim is manifestly not such a claim, it follows that it was correct to decline the claim. It is the Provider’s position that the terms of the Complainant’s **Business Complete Insurance Policy** are abundantly clear.

The Provider declined the Complainant’s claim by way of letter dated **21 April 2020**. Following a review of this declination letter, the Provider noted that reference had been made in error, to the ‘Additional extensions that apply to section 2: Business interruption’, in particular Extension H, ‘Human notifiable diseases, murder or suicide’.

The Provider says that in fact, the additional extensions that apply to Section 2, ‘Business Interruption’, are only applicable where gross profit or gross revenue (or estimated gross profit or estimated gross revenue) are insured, as stated in the **Policy Document** at pg. 43:

***“Additional extensions that apply to section 2: Business interruption***

***The insurance provided by the extensions in this section shall only be applicable where gross profit or gross revenue (or estimated gross profit or estimated gross revenue) are insured”.***

The Provider says that the cover applicable under the Complainant’s policy is for loss of rent receivable with a sum insured of **€26,500.00 (twenty six thousand and five hundred Euro)**.

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The Provider says that this is confirmed in the **Policy Schedule** dated **17 February 2020**, as follows:

<b><i>“Cover Description</i></b>	<b><i>Indemnity Period</i></b>	<b><i>Sum Insured</i></b>
<i>Rent receivable</i>	<i>12 months</i>	<i>€26,500”.</i>

The Provider says that even if Extension H, ‘Human notifiable diseases, murder or suicide’, had applied to the Complainant’s policy (which it did not) it is clear that the claim would not have fallen within the cover afforded by the policy, for the reasons it outlined in the declinature letter of **21 April 2020**, including the fact that COVID-19 is not one of the notifiable diseases listed under the extension.

Aside from the fact that the business interruption cover specific to the Complainant’s policy is for rent receivable only, and does not provide for loss of gross profit (or estimated gross profit) or loss of gross revenue (or estimated gross revenue), the Provider refers to the relevant policy definitions that apply to Section 2, ‘Business Interruption’, at pgs. 36 - 38 of the **Policy Document** and says that the highlighted words have specific definitions under the policy and must be considered in light of same, as follows:

***“Turnover***

*The money paid or due for goods sold and delivered and services provided, in the course of the **business** ...*

***Gross profit***

*This is:*

- *the total of the **turnover** plus the value of the closing stock; less*
- *the total of the value of the opening stock plus any **uninsured variable costs**;*  
*where the amounts of opening stock and closing stock shall be arrived at in accordance with the Insured’s normal accounting methods with due provision being made for depreciation ...*

***Gross revenue***

*The revenue paid or payable to the Insured in respect of services provided ...*

***Rent receivable***

*The total of the rent, service charges and similar payments received for letting the property at the **premises**, adjusted to take account of the **trends of the business** (increased proportionately if the **maximum indemnity period** is more than 12 months).*

***Insurable amount of rent receivable***

*The **rent receivable** which, if the **damage** had not happened, the Insured would have been entitled to in the 12 months immediately after the **damage** (increased proportionately if the **maximum indemnity period** is more than 12 months), adjusted for **trends of the business”.***

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Accordingly, the Provider says that it is satisfied that it correctly assessed and declined the Complainant's claim in accordance with the terms and conditions of her **Business Complete Insurance Policy**.

The Provider says that in its **Final Response of 4 June 2021** it acknowledged the error in its declinature letter to the Complainant dated **21 April 2020**, which inaccurately referenced Extension H, 'Human notifiable diseases, murder or suicide', when this extension did not in fact apply to the Complainant's policy. For that reason, the Provider, in its **Final Response of 4 June 2021**, offered the Complainant a goodwill payment in respect of this error in the sum of **€500.00 (five hundred Euro)**, which the Complainant rejected.

The Provider said on **15 November 2021**, in its **Formal Response** to the complaint investigation by this Office, that it wished to increase this offer to **€750.00 (seven hundred and fifty Euro)**.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongly or unfairly declined to admit the Complainant's claim for loss of rental income when her tenant was unable to pay her the rent due, as a result of the tenant's closure arising from the outbreak of Coronavirus and the Government measures introduced to curb the spread of COVID-19.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant 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.

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A Preliminary Decision was issued to the parties on **22 February 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. 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 notified the Provider on **16 April 2020** of a claim for loss of rental income when her tenant, which traded as a beauty salon, was unable to pay her the rent due, as a result of the tenant's closure arising from the outbreak of Coronavirus and the Government measures introduced to curb the spread of COVID-19.

I note that following its assessment of the claim, the Provider wrote to the Complainant on **21 April 2020** to advise that it had declined her claim for business interruption losses because the policy did not provide her with cover in the claim circumstances.

The Complainant's **Business Complete 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.

I note that the Complainant's business description in the **Policy Schedule** dated **17 February 2020** is declared as:

*"Property Owner Buildings let as storage for [a newsagent shop] with part of this area let to tanning shop [name redacted] with Upstairs Beauty Salon".*

I also note that the Business Interruption cover is stated in this **Policy Schedule** as:

<i>"Cover Description</i>	<i>Indemnity Period</i>	<i>Sum Insured</i>
<i>Rent receivable</i>	<i>12 months</i>	<i>€26,500".</i>

The Complainant's business interruption cover was therefore limited under the policy, to rent receivable for the sum insured of **€26,500.00 (twenty-six thousand and five hundred Euro)**.

I note that Section 2, Business Interruption', of the applicable **Business Complete Insurance Policy Document** defines business interruption at pg. 36, as follows:

***"Business interruption***

*Interruption of or interference with the **business** carried on by the Insured at the **premises** in consequence of **damage** to property used by the Insured at the **premises** for the purpose of the **business**".*

[My underlining for emphasis]

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The 'General Definitions' section of the **Policy Document** defines 'Damage' at pg. 3 of the **Policy Document** as:

***"Damage***

*Accidental loss, damage or destruction".*

I accept the Provider's position that because the Complainant's tenant's occupancy of the Complainant's property was not interrupted as a result of damage to the property, that the Complainant's policy did not provide cover, in the particular circumstances which arose.

It is also important to note that even if the Complainant's business interruption cover had not been limited to rent receivable only, the **Business Complete Insurance Policy Document** does not list COVID-19 or its virus agent SARS-CoV-2 as one of the notifiable diseases that are covered under Extension H, 'Human notifiable diseases, murder or suicide', of the additional extensions that apply to section 2, 'Business interruption', of the policy.

I note that the Provider has acknowledged that it incorrectly referred to Extension H, 'Human notifiable diseases, murder or suicide', in its original declinature letter to the Complainant dated **21 April 2020** even though the additional extensions that apply to Section 2, 'Business interruption', of the **Business Complete Insurance Policy Document** did not apply to the Complainant, as her business interruption cover was limited to rent receivable only.

Administrative errors of this nature are unsatisfactory and can cause confusion. The Complainant ought to be able to rely on the expertise of the Provider with regard to information concerning the cover provided by her policy.

That said, I am cognisant of the fact that the Provider did correctly state in its declinature letter to the Complainant that the definition of notifiable diseases covered by Extension H, 'Human notifiable diseases, murder or suicide', did not include COVID-19. As a result, I am satisfied that the Provider's error in no way suggested to the Complainant that her policy provided her with cover, when it did not.

I note that in its **Final Response** of **4 June 2021**, the Provider offered the Complainant a goodwill payment in respect of its error in the sum of **€500.00 (five hundred Euro)**. I also note that in its **Formal Response** to the complaint investigation by this Office, transmitted on **15 November 2021**, the Provider increased this offer to **€750.00 (seven hundred and fifty Euro)**.

I am of the opinion, in the circumstances, that this is a very reasonable offer given the nature of the Provider's error, and it will be a matter now for the Complainant to communicate directly with the Provider if she wishes to accept its goodwill payment of **€750.00 (seven hundred and fifty Euro)**.

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Insofar as the substantive complaint is concerned however, having regard to all of the above, I am of the opinion that the evidence does not support the complaint that the Provider wrongly or unfairly declined to admit the Complainant's claim for loss of rental income when her tenant was unable to pay her the rent due, as a result of the tenant's closure arising from the outbreak of Coronavirus and the Government measures introduced to curb the spread of COVID-19.

On the evidence before me therefore, I take the view 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)

21 March 2022

### **PUBLICATION**

#### **Complaints about the conduct of financial service providers**

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

(a) ensures that—

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

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

**Complaints about the conduct of pension providers**

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

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

