

# Guidance on Business Interruption



We received the following advise in respect of business claiming for business interruption:

For businesses with a turnover that was not in excess of €3 million last year there are extra protections under the Central Bank of Ireland (CBI) Consumer Protection Code which regulates insurers. There is also a free service on dispute resolution from the Financial Services & Pensions Ombudsman (FSPO) which accommodates lay litigants. Relevant extracts are set out at the end of this document.

For those with turnover in excess of €3 million there may be an Arbitration clause in the policy. However, the wording needs to be checked carefully. Some Arbitration clauses apply to all disputes under the policy whereas others mandate Arbitration only where the amount payable is in dispute under confirmed cover.

Most claims resolved through the FSPO are settled by mediation. In litigation, many judges also strongly recommend mediation. All parties, regardless of turnover levels, can voluntarily agree to mediation which is generally a quicker and more cost effective route to resolve disputes. Ambiguities in policy wordings are interpreted in favour of the policyholder, as confirmed by the CBI letter of 27<sup>th</sup> March 2020 to CEO's of insurers covering risks in Ireland.

The first step to establishing whether there is any insurance against Business Interruption is to check the policy Schedule of the property insurance which will indicate what sections of the policy actually apply to that policyholder. These are not individually negotiated contracts. Many policyholders have received extensive documents, some in excess of 100 pages, detailing a wide range of cover that does not apply because those extensions were not purchased.

It is not possible to make progress on any disputes about claims for financial losses under Business Interruption (BI) cover until the basis of the declinature by the insurer is known. Insurers have obligations in the handling of claims and in the resolving of disputes as detailed in the extracts below from CBI and FSPO.

## **Financial Services & Pensions Ombudsman - 3 Steps to making a complaint to the FSPO**

Before making a complaint to the FSPO, you should give your provider a chance to sort out the problem. The provider should deal with your complaint through its complaint handling process. This is called an internal dispute resolution process (IDR process).

### **1. Contact your provider**

You should make your complaint with whoever provided the service or product to you, this could be your bank, insurance company, credit union, money lender etc.

You should speak or write to either the person you usually deal with, or ask for the complaints manager to make a complaint.

### **What information should you give them?**

Make it very clear that you are making a complaint. Explain your complaint. Suggest how they should put it right.

Provide detailed information, including:

- Relevant dates, places and times
- Details of any phone conversations and meetings (e.g. who was involved, when they took place and what was said)
- Copies of relevant documents, such as contracts, statements, emails, letters, invoices and receipts.

### **2. Be patient and persistent**

The provider should deal with your complaint through its complaint handling process. The provider may take up to 40 working days to deal with your complaint. When you complain to the provider be persistent. If nothing happens, call the provider to check on the progress of your complaint.

The provider should fully investigate your complaint. In the majority of cases the provider will resolve your complaint. If they don't resolve it, they will issue a **final response letter** to you.

A final response should set out what the provider has done to investigate your complaint through its complaint handling process. It should advise you to contact the FSPO as your next step, if you remain unhappy.

### **3. If you remain unhappy after receiving your Final Response Letter, you may contact the FSPO.**

To progress your complaint, we will need

1. A completed complaint form (<https://www.fspo.ie/complaint-form.aspx>) and
2. A copy of your final response letter

<https://www.fspo.ie/make-a-complaint/>

*(To curtail delays it might be advisable to send a copy of last year's accounts to FSPO to demonstrate that turnover level was within the financial limit)*

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## **CENTRAL BANK OF IRELAND CONSUMER PROTECTION CODE**

### **Chapter 12 Definitions**

**“consumer”** means any of the following:

- a) a **person** or **group** of **persons**, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (for the avoidance of doubt a group of **persons** includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or
- b) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a **group** of companies having a combined turnover greater than the said €3 million);

## Chapter 7.7 Claims Processing

- d) the **regulated entity** must offer to assist in the process of making a claim, including, where relevant, alerting the **claimant** to policy terms and conditions that may be of benefit to the **claimant**;
- e) a **record** must be maintained of all conversations with the **claimant** in relation to the claim; and
- f) the **regulated entity** must, while the claim is ongoing, provide the **claimant** with updates of any developments affecting the outcome of the claim within ten **business days** of the development. When additional documentation or clarification is required from the **claimant**, the **claimant** must be advised of this as soon as required and, if necessary, issued with a reminder on paper or on another **durable medium**.

## Chapter 10 Complaints Resolution

10.7 A **regulated entity** must seek to resolve any **complaints** with **consumers**.

10.8 When a **regulated entity** receives an oral **complaint**, it must offer the **consumer** the opportunity to have this handled in accordance with the **regulated entity's complaints** process.

10.9 A **regulated entity** must have in place a written procedure for the proper handling of **complaints**. This procedure need not apply where the **complaint** has been resolved to the complainant's satisfaction within five **business days**, provided however that a **record** of this fact is maintained. At a minimum this procedure must provide that:

- a) the **regulated entity** must acknowledge each **complaint** on paper or on another **durable medium** within five **business days** of the **complaint** being received;
  - b) the **regulated entity** must provide the complainant with the name of one or more individuals appointed by the **regulated entity** to be the complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be progressed any further;
  - c) the **regulated entity** must provide the complainant with a regular update, on paper or on another **durable medium**, on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**, starting from the date on which the **complaint** was made;
  - d) the **regulated entity** must attempt to investigate and resolve a **complaint** within 40 **business days** of having received the **complaint**; where the 40 **business days** have elapsed and the **complaint** is not resolved, the **regulated entity** must inform the complainant of the anticipated timeframe within which the **regulated entity** hopes to resolve the **complaint** and must inform the **consumer** that they can refer the matter to the relevant Ombudsman, and must provide the **consumer** with the contact details of such Ombudsman; and
  - e) within five **business days** of the completion of the investigation, the **regulated entity** must advise the **consumer** on paper or on another **durable medium** of:
    - i) the outcome of the investigation;
    - ii) where applicable, the terms of any offer or settlement being made;
    - iii) that the **consumer** can refer the matter to the relevant Ombudsman, and
    - iv) the contact details of such Ombudsman.
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Extracts from CBI Letter to Insurance undertakings:

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<https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/dear-ceo-letter---central-bank-of-ireland-expectations-of-insurance-undertakings-in-light-of-covid-19.pdf>):

### **Handling of insurance claims**

Firms must ensure that they handle claims effectively and properly and, where appropriate to do so, they must offer assistance to their customers in the process of making a claim, including, where relevant, alerting their customer to policy terms and conditions that may be of benefit to the customer. Any claim settlement offer made to a claimant must be fair, must take into account all relevant factors and must represent the firm's best estimate of the claimant's reasonable entitlement under the policy. Although the Central Bank expects that most policy wordings are clear in terms of what cover is provided and what cover exclusions are in place, where there is a doubt about the meaning of a term, the interpretation most favourable to their customer should prevail. Firms must ensure that claims are appropriately assessed and where there is insurance cover in place that claims are accepted and paid promptly.

In this context, 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 a direction. We note that this is a view that has also been set out by the Minister for Finance, Public Expenditure and Reform.

The Central Bank expects that the CEO of each firm shall take responsibility for the oversight of how their firm is managing determinations of whether claims are covered or not in the context of COVID-19. Where necessary to gather further information with regard to the management of determinations as to whether claims are covered or not in the context of COVID-19 the Central Bank will, as deemed appropriate, require certification from the CEO as to such matters.

### **Engagement with customers**

All firms need to be sensitive to changes in customers' circumstances due to the public health measures taken to counter the spread of COVID-19, which have left many in a financially vulnerable situation. We expect you to provide reasonable arrangements to support such customers in their dealings with your firm at this difficult time.

Where relevant, your firm should proactively communicate in a clear, transparent manner to customers about the levels of cover provided by individual insurance policies. You should inform customers, when renewing existing policies, if there are any changes to those policies arising from COVID-19. Your firm should prominently display on your website the key relevant information about COVID-19 and contact details should customers have queries on coverage. Furthermore, you should engage with intermediaries and partners and to keep them fully informed at all times about the implications of COVID-19 for existing and new policies.