

## Positive news for pandemic-hit Irish business owners: High Court rules in favour of compensation

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### | High Court ruling

The High Court's ruling will allow a number of hard hit business owners to breathe a sigh of a relief as their business interruption insurance has been found to provide cover for their financial losses stemming from the ongoing pandemic and associated restrictions.

On Friday 5 February 2021, the High Court ruled in favour of four publicans who argued that their business interruption insurance policies held with FBD Insurance should provide them with compensation due to their forced closure.

### How will this affect businesses?

The outcome of this ruling is expected to affect claims made by 1,000 bars and restaurants who share similar policies with FBD Insurance, the defendant in these proceedings. Since last Friday's ruling, twelve insurance companies have been put on notice that they face High Court action from hundreds of restaurants and bars should they not confirm indemnity and interim business interruption payments.

Sinnotts, The Leopardstown Inn, Lemon and Duke, (all Dublin pubs) and Sean's Bar (Athlone) were responsible for issuing proceedings against their insurer, FBD.

The delivery of the Irish High Court decision was delayed for three weeks due to the issuing of the English Supreme Court decision on 15 January in the Financial Conduct Authority's 'test case'. Parties to the Irish High Court proceedings were given time to make submissions on foot of the English decision. 14 out of a representative sample of 21 policy wordings were found to provide cover for policy holders in England. The English approach was anticipated to influence the approach in Ireland and Justice McDonald did have regard for the English ruling in his

judgment. See on more on the English Supreme Court decision [here](#).

The FBD policies included a clause ensuring cover where policy holders are forced to close by a government authority. Such authority may be exercised in relation to “outbreaks of contagious or infectious diseases on the premises or within 25 miles of same”. The policy holders contented that the outbreak of Covid-19 constituted an insurable risk under the above clause.

FBD argued unsuccessfully that their insurance policies did not provide cover for such claims due to the nature of the outbreak not having occurred at the business premises or within 25 miles of the premises and FBD refused to indemnify policy holders for their business closure losses. FBD argued that the losses were due to the occurrence of a national situation rather than a local one which they alleged is what is required by the clause.

## **What was the ruling?**

Mr Justice McDonald disagreed, instead stating that although the outbreak was indeed a national phenomenon, the occurrence of the disease within the 25-mile radius is enough to satisfy the requirements under the clause. The outbreaks caused the restrictions which in turn caused the losses. Justice McDonald made it clear that it is immaterial that the national situation caused the government to institute restrictions on businesses. All that is required is for there to be a verifiable instance of disease within the radius outlined in the policy wording and that the outbreak was one of the causes of the closure.

The Court ruled that quantum will be determined at a later date and the matter will be back before the court on 17 February. FBD acknowledged the importance of receiving clarity on these issues and has vowed to provide interim payments to policy holders until the issue of quantum is addressed. FBD has made it clear that it has no intention of challenging the ruling stating that it is in the interests of all parties that the matter be settled quickly.

"We understand the significant challenges our Public House Insurance policyholders currently face. FBD will arrange interim payments to affected policyholders while awaiting final clarity on quantum," the company added.

## **How will this affect further potential claims?**

The Central Bank of Ireland has issued a statement welcoming the High Court's judgment. "We will be closely examining the potential impact of this judgment for customers in the context of our sustained and ongoing engagement with relevant firms".

Ireland is currently in level 5 lockdown with only essential businesses allowed to operate. The majority of retail remains closed with restaurants offering a take away service only. Financial losses continue to be incurred and as insurers will not have allowed pandemic cover in policies renewed since the impact of the restrictions became clear, these one off insurance payments

made on foot of the High Court decision will be a vital lifeline to an industry on its knees.

*For further information on this topic please feel free to contact Elaine White or Larry Fenelon by email to [elaine.white@ogier.com](mailto:elaine.white@ogier.com) and [larry.fenelon@ogier.com](mailto:larry.fenelon@ogier.com)*

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