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Mr Pearse Doherty TD  
Dáil Éireann  
Kildare Street  
Dublin 2

17 February 2021

**Re: COVID-19 and Business Interruption Insurance**

Dear Deputy Doherty

Thank you for your letter of 4 February and previous engagement in relation to the difficulties faced by many businesses during the COVID-19 public health emergency.

At the outset, let me deal with your concern that, as a result of differences in approach to resolution of this issue between jurisdictions, policy assessments in Ireland may proceed more slowly. This is not the case. From the moment the COVID-19 pandemic struck, the Central Bank has prioritised this issue, launching a system-wide supervisory examination. Through this examination, we have focused on identifying all groups of impacted policies where, in our view, the relevant contractual provisions provide cover for COVID-19 related interruption or interference to businesses. Our aim has been to ensure system-wide issues affecting groups of customers are identified and addressed by firms. The work included a comprehensive regulatory and legal analysis of more than 250 different policy types across more than 30 insurers, to determine whether the cover provided under each policy should operate in the specific circumstances of COVID-19.

We have made it clear to firms where our view that 'cover' or 'causation' existed did not coincide with theirs. As such, our review of policies, and our engagement with firms on same, has been sustained and system-wide. As a result of our supervisory interventions, a number of insurers have already accepted and commenced settling claims. This occurred and was ongoing prior to the recent High Court judgment.

The judgment is welcome and significant, and will reinforce our system-wide supervisory action. We have been clear that where a relevant court outcome has a beneficial impact for similar customers, firms must take urgent action to ensure those customers benefit from the final



outcome. We will ensure that insurers provide their customers with the benefit of those judgments and/or outcomes where they are applicable.

I set out some further detail on these points below.

### **Examination of Business Interruption Policies**

We are conducting the examination in line with the [COVID-19 and Business Interruption Insurance Supervisory Framework](#), which sets out how we have and will continue to respond to the potentially systemic issues arising from BI insurance related issues affecting customers.

You suggest, *inter alia*, an audit of relevant policies sold by insurers; intense engagement and intrusive supervision of claims handling; and that insurers identify all policies which provider cover – we agree that these are critically important strands of work and all are already being undertaken as part of our examination.

As stated, our supervisory approach in relation to this issue, since March 2020, has been focused on the identification of all groups of impacted policies where, in the view of the Central Bank, the relevant contractual provisions provide cover for COVID-19 related interruption and/or interference to businesses. Our analysis and supervisory engagement has been industry-wide, with a view to identifying and addressing potentially systemic issues of breaches of legal and regulatory obligations and/or customer harm across groups of customers.

From the outset, we have been clear on expectations of firms for the fair treatment of customers, including:

- That they honour valid claims and pay them promptly;
- Where there is doubt about the meaning of a term, the interpretation most favourable to the customer should prevail;
- Where legal action results in an outcome that has a beneficial impact for similar customers, firms are required to take urgent action to ensure those customers benefit from the final outcome; and
- That they make interim payments to policyholders who make or have made claims pending the final determination of the sums due - and the Central Bank is actively monitoring firms' progress in the resolution of such claims.



While we cannot discuss individual engagement with insurers, our position in the context of BI insurance is abundantly clear to the firms in question. Insurers must adopt a customer-first approach to the resolution of BI insurance issues and where it becomes clear that insurers have not adopted this approach in respect of systemic issues of customer harm, the Central Bank has taken and will take appropriate action.

### **Court judgment and wider framework**

You understandably ask why the Central Bank did not mirror the approach to test litigation taken by the UK Financial Conduct Authority. It is important to note that the legal systems in Ireland and the UK are not the same. The FCA had a specific legal mechanism through which to seek the declaratory relief concerned. The Central Bank fully evaluated the FCA approach and considered all regulatory and legal avenues in this jurisdiction. Given the differences in respective legal systems, the Central Bank settled on a multi-faceted strategy, which we believe is the most effective way forward in terms of resolving these issues for affected businesses in circumstances where there are a number of insurers with a number of different policies and varying approaches to dealing with their customers.

Importantly, as part of this wider strategy, we adopted and mandated policy initiatives in respect of the handling of customer test case litigation to ease the burden on those customer plaintiffs in circumstances where the Central Bank did not have the power to take similar test cases. In contractual matters, both parties to the contract will, ultimately, have legal right to resort to the courts. We made clear that where cover and related issues were disputed, we expected firms to pay the reasonable costs of customer plaintiffs in agreed test case litigation.

We welcome the recent High Court judgment of the FBD test case, which aligns with the position that we have taken in relation to policies of this type. The decision in the FBD test case, together with the persuasive value of the UK Supreme court decision, reinforces our current extensive engagement with relevant firms.

It is the Central Bank's clear expectation that, where a legal action has been concluded and the final outcome may have a wider beneficial impact for similar groups of customers, insurers should carry out an impact assessment to ascertain whether there is such a wider beneficial impact and take remedial action to ensure that those customers obtain the benefit of the final outcome.

Where there is a wider beneficial impact the Central Bank has instructed firms to re-review previously declined claims and also to identify customers that have BI insurance policies with cover and who may have a valid claim but who have not yet made one. We have instructed insurers to communicate with these customers, to inform them of the insurer's updated position in



relation to claims for COVID-19 related business interruption and to invite them to submit a claim notification if they have suffered losses due to COVID-19 related business interruptions.

Finally, the Central Bank has a range of supervisory tools and statutory powers available to it to deal with non-compliance by firms with their legal and regulatory obligations, none of which have been ruled out for consideration by the Central Bank in the event of such non-compliance.

Yours sincerely

A handwritten signature in blue ink, reading "Derville Rowland".

**Derville Rowland,  
Director General, Financial Conduct  
The Central Bank of Ireland**



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