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4 March 2022

Re: E-mail of 26 January 2022 to Governor Makhoul re Business Interruption Insurance

Dear Deputy Doherty

Thank you for your email of 26 January 2022 and previous engagement in relation to the difficulties faced by many businesses during the COVID-19 public health emergency.

As you are aware, the Central Bank of Ireland (the “Central Bank”) has prioritised the issue of Business Interruption (BI) Insurance through our continuing work on the Business Interruption Insurance Examination (the “Examination”). Throughout the Examination, we have focused on ensuring all valid claims are accepted, processed and paid efficiently and as quickly as possible so that insurance can perform its proper role of compensating policyholders against insured losses during the critical period of the pandemic. We also directed all relevant firms to contact policyholders who held a policy which was responsive to business interruption, along with details of how they could make a claim if they believed their business suffered an interruption or interference related to the outbreak of COVID-19 in Ireland. As at 31 December 2021, more than €163 million had been paid to 5,128 policyholders through settled claims and interim payments. This figure includes 4,271 claims that have been settled fully and 857 claims that have received interim payments.

As part of the Examination, the Central Bank has engaged, and continues to engage, with relevant insurers on their position regarding the treatment of wage subsidies and other deductions from BI



claim settlement amounts. This includes Irish authorised insurers and insurers passporting into Ireland on a freedom of establishment or freedom of services basis.

Based on our supervisory engagement with individual firms, we are aware that many firms in the Irish market are applying a similar approach to that taken in the UK (to which your letter refers). In general, State supports directly attributable to a specific business expense are being deducted from the settlement amount. Examples of this are wage subsidies (the Employment Wage Subsidy Scheme (EWSS), the Temporary Wage Subsidy Scheme (TWSS) and the Pandemic Unemployment Payment (PUP)) or rates waivers. General State loans, grants, vouchers and schemes are not being deducted, as they are not directly attributable to a specific overhead. However, a number of factors will be specific to each case and claim. Insurers need to consider individually the precise details of the policy, the claim and how the policyholder used the Government support. Individual businesses with valid claims may have availed of different subsidies and the amount of subsidies received may vary.

You also asked that the Central Bank name individual insurers that have deducted State supports. I hope that the above aggregated information on this topic will be helpful to you in your work on this matter. I also hope that it illustrates the variety of circumstances involved and that different firms have different terms and conditions applying to individual policies. Accordingly, we are not in a position to provide information on named individual firms' commercial practices that we have gathered in the course of our supervisory engagements.

In response to your question specifically on the approach taken in the UK, we have assessed the practices applied in the UK, and have engaged with our colleagues in the Financial Conduct Authority on this topic. As you note in your email, in September 2020, the industry representative body in the UK, the Association of British Insurers (ABI), wrote to the Economic Secretary to the UK Treasury with a commitment, on behalf of 12 firms, that they would not be deducting a number of government supports in the calculation of insurance compensation payments. As noted above, our supervisory engagement with insurance firms indicates that many firms in Ireland are applying a similar approach as has been seen in the UK. The approach being taken by many insurance firms in Ireland (i.e. to deduct State supports which are directly attributable to a specific business expense but not deduct those that are not directly attributable to a specific overhead)



appears to be similar, based on our understanding, to the commitment made by the ABI in the UK, which includes certain but not all supports.

While the specific approach taken by the UK representative body (i.e. to make a public commitment) has not been adopted by the insurance sector in Ireland, the outcome of the FBD High Court test case regarding quantum will inform the approach to be taken by Irish firms. As you are aware, the matter of government supports and subsidies is a live matter before the High Court. On 28 January 2022, a judgment was published dealing with issues of quantum in the FBD High Court test case, in which Mr Justice Denis McDonald specifically noted that the issue of government supports would be left over to a later module¹. As we have done to date, the Central Bank will continue to work in line with the COVID-19 and Business Interruption Insurance Supervisory Framework. This framework sets out that where legal action results in an outcome that has a beneficial impact for similar customers, all relevant firms are required to take action to ensure those customers benefit from the final outcome.

The Central Bank has, and will continue, to prioritise its work in this area – both in our own supervisory work and in seeking to help inform any wider policy discussions. I hope that the above information is helpful to you in this context and we would be happy to discuss any of these matters further with you if that would assist.

Yours sincerely

A handwritten signature in blue ink that reads "Colm Kincaid".

Colm Kincaid
Director of Consumer Protection

¹ See paragraph 188 of the High Court decision published on 28 January 2022 for further details.