

## COVID-19

### The Supreme Court Judgment in the Covid-19 Business Interruption test case

Trade Protect welcomes the Supreme Court judgment in the Financial Conduct Authority's (FCA)'s business interruption insurance test case bringing clarity to thousands of commercial policyholders in respect of their Business Interruption claims.

The implications for individual policyholders are now the subject of our immediate attention and we will be communicating more fully with those of our policyholders who have current claims pending, and who may have been impacted by this judgment, as soon as is practical.

Please see below links to the FCA Statement and a briefing note issued today by Herbert Smith Freehills who acted for the FCA.

<https://hsfnotes.com/insurance/2021/01/15/supreme-court-hands-down-judgment-in-fcas-covid-19-business-interruption-test-case/>

<https://www.fca.org.uk/news/press-releases/supreme-court-judgment-business-interruption-insurance-test-case>

In addition, the FCA COVID-19 Business Interruption insurance website

<https://www.fca.org.uk/firms/business-interruption-insurance> contains much information regarding the ongoing situation, including a list of insurers/policies that may be affected.

Although the Supreme Court judgment is good news, it is important to note that this litigation was designed to provide clarity and certainty to the policy coverage that existed. Where policies did not provide cover (i.e. where disease-related cover was dependent upon an actual outbreak at the premises, or where insurers specified a list of insured diseases), the Supreme Court judgment is unlikely to change that situation.

This COVID-19 pandemic could not have been predicted, and was not included within insurers pricing models. It is unlikely that any insurer would be able to provide a wide scope of cover for Business Interruption arising from pandemics without Government financial backing. This scale of loss is often referred to as a 'Fundamental Risk'. Fundamental risks affect the entire economy or large numbers of people or groups within the economy. For the future, we understand that the Government have been consulting on a Government-backed pandemic insurance model. Whether this comes to fruition or not remains to be seen.

We would recommend that any policyholders whose businesses have been affected by the pandemic contact our office to seek guidance on whether cover may exist under their policy and whether their policy has been affected by the Supreme Court judgment. In addition, information can be obtained from the FCA website (see above link).

This is a difficult time for everyone, including businesses. Rest assured, at Trade Protect we are here to assist you in any way that we can. Please contact myself or your usual Client Manager to discuss this matter further.

David MacKinnon ACII  
Director

Trade Protect

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