

CORONAVIRUS RESOURCE CENTER

UK's FCA Seeks Court Decision on Business Interruption Insurance

1 May 2020

Business Interruption Insurance

The United Kingdom's Financial Conduct Authority (the "FCA") announced [today](#) that it will seek a court declaration in order to settle ongoing disputes over business interruption insurance. This is part of an ongoing attempt by insurance regulators around the world to resolve the uncertainty faced by businesses at this time.

The FCA plans to seek a court declaration on an urgent basis on whether commonly used policy wordings should apply as a result of coronavirus, in order to address concerns about lack of clarity and certainty in respect of business interruption claims. The FCA has emphasised that the proposed action is not intended to cover all potential insurance coverage disputes and that it will not go into the amounts payable under individual policies but instead only whether there is a basis for claims to be paid.

The FCA proposes to put the example policy wordings before the court on an agreed basis with the relevant insurers. However, customers will still be able to access the Financial Ombudsman or the courts if they qualify and choose to do so.

The FCA is working to identify a sample of representative examples of the most frequently used policy wordings that are giving rise to uncertainty. The FCA has already identified certain UK insurers who have made decisions about the application of their policies or who are considering questions around their policy wordings which could give rise to uncertainty. The FCA has written to those insurers, as well as to the Association of British Insurers, to ask for clarity on their policy wordings. Responses are expected no later than 15 May 2020. Based on the information obtained, the FCA will consider which firms to ask to join the court process. The FCA has indicated that it may approach other firms where additional examples of relevant policy wordings emerge.

While it is expected that only English-law governed insurance contracts will be included at this stage, whatever the English courts determine may also be relevant for other common law jurisdictions as a matter of insurance contract interpretation, especially other Commonwealth jurisdictions such as Canada, Australia and New Zealand.

As discussed in our previous [update](#), the FCA [announced](#) in mid-April that it saw no “reasonable grounds” to intervene in business interruption claims for coronavirus losses where policies do not cover pandemics. The FCA’s view is that most policies do not cover pandemics, and therefore most insurers will have no obligation pay out in relation to coronavirus. The interim chief executive of the FCA, Christopher Woolard, reiterated this in a statement this morning but noted that there are some policies where there is “genuine uncertainty” about whether there is cover provided under the policy. As such, the FCA’s intended court action is “designed to resolve a selected number of key issues causing uncertainty as promptly as possible and to provide greater clarity for all parties, both insured and insurers. It is clear that decisive action is appropriate given the severity of the potential consequences for customers.”¹

The FCA also simultaneously published a [statement](#) on business interruption insurance, particularly in relation to small and medium enterprises, in which it provided further details of the proposed court action, as well as restating its expectation that where insurers have determined that there is an obligation to pay out under a business interruption policy, they do so quickly, using interim payments where appropriate. In making this statement, the FCA flagged that it expects firms to be able to demonstrate that they continue to comply with their regulatory and contractual obligations in relation to customers.

This FCA-initiated court process seems targeted to alleviate fears that disputes between insurers and policyholders could stretch into lengthy court claims, extending the uncertainty experienced in the economy.

Insurance Guidance

In addition to the announcement above, the FCA also stated that it is proposing a series of additional guidance measures to support both consumers and businesses. The package of measures sets out the FCA’s expectations that insurance firms should consider whether:

- their products still offer value to customers - for example, coronavirus may have an impact on the extent to which policyholders can use and access benefits from their insurance products; and

¹ <https://www.fca.org.uk/news/press-releases/fca-seeks-legal-clarity-business-interruption-insurance>.

- they can be doing more for those suffering a financial impact because of coronavirus.

In relation to the first point above, the FCA cited public liability insurance as an example of a product that may be less relevant (albeit temporarily) for some businesses that have been closed as a result of the government's stay-at-home orders. The FCA has indicated that insurers should assess the value of their products and consider appropriate actions, which might include changing how benefits are delivered, refunding some premiums or suspending monthly payments for a certain period of time. The FCA is giving insurers six months to make their assessments.

The FCA also expects insurers to take steps to help their "customers alleviate temporary financial distress and maintain insurance cover that meets their demands and needs".² It proposes a range of options that might be appropriate (although these should be considered in the context of the respective policy), including giving customers premium payment holidays or refunding premium payments (in part) where the whole amount has been paid up front, waiving administration and cancellation fees, relaxing charges or interest incurred for missed payments or extending cooling-off periods.

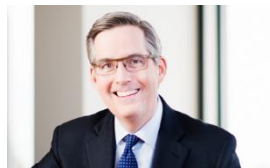
The FCA is asking for comments on its proposed guidance. Comments on its proposal to help customers in temporary financial distress are due by 5 May and by 15 May in relation to its proposals to assess the value of insurance products. If confirmed, the measures will apply shortly after the respective response dates. The FCA will review the measures in three months' time, taking into account any developments linked to coronavirus, and may revise the guidance where appropriate.

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For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

Please do not hesitate to contact us with any questions.

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