



Coronavirus Update: Post High Court Decision

Covea Insurance plc was not one of the Insurers taking part in the High Court Test Case. The Insurance community as one agreed to review their policy wording to ascertain whether the decision issued last month would have had a direct impact on their original decision/ policy wording at the time of the lockdown.

Insurers have confirmed the following: -

As you may be aware, in July 2020, the FCA started legal proceedings in the High Court against a number of insurers to examine and provide clarity on how certain business interruption policies should be interpreted and whether they cover losses arising out of the Covid-19 pandemic. The Court has now handed down its judgment on the interpretation of the business interruption policies presented.

Although Covea Insurance is not a party to the test case we've undertaken a review to see how the FCA test case might impact Covid-19 related business interruption claims which have been made by our customers (including on those claims where we've already made a decision).

We've identified that your claim is **not** a potentially affected claim.

The policy contains a number of definitions which have a specific meaning; these are highlighted in bold through the policy. Your attention is also drawn to the first Paragraph of the Business Interruption section which further clarifies:

"The following definitions apply to this Section in addition to the General Definitions at the front of this policy and keep the same meaning wherever they appear in the Section, unless an alternative definition is stated to apply."

For Business Interruption cover to trigger there has to be interruption to or interference with the business as a consequence of **Damage** occurring at the **Premises**. Although the FCA test case did not consider what might amount to damage, we do not consider the presence of COVID-19 to constitute **Damage**. Irrespective of this, unfortunately it would be excluded under the General Exception regarding Pollution and Contamination. Therefore we are unable to consider a claim under the standard Business Interruption cover. This same requirement for **Damage** at the **Premises** applies the majority of Business interruption extension covers.



We have considered if there is cover under any of the other extensions provided, particularly the extension of cover in relation to **Notifiable Disease** which provides cover for interruption of or interference with the Business in consequence of an occurrence or discovery of a **Notifiable Disease** at the **Premises**, without the requirement for damage.

Notifiable Disease has a specified meaning within the terms of the policy (as defined under the Business Interruption section) which lists the specific diseases to which the policy can respond. This list does not include all notifiable diseases. COVID-19 is not included in the specified policy list and cannot be added retrospectively.

The definition of what constitutes a **Notifiable Disease** is clearly stated in the policy wording. There can be no doubt, therefore, that the objective intention of the Policy is to cover only those notifiable diseases listed by name.

COVID-19 was not a known disease at the time the Policy was proposed for and accepted. Indeed the reason we set out in the Policy a list of those **Notifiable Diseases** which we are prepared to cover is because the extent of exposure is understood at the outset of the Policy. There are proven risk control measures already available which minimise the effect these diseases have whilst not eradicating them entirely.

It is our position that the **Notifiable Disease** extension does not respond to COVID-19 and we regret that we are unable to provide any financial assistance on this occasion.

The FCA test case did not consider clauses which only cover a specified list of diseases. Further, even if COVID-19 had been a disease specified in your Policy, the Policy requires business interruption losses to be caused by the occurrence of such disease at your premises. The FCA test case did not consider clauses which require the disease to occur at a policyholder's premises.

This means that the final resolution of the test case will **not** affect our decision on your claim.

Whilst we understand that this decision is disappointing, we would like to assure you that we have looked at this thoroughly in the light of the guidance provided by the FCA.