

# UK FCA Seeks Urgent Court Declaration on Business Interruption Insurance

May 5, 2020

On 1 May 2020, the UK Financial Conduct Authority (“**FCA**”) published a statement on its website about business interruption (“**BI**”) insurance cover in light of the current COVID-19 pandemic. The FCA confirmed that it intends to obtain a fast-tracked court declaration to resolve current contractual uncertainty in relation to the same.

The issue the FCA would like to resolve is that there is currently a great lack of clarity and certainty for many businesses making BI claims, and the basis on which insurance firms are subsequently making decisions in relation to whether to pay out on such claims.

Due to this uncertainty, the FCA intends to urgently bring key cases to court “*as promptly as possible*” in order to get an independent, authoritative declaratory judgment, which should provide fast clarity about the meaning and the effect of certain BI insurance policy wordings where such wording currently gives rise to unresolved uncertainty. In the event that the FCA does obtain a declaratory judgment, the Financial Ombudsman Service will be able to take such a judgment into account when considering relevant complaints.

Christopher Woolard, interim chief executive of the FCA, reiterated the previous FCA view that most policies do not generally cover pandemics, stating “*in the majority of cases, business interruption insurance was not purchased to, and is unlikely to, cover the current emergency. However, there remain a number of policies where it is clear that the firm has an obligation to pay out on a policy. For these policies, it is important that claims are assessed and settled quickly.*”

In this respect, the FCA confirmed that it is writing to a number of relevant firms and ask them to clarify their position as to whether they believe that their policy wordings for BI losses (arising other than from property damage) provide cover by 15 May 2020.

**The FCA’s general expectations of insurance firms**

The FCA also reiterated its general expectations of all general insurance firms to meet their regulatory obligations in this area. Specifically, the FCA has outlined the following guidance measures which are designed to support consumers and businesses:

- firms must meet their obligations under Principle 6<sup>[1]</sup> of the FCA's Principles for Businesses, the Insurance: Conduct of Business sourcebook (ICOBS) and Dispute Resolution (DISP) when handling claims and any complaints arising from them. Firms should communicate clearly and sympathetically to their customers at all times;
- expectations under Principle 6 and ICOBS also apply to firms' work to establish the amount due to be paid to customers in cases of valid claims. In some cases, it will be possible to make interim or partial payments until final amounts are established; and
- firms should communicate their approach and decisions clearly to their customers and to promptly and appropriately investigate any complaints that they receive.

This latest statement demonstrates the FCA's commitment to protect businesses and customers not only to provide rapid certainty to policy holders of BI insurance cover, but also to ensure that FCA-authorised firms adhere to the FCA's Principles for Businesses in relation to paying due regard to customers' interests and treating them fairly.

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

<sup>[1]</sup> This principle states that a firm must pay due regard to the interests of its customers and treat them fairly.

#### [Related Professionals](#)

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