

Covid-19

The Supreme Court Ruling
21st January 2021



Ascend Broking Group
Business Insurance Solutions



FCA Test Case: Business interruption extensions to COVID-19 losses Supreme Court decision

The Supreme Court judgment in the FCA Business Interruption Test Case was published on Friday 15th January 2021. The Supreme Court did find in favour of the FCA and policyholders on the areas of dispute on eight insurers in the test case.

The majority of insurers did **not provide cover** resulting from business closures forced as a result of Coronavirus. This is where press coverage on over the last week has been slightly misleading, unfortunately, as the decision did not mean a carte blanche agreement to all claims.

However, some policies were unclear and ambiguous on their disease and prevention of access wordings **and these were** the ones that the Supreme Court decided on.

We are reviewing the content of the judgment in detail, however, in short, the Court substantially allowed the appeal of the FCA and dismissed the insurers' appeal on applicable cases. This is a complex issue and one which will develop over the next few weeks.

While the Supreme Court judgment is positive for those policyholders whose policies are directly in scope, it will not have identical ramifications for each client or each claim. The majority of policies will not respond, unfortunately, for COVID-19 business interruption losses.

We are presently working through the implications of the decision and commentary set out in the judgment. The FCA will, on the 22nd January 2021, be providing further communication and guidance on applicable policies and how it expects insurers to move quickly to settle claims that are covered.

We have deployed a claims team to review each potential claim and will communicate further with you as things become clearer.

We will advise you if there is a valid claim or a potential claim, dependent on the terminology of your policy, once reviewed, and we will assist you to progress a preparation and presentation of a claim as soon as possible, if cover is applicable.

Please contact us at claims@ascendbroking.co.uk in respect of your individual policy.



Ascend Broking Group Ltd are authorised and regulated
by the Financial Conduct Authority FCA Registration Number:
768429 Registered in England & Wales Company No. 10468557
A Willis Towers Watson Networks Member

Ascend Broking Ltd
21 Springfield Lyons Approach, Chelmsford Business Park, Chelmsford, Essex CM2 5LB
Tel 01245 449 060 | Email info@ascendbroking.co.uk

www.ascendbroking.co.uk



The key takeaways for policyholders are as follows:

Business interruption cover must have been in force for;

- ❖ Full revenue reinstatement &/or
- ❖ Gross profit

There is no cover if the basic level of cover of Increased Cost of Working is applicable

Each insurance wording must be reviewed to see if it has the definition basis that could grant cover with specific review of;

- ❖ Notifiable Disease Extensions:
- ❖ Non-Damage Denial of Access Extensions:
 - a. the public authority action necessary to trigger the cover need not necessarily have the force of law (such as government guidance or announcements); and
 - b. the prevention of access to or inability to use premises need not be absolute meaning that closure of a discrete part of a business could be sufficient to trigger cover.

Causation and trends: consistent with the outcome of the High Court judgment, the Supreme Court did not find favour with the narrow arguments around causation and trends clauses advanced by insurers.

This is a complex area and one that we are continuing to review. Each case will need to be considered on each individual contract.

Therefore, the majority of policyholders will still not have cover under a standard insurance policy. To progress, each insured must have the applicable business interruption loss of revenue or gross profit cover and the applicable disease, prevention of access or hybrid wordings that could be deemed to grant cover following this ruling.

The FCA is consulting on the process as to how claims can be proven and dealt with and this has been extended until the **22nd January 2021**. We would expect further clarification after this date.

<https://www.fca.org.uk/publications/guidance-consultations/draft-guidance-business-interruption-insurance-test-case-proving-presence-coronavirus>

Key actions

Read the full update from the FCA here

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

*Policyholder Q&A
FCA to provide a guidance document*

*Declarations
How The Supreme Court judgment will operate in conclusion to each policy wording*



Fenchurch Law FCA Video

<https://www.fenchurchlaw.co.uk/webinar-fca-test-case-the-supreme-court-judgment/>