

20 January, 2021



## FCA business interruption test case



On 9 June 2020, the Financial Conduct Authority ("FCA") issued proceedings in the High Court of England and Wales to commence a test case in respect of business interruption policies that provide cover in circumstances where there has been no physical damage to the insured property. The aim of the test case is to resolve contractual uncertainty around the validity of many business interruption claims arising from the coronavirus pandemic.

The FCA has involved a number of insurers as parties in the test case. Although your insurer is not a named party in the test case, it supports the FCA's aim to achieve clarity for all concerned in this unprecedented situation. The test case is designed to achieve the maximum clarity for the maximum number of policyholders, by seeking a binding court determination on the meaning and effect of 21 representative policy wordings written by the insurer parties.

Following the High Court's decision on 15 September 2020, the test case was appealed (by the FCA, the Hiscox Action Group and six of the eight defendant insurers) to the Supreme Court. The appeals were heard by the Supreme Court under the "leapfrog" procedure which enables an appeal in exceptional circumstances to bypass the Court of Appeal and proceed directly to the Supreme Court. The appeals were heard remotely over four days between 16 and 19 November 2020.

The Supreme Court handed down judgment on 15 January 2021, which was predominantly in the FCA's favour.

As we are now at the final resolution of the test case, your insurer will apply the Supreme Court's decision to all outstanding claims and complaints other than those which have been referred to the Financial Ombudsman Service.

Policyholders who have submitted claims under business interruption policies that provide cover in circumstances where there has been no physical damage to the insured property, will be contacted in accordance with the guidance issued by the FCA on 17 June 2020. If we have already written to you previously to confirm that your policy is not affected, we will not be contacting you, as this position is unchanged.

Information about the test case can be found on the FCA website:

<https://www.fca.org.uk/firms/business-interruption-insurance>

Information concerning business interruption insurance can be found on the Financial Ombudsman Service's website:

<https://www.financial-ombudsman.org.uk/businesses/complaints-deal/complaints/coronavirus-covid-19-information-businesses>

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