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May 2025 update:
This letter is historical. See our supervisory correspondence page for more information and current views.

18 September 2020

Dear CEO,

Business Interruption (BI) Insurance

On Tuesday, the High Court handed down its judgment on the BI test case. The objectives of the BI test case have and continue to be to achieve clarity as quickly as possible for policyholders and insurers on whether certain BI policies and wordings respond to the Covid-19 pandemic. This judgment is a critical step in obtaining that clarity.

I am grateful for the work of the eight insurance firms that were parties to the case as well as all firms impacted by the test case, who have co-operated from a shared desire to achieve clear outcomes for policyholders and insurers as quickly as possible and avoid protracted litigation. The speed with which the industry has reached this stage reflects well on all parties involved.

Following the judgment, I wanted to be clear on the FCA's next steps and expectations of insurers over the coming weeks and months to maintain this pace.

In this letter, references to insurers include managing agents.

In some cases, insurers will feel that the judgment gives them the clarity they need to now conclude their claims processes with their customers. We encourage these insurers to do so as quickly as possible. In other cases, insurers may determine they need to wait to understand whether a specific point in the judgment will be appealed. As you write to your policyholders over the coming week, we expect you to be clear to your policyholders on your next steps. We will shortly update our BI webpage with details of the timing of the consequentials hearing where the court will consider any applications to appeal.

Our Dear CEO letter on BI insurance in April 2020 set out our expectations of insurers for BI policies where the insurer has an obligation to pay. Our objective remains to ensure that slow payment does not exacerbate financial pressures on policyholders. It is important that insurers reassess and settle claims quickly, including making interim payments wherever possible on policies where the legal process is complete or the claim has been accepted in full or in part. This is consistent with the wider objectives of the FCA to support business and consumers during the current Coronavirus situation.

We also expect all insurers to take a pragmatic, transparent and consistent approach to their interactions with policyholders over any remaining evidence that applies to individual claims, rather than these creating additional barriers or delays to paying valid claims. This includes evidence for proximity and prevalence for 'disease' coverage clauses. In the coming weeks, we will publish additional information to help policyholders and insurers with the process of providing and assessing appropriate evidence on proximity and prevalence.

Claims handling

We believe that insurers should reflect on the clarity the judgment provides and, irrespective of any possible appeals, consider the steps they can take now to progress claims of the type that the judgment says should be paid. This should include taking all reasonable steps to ensure that all those claims are ready to be paid and settled at the earliest possible opportunity after any relevant appeals.

Insurers should analyse the scope of any appeal. They should then, under Chapter 5 of our Guidance, consider the implications for their relevant non-damage BI policy wordings where they have determined that the test case may affect the outcome on claims generally, including questions of causation.

Where insurers have policy wordings which were:

- affected by the test case, but
- where the relevant questions in the test case are not subject to any appeal,

then they should, in accordance with Chapter 7 of our Guidance (and the Financial Ombudsman Service's (FOS) expectations for complaints accepted by them), reassess all potentially affected claims/complaints, unless the claim or complaint has been properly settled on a full and final settlement basis. If the FOS has accepted the complaint, the insurer should keep the FOS fully informed.

Where insurers have policy wordings which were:

- affected by the test case, and
- the relevant questions in the test case are the subject of an appeal,

then we expect insurers to continue to progress claims of the type that the judgment says should be paid, as described above, so that they are as progressed as possible when any appeal judgment is handed down.

Government support

Insurers should consider our August 2020 statement on the deductions that some insurers have been making from claims payments for some types of Government support policyholders have received during the pandemic. This statement highlighted particularly that insurers need to consider the appropriateness of such deductions on a case by case basis in the context of their policy, and treat their customers fairly in accordance with Principle 6. It set out the need for insurers to consider individually the precise terms of the policy, the claim and how the policyholder applied any government support they received.

We also noted that the treatment of any forms of Government support as income for tax purposes may well differ from how the support should be assessed under a BI policy. Tax considerations typically do not form any part of the calculation of losses for business interruption policies. We therefore do not consider the Government's treatment of the Small Business, Retail, Hospitality and Leisure or Local Authority Discretionary grants for tax purposes is a proper basis for insurers treating those payments as turnover under the policies. Nor do we see that insurers can apply these amounts as savings against fixed business expenses. This is because the amounts received are not attributable to any particular business expense and policyholders will have used the grants in any number of ways. We expect firms to have explicitly considered the treatment of the various forms of government support at Board level and for this consideration and the conclusions reached to be appropriately documented. We will follow up with insurers individually as appropriate and continue to consider the appropriateness of any deductions of any other form of Government support when calculating the BI losses.

Communicating with policyholders

Insurers should communicate directly and as soon as possible with policyholders who have made claims/complaints potentially affected by the judgment to explain the next steps. Under Chapter 6 of our Guidance, insurers should provide at least an initial update on the implications of the judgment by 22 September 2020. We know the level of detail that insurers can provide at this stage, when the scope of any appeal is known, and how quickly they can communicate the full implications for each policyholder will depend on their particular policy wordings and the implications of the judgment for those wordings. We expect insurers to provide the clearest information that they are able to at the earliest opportunity.

Providing us with information on affected policies

Under Chapter 5 of our Guidance, insurers should update the information they previously provided to us. We will give further details on how they should do that once we know the scope of any appeal.

Summary

The High Court judgment on the test case has brought greater clarity and certainty for all parties. It is critical that this results in insurers paying valid and successful claims in full at the earliest possible date to support business and consumers during the current situation. Where we see that insurers are not meeting the expectations set out here, we will use the full range of our regulatory tools and powers to ensure they do so. We will also continue to co-ordinate closely with the Financial Ombudsman Service.

Yours sincerely

Christopher Woolard

Interim Chief Executive