

UK TEST CASE MAY PAVE WAY FOR COVID-19 INSURANCE PAYOUTS IN AUSTRALIA

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News

The recent decision in the UK test case on business interruption insurance coverage related to Covid-19 may give an indication on how similar cases in Australia will play out, according to leading law firm Herbert Smith Freehills.

The UK Financial Conduct Authority brought the case on behalf of policyholders and was represented by Herbert Smith Freehills' insurance team.

The High Court (the first instance Court in the UK) handed down its decision earlier this week and generally ruled in favour of policyholders, finding that various policy extensions can provide coverage for financial losses suffered as a result of the UK's Covid-19 lockdown, and minimising the ability for insurers to reduce recoveries in reliance on causation arguments.

Herbert Smith Freehills' insurance partner Mark Darwin said: 'These issues represent some real pressure points for insurers, both in the UK and Australia. Policyholders should re-examine their policies to see what might be claimable for Covid losses and carefully assess any coverage positions advanced by insurers on these types of losses.'

The Court made key findings on the application of particular coverage extensions to Covid-19 losses and causation issues relating to the impact of Covid-19, including:

- **In relation to coverage:** The Court considered a variety of extensions which are said to give rise to coverage either as a result of a notifiable disease occurring within a specified area or as a result of prevention of access / action by public authorities. The Court confirmed that various extensions would provide coverage based on the policy wordings considered. Disease extensions had particular success, with the Court

confirming that individual outbreaks are indivisible from the general pandemic, meaning that cover was not limited to outbreaks wholly within the geographical area specified in the policy.

- **In relation to causation:** Insurers argued that the broader impact of the pandemic on the business must be taken into account as a 'trend' which would otherwise have affected the policyholder's business - effectively negating any cover for the immediate local impact of the pandemic. The Court did not accept this argument and did not allow insurers to artificially distinguish between local and national impacts to reduce claimable loss.

A hearing will shortly be fixed with the UK High Court, where any applications for appeal will likely be made.

There are also currently at least two significant cases underway in Australia in respect of Covid-19 business interruption claims. The Australian Financial Complaints Authority and Insurance Council of Australia case in the NSW Supreme Court and the Star Entertainment Group case in the Federal Court are both in their early stages. Herbert Smith Freehills anticipates that there may be some overlap between the UK decision and these Australian test cases, but that a number of additional issues will be dealt with in the Australian cases.

More information can be found in our [Legal Briefing](#).

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