

FSCA Press Release

09 July 2020

FSCA stance on Business Interruption insurance cover

The Financial Sector Conduct Authority (FSCA) is concerned about the behaviour of some insurers who are deliberately avoiding paying business Interruption claims where no grounds exist to do so. The National Lockdown cannot be used by any insurer as grounds to reject a claim. Such conduct goes against the principles of treating customers fairly and breaks down confidence and trust in the insurance sector. The FSCA has communicated this view to insurers and will take action against those that do not treat their customers fairly.

One of the key principles underlying the Twin Peaks reforms is that of treating customers fairly, where products are designed to meet customers' needs; are sold in such a way that customers understand what they are buying; and unfair barriers such as fine print or unfair proof of claims are not put in the way of customers exercising their rights in terms of those policies.

The FSCA expressed its concern to the short-term insurance industry when this matter first arose and engaged with the sector to resolve it. The FSCA formalised its concern in the form of a communication that focused on specific aspects of Business Interruption (BI) insurance cover (communication 34 of 2020). This communication followed complaints relating to delays experienced by policyholders in the processing of BI insurance claims and repudiations of BI insurance claims by insurers.

The FSCA has assessed different BI wordings and found that although there are nuances in BI policy wording, they may be broadly grouped into the six categories identified in communication 34 of 2020.

Based on the information received and analysed by the FSCA to date, the FSCA found that, although it could not find evidence that the National Lockdown could be a trigger for a valid BI insurance cover claim, policyholders are able to claim in instances where they can show that they have satisfied the requirements of their specific policy, whether it was before, during or after the National Lockdown. In other words, the National Lockdown cannot be used by any insurer as a ground to reject a claim. If a policyholder has a BI policy with a radius clause and such policyholder can prove that it suffered a loss for example, less bookings, cancellations of bookings and so forth as a result of the contagious/infectious disease in the area specified in the radius clause, and its business was interrupted or interfered with as a result of measures taken as a consequence of the contagious/infectious disease, including the National lockdown, then the policyholder has a valid claim. In this regard, the FSCA has continuously reminded the insurance industry of the fact that Covid-19 entered the country and spread already prior to the declaration of the National lockdown.

In the communication, the FSCA advised all affected insurers to action BI insurance claims in line with the communication. Insurers are engaging with the FSCA and the FSCA has advised that it may issue specific directives to any insurer which is seen to be non – compliant.

Finally, the FSCA would like to point out that it is aware of the judgment in the matter between *Café Chameleon CC v Guardrisk*. This judgment is in line with our communication and with what the FSCA has been communicating to the insurance industry subsequent to the issuance of its communication. Based on this judgment and in an attempt to avoid protracted litigation on further aspects of BI insurance cover such as quantum, the FSCA is engaging with the insurance industry in the interests of all affected policyholders.

The full communication is available for download [here](#). For more information about this communication please email MakgOMPI.Raphasha@fscA.co.za.

ENDS

Transitional Management Committee:

AM Sithole (Commissioner) DP Tshidi CD da Silva JA Boyd MM du Toit LP Kekana K Gibson OB Makhubela P Mogase

Enquiries: Financial Sector Conduct Authority
Email address: fscacommunications@fsc.co.za
Telephone: 0800 203 722