

New Central Bank of Ireland's Covid-19 and Business Interruption Insurance Supervisory Framework

Essential reading for Irish Insurers

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Beale & Co have closely monitored the Irish and UK's insurance industry's approach to dealing with policy response for Covid-19 related losses under Business Interruption ("BI") policies and are instructed in a number of matters. Certain issues are likely to come before the before the Commercial Court here in Ireland in late 2020 and in the UK the 'test cases' brought by the Financial Conduct Authority (FCA) who are seeking determination from the Superior Courts on the interpretation of a number of provisions within policies dealing with business interruption have been much publicised and indeed watched live. We have previously discussed this in previous articles which can be found [here](#).

The Central Bank of Ireland has in recent days published its Supervisory Framework in respect of Business Interruption Insurance and insurers should carefully consider the framework in dealing with business interruption notifications and claims going forward. The Supervisory Framework can be found [here](#):

Tara Cosgrove and Emmy Marshall have summarised below some key points as set out in the Framework:-

Key Points

1. The Central Bank says that it expects Regulated Financial Service Providers ("RFSPs") in implementing the Framework to adopt a *"customer first approach to the resolution of issues identified in the context of the Framework"* and to *"at all times analyse their actions and decisions in relation to their treatment of customers through the lens of their obligations under the Consumer Protection Code 2012"*. The Central Bank therefore expects insurers to bring clarity to affected business customers as soon as possible.
2. In cases where there is a doubt over policy wording and interpretation of terms the Central Bank have advised that *"the interpretation most favourable to the customer should prevail"*. Again, insurers should attempt to bring immediate clarity to queries raised by business policy owners and indeed record their efforts to do so lest this be challenged in the future.
3. The Framework sets out that *"RFSPs should consider how the issues in dispute can be narrowed to ensure that the litigation can proceed in the least costly and most expeditious"*

manner possible". It is integral that insurers be mindful of the most cost efficient manner of dealing with potential litigation brought by Plaintiff policyholders. We are cognisant of the delays that occurred in progressing litigation during the Covid 19 lockdown, in particular through the Courts, and are aware of the backlog of litigation that now arises. Insurers may wish to consider coverage advice to narrow down issues of disputes or may wish to consider alternative dispute resolution mechanisms to avoid lengthy and costly litigation. Costs can often outweigh claims and an ADR approach or early assessment will often reap its own rewards. Our team are happy to discuss this further and our contact details are set out below.

4. Insurers should be most cognisant of the Central Bank's expectations of the dealing with costs of claims brought by affected business owners. The Framework identifies the financial burden that is placed on plaintiffs in bringing litigation on foot of unclear or disputed policy wording. The Central Bank sets out that, *"Where cover and related issues are disputed, the Central Bank expects firms to pay the reasonable costs of customer plaintiffs in agreed test case litigation"*. In addition, where an RFSP obtains a beneficial court interpretation of a policy wording in its favour, the Central Bank expects that the RFSP will not seek costs against the Plaintiff.
5. Insurers should also carefully consider the supervisory and responsive policy that the Central Bank intends to take going forward with RFSP's who respond to BI policy disputes. The Framework identifies that the Central Bank will monitor the RFSP's positions on cover and causation and claims processing. The Framework suggests that the Central Bank intends on taking a robust approach with RFSPs who do not comply with customers under

policies and that the Central Bank will, *"Challenge RFSPs if necessary with the aim of ensuring that prompt action is taken by the RFSP or may itself take action where necessary to ensure that there is a final resolution of each of these issues separately or together"*.

6. Furthermore, the Framework identifies that where a resolution has been reached between the RFSP and their customer then the RFSP is required to 'carry out an impact assessment and apply any beneficial impact of the resolution to all similar groups of customers'. Insurers therefore should anticipate the subsequent effect of any general binding decision on a particular policy wording or interpretation across all customer policies and should attempt to mitigate the risk of any further dispute by providing a clear and concise interpretation of the resolution to all customers affected. However, that should not mean that Insurers should be shoehorned into being bound by policy decisions and interpretations where wordings or indeed circumstances differ. The devil will be in the detail here.

The Framework does not set out exact penalties for RFSPs who fail to comply with the provisions of the framework however it does set out that, *"Any decision as to the exercise of powers or legal options in the event of non compliance by an RFSP with its legal and/or regulatory obligations will be a circumstance specific determination depending on the relevant issues, the aim sought to be achieved and the speed at which clarity can be provided to policyholders via the exercise of the relevant option"*. The failure to comply with the framework by RFSPs may result in Central Bank sanctions.

Conclusion

Insurers are advised to consider carefully the provisions as set out within the Framework and to note the

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supervisory and escalation role that the Central Bank intends to take over RFSPs into the future in relation to business interruption policy disputes. This Framework and insurers' own internal policies on the handling of claims should be considered now hand in hand and any additional obligations should be considered throughout all relevant teams with training provided where required. Should you require any further information or advice on any business interruption issues feel free to contact Tara Cosgrove or Emmy Marshall and contact details are provided below.

For further information please contact:



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