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COVID-19 is claimable

LEGAL

A judgement was given in November on the Financial Conduct (FCA) test case brought on the back of insurers disputing claims made through business interruption insurance policies. The case, *The Financial Conduct Authority v Arch and Others*, highlighted the strain put on small business whose financial woes were deepened having been told by their insurers that COVID-19 global pandemic phenomenon was not included within policy clause wordings.

The FCA took a sample or policy wordings, identifying 700 types of policies across 60 different insurers and affecting around 370,000 policy holders.

In a 150-page judgment, the court found that most, but not all, of the disease clauses in the sample provide cover. It also ruled that certain denial-of-access clauses in the sample provide cover, but this depends on the detailed wording of the



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clause and how the business was affected by the government response to the pandemic, including for example whether the business was subject to a mandatory closure order and whether the business was ordered to close completely.

The test case has also clarified that the COVID-19 pandemic and the government and public response were a single cause of the covered loss, which is a key requirement for claims to be paid if the policy provides cover.

Each policy needs to be considered against the detailed judgment to work out what it means for that policy.

In the advent of further local lockdowns being put in place, businesses must continue to keep detailed records of their commercial dealings in a format that may assist in bringing future insurance claims.

An upcoming judgement on an FCA appeal begun in November 2020 is expected to further clarify the situation.

REGULATORY

From 1 January 2021, financial standing levels for standard operator licence holders will increase slightly to £8,200 (from £8,000) for the first vehicle and £4,550 (from £4,450) for each subsequent vehicle.

Statutory Document No. 2 'Finance' has been duly updated.

The levels for restricted operator licence holders remain unchanged (at £3,100 for the first vehicle and £1,700 for each subsequent vehicle).

REGULATORY

Vehicle inspections restarted four months ago after being halted during the first Coronavirus lockdown. Now, DVSA has published a few different means for operators to manage this information digitally.

First, the Transport Operator Portal Service, which contains information about all the vehicles and trailers on an operator licence, now includes MOT test expiry dates. More information is available on www.is.gd/joseme.

Second, it has provided means for operators of large fleets to compare their electronic vehicle and trailer records against DVSA's records, through an API, application programming interface. More technical information and a link to a mandatory application form is available via www.is.gd/beroha.

Finally, DVSA reports that its 'find a test centre' service, available via www.is.gd/obuhav, now includes information about whether test slots are available.

Fact File

Old tyres now illegal

The Road Vehicles (Construction and Use) (Amendment) Regulations will come into force on 1 February 2021 and, from that date, it will be illegal to fit tyres aged 10 years or older to:

- the front axle of a goods vehicle with a maximum gross weight exceeding 3,500kg
- the front axle of a bus or coach - including minibuses
- the rear axle of a minibus with single rear wheels fitted.

The change in the law means that tyres aged 10 years and older will become a failure item at annual test and will result in the issue of an 'S' marked prohibition notice at the roadside.

DVSA has published updates to the Guide to Maintaining Roadworthiness, Categorisation of Defects and MOT Inspection Manual; see also www.is.gd/henudi.

Operators should also conduct an audit of their tyres (including any spare tyres they may have) and review their tyre management policies in anticipation of the changes as well as informing drivers, workshop staff and tyre contractors.