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17 December 2025

For the attention of:
[redacted]

[redacted]

Aaron Le Marquer
[redacted]

An open letter to the FCA

Dear FCA

Covid-19 stop the clock request

We are a law firm active in policyholder representation.

We write to invite the FCA's urgent consideration to reinstate its earlier 'stop the clock' instruction to insurers in relation to Covid-19 business interruption claims, ahead of many claims starting to become time-barred from March 2026 onwards (the **Request**).

We make this Request because, more than five years on from the Covid-19 pandemic, many SME policyholders (who are retail customers for the purpose of Principle 12 and the Consumer Duty) remain without compensation to which they are legally entitled from their insurers. Following the significant impact of the pandemic on SMEs, the FCA's previous intervention by way of test case litigation, and subsequent guidance and Dear CEO letters, has given rise to a legitimate expectation that the FCA will continue to take appropriate steps to support the SME policyholder community, and avoid unjust avoidance of policy coverage for policyholders who throughout have acted responsibly and in good faith.

In preparing this Request, we have consulted with UKHospitality, the Music Venue Trust, the Association of Indoor Play, Gamechangers, and the British Beer and Pub Association. In total, these organisations represent over 155,000 venues that were severely affected by the pandemic. They have co-signed this letter as indications of their organisation's support for our Request.

We trust that the FCA will give due and careful consideration to our Request, and have set out the background, the detail of our Request and the supporters below.

Background

The FCA Test Case

When the Covid-19 pandemic hit in 2020, businesses across the country found that their insurers were not there to support them. At that time, the FCA took decisive action by launching expedited test case proceedings, with the cooperation of eight insurers, to establish whether insurers were liable to policyholders under a range of standard market 'non-damage' extensions.

The FCA Test Case was highly successful, establishing that a majority of the wordings under consideration did indeed respond to losses caused by the pandemic. We have no doubt that the FCA's timely action was responsible for saving many businesses that would otherwise have succumbed to the financial effects of the pandemic.

The ensuing litigation

The FCA test case proceedings could never have comprehensively determined coverage under all existing market wordings, but the Supreme Court's rulings did set down a number of key principles that paved the way for further rulings in favour of policyholders. Over the past five years, subsequent legal decisions[1], in several of which our firm has acted for the policyholders, have incrementally widened the scope of coverage available to policyholders.

The present position

Many of the key coverage issues are now determined, but there are at least two key issues[2] affecting large cohorts of policyholders which remain in dispute.

First, the treatment of furlough payments received by policyholders will be decided by the Supreme Court on 11-12 February 2026[3]. If decided in favour of the policyholders, this will necessitate a wholesale re-adjustment of the vast majority of claims paid by insurers over the past five years.

Secondly, the issue of how policyholders may prove an occurrence of Covid-19 at their insured premises for the purpose of so-called 'At the Premises' disease clauses remains undetermined. It is possible that further test case proceedings will be required to settle this issue, but any such proceedings will be unlikely to conclude until late 2026 at the earliest.

Finally, our anecdotal experience shows that many other claims, including many presented under 'Prevention of Access' and similar clauses, which have been confirmed

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[1] In particular, *Policyholders v China Taiping*, *Corbin & King v Axa* [2022] EWHC 409 (Comm), *Stonegate v MS Amlin* [2022] EWHC 2548 (Comm), *LIEC v RSA* , [2024] EWCA Civ 1026 and *Bath Racecourse v Liberty Mutual* [2025] EWCA Civ 153

[2] Further explanation of these issues is provided at Appendix 1 to this letter

[3] In Bath Racecourse v Liberty Mutual [2025] EWCA Civ 153

to be valid by the most recent test case litigation, have simply not yet been adjusted or paid.

Although the FCA has now ceased collecting and publishing data on Covid-19 BI claims, at the last count, only 43,027 claims had been accepted by insurers, out of a total of 370,000 policyholders that were estimated by the FCA to have held policies affected by the Test Case[4].

Limitation

The FCA will be aware that, in most cases, insurance claims in England and Wales are subject to a limitation period of six years, starting to run from the date of loss. That means that many unsettled Covid-19 BI claims will start to become time-barred from March 2026 onwards, unless legal proceedings are issued, or standstill agreements agreed with insurers.

For the reasons described above, it is clear that a large volume of claims will remain unsettled at this stage.

In the absence of action by the FCA, this will have two unwelcome consequences:

- First, voluminous legal proceedings will be generated by those policyholders who are in a position to bear the cost and risk of issuing proceedings. This will put undue strain on public resources, as well as causing unnecessary costs to be incurred by both policyholders and insurers, in respect of claims which may be capable of settlement. It will not be conducive to maintaining the integrity of the market.

- Secondly, and of more concern, a large number of SME policyholders, including the members of the signatories to this letter, who may not have the resources to take their own legal action, will be prevented from claiming compensation to which they were legally entitled, simply because the relevant legal principles have taken so long to be resolved. That would be incompatible with the Consumer Duty, requiring firms to act to deliver good outcomes for retail customers.

Our request

In its finalised guidance for firms, issued to insurers in June 2020[5], the FCA indicated that it expected insurers to 'stop the clock' on any time limits applying to claims until the final resolution of the FCA Test Case. That was a practical and fair instruction to the insurers, and was repeated in the FCA's Dear CEO letter to insurers in January 2021[6]. However, it did not contemplate the extensive further test case proceedings that would follow.

In light of the approaching limitation deadline, we are therefore requesting that the FCA:

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[4] https://www.fca.org.uk/data/bi-insurance-test-case-insurer-claims-data

[5] Business interruption insurance test case: Finalised guidance for firms

[6] Dear CEO letter: Business interruption insurance January 2021

- reinstate its 'stop the clock' guidance, with specific reference to more recent test case litigation including *London International Exhibition Centre v RSA* and *Bath Racecourse v Liberty Mutual*;

- require firms to confirm that they will not decline Covid-19 BI claims on the basis that any relevant time period has expired (including, but not limited to, any applicable period imposed by the Limitation Act 1980); and

- in the event that the Supreme Court reverses the current position on deduction of furlough receipts in *Bath Racecourse v Liberty Mutual*, require firms to revisit all previous claims settlements to ensure that policyholders are made whole to the extent required by the decision, without regard to whether any further claim may otherwise be time-barred.

Timing

In order for any such guidance to be effective, and avoid the need for policyholders to prepare to issue protective proceedings, we suggest that any such guidance be issued by 20 January 2026, and remain in place for a period of two years, i.e. until 20 March 2028.

Conclusion

We look forward to your response, and to the FCA giving due and fair consideration to our Request, which we consider would secure an appropriate and fair degree of protection for SME policyholders in the circumstances above. We are available to answer any questions or to arrange a meeting to discuss if that would be helpful.

Yours faithfully

Stewarts

<u>Supporting signatories</u>

1. **<u>UKHospitality</u>,** the trade body for hospitality in the UK. [redacted] for and on behalf of UKHospitality	**2.** The **Music Venue Trust,** a Registered Charity which acts to protect, secure and improve UK Grassroots Music Venues for the benefit of venues, communities and upcoming artists. [redacted]

	for and on behalf of Music Venue Trust
3. **The Association of Indoor Play**, the Trade Association for the indoor play sector in the United Kingdom. [redacted] for and on behalf of Association of Indoor Play	**4.** **Gamechangers**, an organisational body designed to cater to and look after venues that have invested or are looking to invest in competitive socialising. [redacted] for and on behalf of Gamechangers
5. The **British Beer and Pub Association**, the UK's leading trade association representing pubs and breweries. [redacted] for and on behalf of British Beer & Pub Association.	