

# Covid-19 Business Interruption - Loss means physical deprivation of property

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The Commercial Court has today ruled that temporary loss of use of premises as a result of Covid-19 lockdown measures does not trigger cover under a standard business interruption policy (without the sorts of extensions considered in the FCA test case).

TKC London Ltd is the owner of a café restaurant, which was closed earlier this year due to Government restrictions during the Covid-19 pandemic. It made a claim for business interruption losses under a policy issued by Allianz Insurance Plc, which covered all risks property damage and business interruption losses.

The policy covered business interruption which was caused by “*accidental loss or destruction of or damage to property*” used by TKC at its premises. Its primary argument was that loss of use of its premises amounted to “*loss of property*”, so as to trigger the cover.

On a summary judgment application, the Court accepted Allianz’ argument that the meaning of the word “*loss*” in property damage insurance usually has a physical element attached to it. The juxtaposition of the word “*loss*” against the words “*destruction*” and “*damage*” pointed towards the policy being intended to cover business interruption arising from physical rather than solely economic loss.

Such an interpretation was considered consistent with the wider context of the policy. Notably, as is standard in insurance of this nature, the business interruption cover was parasitic upon loss being covered by the property damage section of the policy (or some other property insurance). Further, the basis of settlement provisions of the property damage section suggested that the policy was only designed to cover physical losses.

The Court determined that to succeed in its claim, TKC would have to show that it had been physically deprived of its property in circumstances (where it is not plainly irrecoverable) making its recovery uncertain. A temporary deprivation of use of premises due to government restrictions was accordingly insufficient to trigger cover. TKC’s claim was struck out and summary judgment entered in Allianz’ favour.

The decision is a welcome assurance that, despite the unprecedented economic impact caused by the pandemic, the Courts are not willing to subvert the very foundations on which the vast majority of standard business interruption policies are based. The Court saw the force in the importance of the law providing a clear, certain and predictable basis for resolving claims, rather than straining the language of the policy to admit claims which the policy had not been designed to cover. It is vital for the functioning of the insurance market and for the benefit of policyholders with valid claims that insurers should only be paying those claims where the policy requirements are satisfied.

The judgment is also of interest with regard to TKC’s secondary claim that it should be entitled to recover business interruption losses consequent upon deterioration of its food stock during lockdown. The Court found that any such damage was not accidental and was not the cause of the interruption to TKC’s business, but rather the effect of it. Alternatively, any such damage was caused by or consisted of inherent vice, gradual deterioration and/or change in temperature, colour, flavour, texture or finish, all of which were excluded.

DACB acted for Allianz in the case of *TKC London Ltd v Allianz Insurance Plc* [2020] EWHC 2710 (Comm). The lawyers working on this case were James Deacon and Jacob Bebb.

## Authors



**James Deacon**

London - Walbrook

+44 (0)20 7894 6698

[jdeacon@dacbeachcroft.com](mailto:jdeacon@dacbeachcroft.com)

