howden

# Covid-19 Business Interruption FCA test case - updated 15/09/2020

Given the complexities surrounding business interruption policy wordings and the number of disputes between policyholders and Insurers as to the interpretation of these wordings and whether losses should be covered, the UK's financial services regulator, the Financial Conduct Authority (FCA) recognised the need for it to intervene in order to assist in swiftly solving some of the uncertainties surrounding such policy wordings and the associated on-going claims and disputes. It therefore proceeded with seeking a court declaration as part of a test case to resolve the contractual uncertainty around the validity of many business interruption claims.

On 15 September 2020, the High Court handed down its judgement in the FCA's business interruption test case, with the Court finding in favour on many of the arguments advanced for policyholders by the FCA.

This guide will provide you with further information on the following:

- Summary of the FCA's test case
- The expectations on Insurers during the test case
- The expectations on Insurers following the judgement
- An overview of the judgement
- Likely next steps and considerations
- Other information on how it may impact policyholders

We will continue to update this page with any further development.

## Get in touch:

If you would like to discuss any of the matters raised in this document, including where you may have suffered a financial loss and want to discuss making a claim under your policy to insurers, please get in touch with your normal point of contact at Howden or e-mail our Claims Team at UKclaims@howdengroup.com. Please put "New Covid 19 claim" in the email header and include both your policy details and details of your loss. This will help us deal with your matter more swiftly. Alternatively, please get in touch either by phone or by dropping us an electronic message, details of which can be found here.

## Updated to this document

| Date | Updates |
|---|---|
| 15 June 2020 | ▪ Document first published. |
| 24 June 2020 | ▪ Changes made following FCA finalising guidance, which sets out expectations on insurers for reviewing business interruption policies, and determining whether or not they are affected by the test case.<br>▪ Updates on each Insurer's Defences in response to the FCA's Particulars of Claim.<br>▪ Contact details have been added, should you wish to submit a claim. |
| 20 July 2020 | ▪ Addition of a link to the Comprehensive List of affected insurers and policies published by the FCA on 15 July 2020.<br>▪ Updates on the progress of the case and reference to new documents presented by the FCA and insurers.<br>▪ The Hiscox Action Group and the Hospitality Insurance Group Action were permitted to intervene in the test case. |
| 15 September 2020 | ▪ Updates following the High Court's judgement. |

howden

# The FCA's test case:

**Commencement**

The Court Trial commenced on 20 July 2020. The individual steps and associated timeframes of the test case are included on the FCA's dedicated business interruption insurance web page.

**Review of information**

The FCA recognised that the disputes between Insurers and policyholders stem from policy wordings which are perceived to provide cover for business interruption losses in circumstances where there has been no physical damage to the insured property, for example where such wording includes cover for 'non-damage denial or access', 'public authority closure', 'notifiable disease outbreak' or similar matters.

In advance of the Court Trial, the FCA engaged with over 50 Insurers and reviewed over 500 policy wordings. It also received over 1,000 submissions from policyholders and insurance intermediaries, who provided their arguments in relation to on-going disputes.

**Impacted insurers and policy wordings to be tested**

Supported by external counsel, the FCA identified a sample of 21 business interruption policy wordings that it believed captured the majority of the policy wording characteristics which are resulting in disputes between policyholders and Insurers and, therefore, proceeded to use this sample as part of the test case. Given the representative nature of the policies and wordings it had selected, the FCA expected the test case to provide guidance for the interpretation of many other business interruption policies that were not in the representative sample.

The FCA also published a preliminary list of 16 affected Insurers and their policies that matched the 19 policy wordings that were within the scope of its test case. On 15 July 2020, this preliminary list was replaced by a more Comprehensive List of affected insurers and policies, following the FCA's requirement on all insurers to review all of their business interruption policies that included non-damage interruption wordings, compare these to the clauses being included within the test case, and confirm to it whether any such policies were likely to be affected by the findings of the test case. Insurers were expected to provide the FCA with any updates to this list, as the test case progresses. The FCA has advised that this list did not contain details of any policies that are held by fewer than five policyholders.

Of the 16 affected Insurers included in the above list, 8 were invited and agreed to participate in the test case, a list of which included in the Particulars of Claim document, which is the FCA's 'pleading' in the case, setting out its claim in writing.

**Policies unlikely to affected**

Prior to the test case commencing, the FCA stated that non-damage business interruption policy clauses that have the following characteristics were unlikely to be affected by the test case:

- where there is cover for a list of specified illnesses or notifiable diseases only, which does not include Covid-19, and/or
- where there must have been an occurrence of Covid-19 at the insured premises/property.

**FCA legal representatives**

To assist the FCA to put forward policyholders' arguments to their best advantage, it instructed Herbert Smith Freehills, led by Paul Lewis. It also instructed an external team of highly experienced counsel, including Colin Edelman QC, Leigh-Ann Mulcahy QC and Richard Coleman QC.

The Hiscox Action Group and the Hospitality Insurance Group Action who represent hundreds of policyholders have been permitted to intervene in the test case.

**Judgement**

The High Court handed down its judgement of the case on 15 September 2020, with the Court finding in favour on many of the arguments advanced for policyholders by the FCA.

The FCA made it very clear that policyholders should not assume that the simple inclusion of their Insurer and/or policy wording (or similar wording) in the test case would result in their losses being covered under the policy. The court judgement will provide assistance in settling disputes, however, even with the judgement, each claim would need to be looked at on a case by case basis, depending on the policy wording itself, the nature of the insured's business and the degree to which that business was impacted by Covid-19 and the restrictions applied.

**Appeals**

It is possible that Insurers will appeal some or all of the judgement, and will make applications to appeal which will be heard at a consequentials hearing before the High Court.

The FCA and the defendant Insurers have agreed that they will seek to have any appeal heard on an expedited basis, given the importance of the matter for so many policyholders. This includes exploring the possibility of any appeal being a 'leapfrog' appeal to the Supreme Court (rather than needing to be heard by the Court of Appeal first).

Although no date has been set for this, a legal firm closely involved in the test case have said they believe this initial hearing will take place in mid-October.

Other Insurers not party to the test base, but who will have affected claims and complaints, will also respond following the judgement, but may also choose to consider any appeals made.

**Purpose of the test case**

The result of the test case is legally binding on the Insurers that are parties to the test case in respect of the interpretation of the representative sample of policy wordings considered by the court. The FCA also believes that the proceedings will set a legal precedent which will be helpful to resolve uncertainty around the interpretation of similar policy wordings and claims that can be taken into account in other court cases, by the Financial Ombudsman Service and by the FCA in looking at whether Insurers are handling claims fairly.

The test case was not intended to encompass all possible disputes, but to resolve some key contractual uncertainties and 'causation' issues to provide clarity for policyholders and Insurers. It was not to determine other issues such as aggregation, additional causation issues specific to loss of rent and similar claims under a property owner's policy, and how much is payable under individual policies.

The intended action will not prevent individuals from pursuing issues through negotiated settlement, arbitration, court proceedings as a private party, or taking eligible complaints to the Financial Ombudsman Service (FOS). When investigating a complaint, the FCA requires insurers to provide the FOS with the results of the assessment they were expected to undertake (as set out in the next section of this document).

If you are a member, or thinking about becoming a member, of an Action Group, you should seek advice from the Action Group as to the implications of this case in relation to you participation in the Group.

**Other documentation to be presented to the courts**

Key documents that were used as part of the Test Case are made available on the FCA's dedicated business interruption insurance web page and include:

- **The Arguments and Defences** presented by each party.
- **Assumed Facts** (or 'fact patterns'), which are a set of illustrative factual assumptions, for example the nature of the affected business(es), how they were affected by the pandemic and whether they closed entirely or partially (and why). These were a menu of potential fact patterns to assist the court, and not all of the assumed facts were applied to all of the representative sample of policy wordings
- **Issues Matrix**, which shows which questions for determination by the court are engaged by each policy in the representative sample
- **Agreed list of Facts**, which summarises what is and is not in dispute between the parties.
- **Transcripts of previous hearings**.

howden

# Expectations on Insurers:

### Expectations of insurers in advance and during the test case

In advance and during the test case, the FCA expected all Insurers (and not simply those which were parties to the test case) to meet the expectations set out below.

**Review of policies**

- All Insurers were required to review all of their policies that include non-damage business interruption wordings against those policy wordings and clauses that were included within the test case and provide to the FCA a list of all such policies, and confirm whether any claims decisions under those policies would likely be affected by the final resolution of the test case.
- The FCA produced a Comprehensive List of affected insurers and policies.
- The FCA stated that non-damage business interruption policy clauses that have the following characteristics would unlikely be affected by the test case:
  - where there is cover for a list of specified illnesses or notifiable diseases only, which does not include Covid-19, and/or
  - where there must have been an occurrence of Covid-19 at the insured premises/property.

**Communication**

- Insurers were, and continue to be, expected to make available to policyholders (e.g., via web site) updates about the test case and its implications for potential claims.
- They were also required to review historically made statements on whether their non-damage business interruption policies would respond to claims and, in light of the test case, amend these appropriately and reissue to policyholders.

**Policyholder contact**

- Insurers were required to notify policyholders with existing claims or complaints concerning relevant non-damage business interruption policies (including those already rejected or where an adjustment or deduction for general causation had been made) whether or not their decisions in relation to those claims or complaints were likely to be affected by the outcome of the test case and the associated implications.
- Insurers were also required to give claimants or complainants appropriate and timely updates about the test case and its implications, and whether their decisions may be affected by the final resolution of the test case.
- Insurers were also required to provide this information to policyholders who make new claims/complaints concerning non-damage business interruption policies.
- Should we have received any correspondence from Insurers relating to the above, our Claims Teams will have forwarded these onto our clients.

**Final resolution**

- On the final resolution of the test case, after all rights of appeal have been concluded, Insurers will need to consider all existing and previously rejected claims and complaints, and reassess these on the basis of the final judgements of the test case.
- Insurers will be expected to notify policyholders promptly of the outcome of the reassessment.

### Expectations of insurers following the judgement

Following the judgement handed down by the High Court on 15 September 2020, Insurers must communicate with all policyholders of affected claims or complaints by 22 September 2020, providing them with an update and their response to the judgement.

The judgement is legally binding on the Insurers that are party to the test case and, therefore, will be required to consider their position and response to existing and future claims. However, it is also possible that the Insurers will appeal some or all of the judgement, and will make applications to appeal which will be heard at a consequentials hearing before the High Court.

The FCA and the defendant Insurers have agreed that they will seek to have any appeal heard on an expedited basis, given the importance of the matter for so many policyholders. This includes exploring the possibility of any appeal being a ‘leapfrog’ appeal to the Supreme Court (rather than needing to be heard by the Court of Appeal first).

Other Insurers not party to the test base, but who will have affected claims and complaints, will also respond following the judgement, but may also choose to consider any appeals made.

## Summary of the judgement

This section provides a brief overview of the key findings of the judgement as recorded within the judgement itself and the summary produced by the FCA's legal representatives, both of which can be found on the FCA's dedicated business interruption insurance web page.

A summary of the key points raised against the main sections of the judgement are set out below. It does not cover all of the Court's conclusions and nor does it cover each nuance of each policy considered. A number of the arguments raised were found in favour of the FCA and, in effect, policyholders. However, the judgement is complex and its application to each policy (both those within the test case and those that were not), needs to be carefully considered by both insurers and policyholders.

Policyholders with affected claims can expect to hear from their Insurer by 22 September 2020 as to how they will respond to the judgement.

It is important to remember that the test case was not intended to encompass all possible disputes, but to resolve some key contractual uncertainties and 'causation' issues to provide clarity for policyholders and insurers. The judgment does not determine how much is payable under individual policies, but will provide much of the basis for doing so.

It is possible that the judgment will be appealed. Any appeal does not preclude policyholders seeking to settle their claims with their insurer before the outcome of any appeal is known.

A sample of 21 business interruption policy wordings were considered as part of the test case, and the relevant provisions considered under these policies is set out below.

### Disease wording

Policies in this category were written by RSA, Argenta, MS Amlin and QBE. They all differ slightly, but essentially provided cover for loss resulting from:

- interruption or interference with the business
- following / arising from / as a result of
- any notifiable disease / occurrence of a notifiable diseases / arising from any human infectious or human contagious disease manifested by any person
- within 25 miles / 1 mile / the "vicinity" of the premises / insured location.

For all but two of the QBE policy wordings, the High Court disagreed with Insurers' argument that cover under these policies would apply where there was a local occurrence of a notifiable disease only and not where there was a wider spread of the disease (of which the local occurrence could not be separated). Instead, the High Court agreed with the FCA, essentially concluding that cover would be provided and triggered at the point when there was at least one case of Covid-19 in the defined area referenced in the policy clause, (with the test generally being whether that case of Covid-19 was diagnosable, regardless of whether or not actually it was actually diagnosed or symptomatic) and that this was not impacted by the fact that there was widespread cases outside the defined area referenced in the policy clause.

In relation to the RSA4 wording, the definition of 'Vicinity' included within the policy was construed in the context of the disease clause as encompassing England and Wales. This was on the basis that, when Covid-19 occurred, it was of such a nature that any occurrence in England and Wales would reasonably be expected to have an impact on insureds and their businesses, and therefore that all occurrences of Covid-19 in England and Wales were within the relevant "Vicinity".

Two of the three QBE wordings were in a slightly different form, and the Court concluded that the wording used in these policies (in particular the words "*in consequence of*" together with "*events*") meant that policyholders would only be covered if they could prove that interruption to their business was as a result of Covid-19 being in the defined area covered under the policy, as opposed to elsewhere.

### The Prevention of Access / Public Authority Wordings

Policies in this category were written by Arch, Ecclesiastical, Hiscox, MS Amlin, RSA and Zurich. The wordings provide cover for loss resulting from:

- Prevention / denial / hindrance of access to the Premises
- Due to actions / advice / restrictions of / imposed by order of
- A government /local authority /police / other body
- Due to an emergency likely to endanger life / neighbouring property/incident within a specified area

Generally, the Court concluded that the Prevention of Access / Public Authority clauses were to be construed more restrictively than the Disease Clauses (however, it was found that there would be cover for some insureds under some wordings). It was therefore concluded that determining whether or not cover was provided under these clauses would very much depend on the exact terms of the policy wording itself and the application of any Government advice or Regulation on the policyholder's specific business (ie, whether the business was impacted by mandatory closure or affected by social distancing advice and stay at home advice).

It is therefore very possible that two businesses with the same insurance policy wording will find the cover afforded to them to be very different, based on the nature of their specific businesses and how they were impacted by Covid-19.

Some of the key factors considered by the court can be summarised as follows:

- Wordings which included ''emergency in the vicinity", "danger or disturbance in the vicinity", "injury in the vicinity" and "incident within 1 mile/the Vicinity" were considered to be requirements that meant something specific which happens at a particular time and in the local area and, therefore, were intended to provide narrow localised cover, meaning that cover would only apply where the action of the relevant authority would have to be in response to the localised occurrence of the disease and not a response to the pandemic.
- Advice issued by the Government on 16, 20 and 23 March would not be considered as mandatory instructions meaning that they would potentially result in cover for clauses with "advice" wordings or could be construed as an "action" in the context of a clause that contemplated hindrance of use. However, such advice by the Government was unlikely to trigger cover in policies with clauses that included an "action" by an authority, which "prevents" access, or clauses that included "imposed by order" (as these would require a mandatory action and the force of law). However, the Regulations issued by the Government on 21 and 26 March could possibly trigger cover in these instances.
- Many policies required there to have been a "prevention" of access (as opposed to, for example, "hindrance" of "use"). Where that was the case, although physical prevention was not required, there had to have been a closure of the premises for the purposes of carrying on the business.
- The Court considered that "interruption" did not require a complete cessation of the business but was intended to mean "business interruption" generally, including disruption and interference with the business. The exception to this general rule was in relation to MS Amlin 2, where interruption was given its strict meaning of cessation.

### Hybrid Wordings

Policies in this category were written by Hiscox and RSA and are a hybrid of the disease wordings and prevention of access/public authority wordings. Although there were variations between the wordings, they broadly provided cover for losses resulting from:

- An interruption to the business
- Due to an inability to use the premises
- Due to restrictions imposed by a public authority
- Following an occurrence of disease

Similar to its conclusion on the stand-alone disease wordings, the Court concluded that cover was not restricted to local outbreaks only. However, as per its conclusion on the prevention of access wordings, the Court considered that the terms "restrictions imposed" meant a mandatory requirement (eg, the Government regulations), and "inability to use" meant more than just an impairment of normal use.

In these cases, therefore, there will be a need to carefully consider the individual wordings of the hybrid policies and the application of any Government advice or Regulation on the policyholder's specific business.

### Trends Clauses

A trends clause is intended to put the insured in the same position as it would have been had the insured peril not occurred. Such clauses allow for business trends that would have impacted the business anyway (i.e. regardless of whether the insured peril in question occurred) to be considered when calculating the value of the claim. Insurers argued that the insured peril should be narrowly defined, meaning that all other events and factors which would have affected the business (the counterfactuals) could be considered under the trend clause. For example, in respect of the disease wording, Insurers argued that the insured peril was the local occurrence of the disease alone, meaning that the financial performance of the business would be adjusted based on the other effects of the pandemic and associated government measures, the effect of which would be a reduction in the claim value.

The Court did not agree with Insurers and, unless specifically referenced otherwise in the policy, it provided the following guidance as to the 'in principle' operation of the trends clauses in respect of each category of wording:

- Disease wordings: The insured peril is the interruption or interference of the Business following the occurrence of the disease including via the authorities' or public's response. The wordings in issue insured the effects of Covid-19 both within the specified radius and outside it, with the result that the whole of the disease both inside and outside the relevant area has to be stripped out in the counterfactual.
- Prevention of access / public authority wordings: the insured peril is a composite one involving three interconnected elements: (i) prevention or hindrance of access to or use of the premises; (ii) by any action of an authority; (iii) due to an emergency / incident which could endanger human life. All three must be stripped out of the counterfactual.
- Hybrid wordings: The insured peril is also a composite peril involving (i) inability to use the insured premises; (ii) due to restrictions imposed by a public authority; (iii) following the occurrence of a human infectious or contagious disease. Each of these interconnected elements should be removed from the counterfactual.

howden

## Other information on how the test case may affect policyholders:

### Is my claim going to be affected by the test case?

- If you submitted a claim to Insurers before 17 June 2020 on a non-damage business interruption policy, the Insurer would have been required to contact you by 15 July 2020 to inform you of whether their decision in relation to that claim was likely to be affected by the test case. This is regardless of whether your claim had already been rejected or where an adjustment or deduction for general causation had been made. Where we submitted a claim on your behalf, our claims team would have chased insurers for their responses and would have forwarded these on to you.
- If you submitted a claim after 17 June 2020 insurers may have taken a little longer to provide you with their response. However, when they respond, they will also need to set our clearly whether your claim will be affected by the test case and they must provide this information promptly.
- The Insurer's initial responses would have been based on its review of its policies against the characteristics of the sample of 21 business interruption policy wordings that are to be included within the test case.
- Insurers will now need to consider the implications of the judgement handed down by the High Court against each existing affected claim or complaint, and will need to provide an update to policyholders by 22 September 2020. It is possible that this will reflect their desire to consider options for appeal.
- We will promptly forward to you any communications we receive from Insurers on your behalf.
- The FCA has also publish a Comprehensive List of affected insurers and policies, which are likely to be affected by the outcome of the test case. This replaces the preliminary list of 16 affected Insurers and their policies that the FCA previously issued.

### If my policy is included within the test case or shares the same wording as those included in the test case, does that mean my claim will be covered?

- Whilst the judgement has found in favour of policyholders in respect of many arguments raised by the FCA during the test case, it is also clear that insurers will need to now consider each of their policy wording against the judgement and will also need to consider the circumstances of each individual claim (for example, the degree to which their businesses were specifically affected by the lockdown measures introduced by the Government). Therefore, you should not assume that the simple inclusion of your Insurer and/or policy wording (or similar wording) in the test case will result in your claim being covered. Furthermore, Insurers may seek to appeal the judgement.
- Insurers are required to provide all policyholders with affected claims or complaints with an update as to their position following the judgement by 22 September 2020.
- Therefore, in all cases, we strongly recommend that you continue to act in a prudent manner as if you were uninsured, including considering and seeking assistance from the number of initiatives made available by the Government. If any claim is to be considered by an Insurer, they will want to see that you sought every opportunity to mitigate your potential loss so it would be important to show that any assistance available, whether nationally or locally, had been duly considered. More information upon the assistance provided by the Government can be found on its website here.

### What if I haven't already made a claim?

- The FCA has required all Insurers to review all of their policies that include non-damage business interruption wordings against those policy wordings that are to be included within the test case. They will now also be required to consider these against the judgement handed down by the High Court on 15 September 2020.
- However, Insurers will only be required to notify policyholders who have made a claim or complaint concerning a non-damage business interruption policy and whether their decisions in relation to those claims or complaints are affected by the outcome of the test case.
- If you have not already made a claim but have a policy that includes non-damage business interruption wordings, you may wish to compare your wording against the sample of 21 business interruption policy wordings that were included specifically within the test case to see if they share the same characteristics and to see if it would be affected. You may also wish to review it against the judgement handed down by the High Court on 15 September 2020, a full copy and summary of which is available on the FCA's dedicated business interruption insurance web page.
- You can also check to see whether your Insurer and policy is referenced within the more Comprehensive List of affected insurers and policies that the FCA publish on 15 July 2020.
- Insurers should not include the period between 17 June 2020 and the final resolution of the test case, (after all rights of appeal have been concluded) when relying on any time limits within which policyholders must make a claim or take any other step under the terms of their policies, or refer a complaint to the Financial Ombudsman Service.
- Insurers should not limit any payment that may be due to a policyholder because of the time period that has elapsed before the claim or complaint was made.
- If you would like to discuss making a claim, please get in touch with your normal point of contact at Howden or please e-mail our Claims Team at UKclaims@howdengroup.com. Please put "New Covid 19 claim" in the email header and include both your policy details and details of your loss. This will help us deal with your matter more swiftly.

## Given the test case, should I now make a claim?

- Insurers will continue to review all claims on a case-by-case basis and, depending on the policy wording, may need to consider the outcome of the test case when deciding whether or not the claim is covered.
- Therefore, if your policy includes cover for non-damage business interruption and you feel you have suffered a business interruption loss as a result of Covid-19 and would like to discuss this further, please get in touch.
- Please note that where your policy either provides cover
    1. for a list of specified illnesses or notifiable diseases only which does not include Covid-19, and/or
    2. where there must have been an occurrence of Covid-19 at the insured premises/property

  Insurers will most likely decline your claim and it is unlikely that their decision will be affected by the outcome of the test case.
- In all cases however, if you would like to submit a formal claim to Insurers, we would support you in doing so.
- Insurers should not include the period between 17 June 2020 and the final resolution of the test case, (after all rights of appeal have been concluded) when relying on any time limits within which policyholders must make a claim or take any other step under the terms of their policies, or refer a complaint to the Financial Ombudsman Service.
- Insurers should not limit any payment that may be due to a policyholder because of the time period that has elapsed before the claim or complaint was made.
- If you would like to discuss making a claim, please get in touch with your normal point of contact at Howden or please e-mail our Claims Team at UKclaims@howdengroup.com. Please put “New Covid 19 claim” in the email header and include both your policy details and details of your loss. This will help us deal with your matter more swiftly.

## Where can I get more information?

- The FCA has made it clear that it wishes to ensure that policyholders are properly engaged throughout the test case process. It has made available a dedicated business interruption insurance web page, which it will update on a regular basis.
- The FCA also includes a service whereby you can subscribe for email updates.
- The FCA will continue to make available all information and documents published in relation to the test case and will update the web page regularly. It has also indicated it will be available for discussion with Action Groups and policyholders and their legal representatives.
- We will continue to update our own web page as further information in relation to the test case is published.
- If you would like to discuss any of the matters raised below, please get in touch with your normal point of contact at Howden. Alternatively, please get in touch either by phone or by dropping us an electronic message, details of which can be found here.

## Will the test case have an impact on my ability to pursue other avenues of challenge?

- The test case will not prevent individuals from pursuing issues through negotiated settlement, arbitration, court proceedings as a private party, nor from taking eligible complaints to the Financial Ombudsman Service.
- The Financial Ombudsman Service is likely to issue updates on its handling of business interruption associated complaints and, when available, will be published on the Financial Ombudsman Service web site. If you have any complaints with the Financial Ombudsman Service that are potentially affected by the judgement, you should await further information from the Ombudsman.
- Insurers should not include the period between 17 June 2020 and the final resolution of the test case, (after all rights of appeal have been concluded) when relying on any time limits within which policyholders must make a claim or take any other step under the terms of their policies, or refer a complaint to the Financial Ombudsman Service.
- If you are a member of an Action Group, or are thinking of becoming one, you should seek advice from the Action Group as to the implications of this case in relation to your participation in the Group.