

About us

Unlike many of our clients, we have the privilege of being able to work from home – and we plan to maintain a full service. We have also doubled our claims resource and hired 15% more staff in the last month, which will assist our resilience.

Our claims team is working flat out at present, so if you are seeking general advice, rather than making a claim, please direct this to your main contact at Innovation. We will be more than happy to assist.

As I write this, we are all well.

Resources

Earlier in the month we listed two helpful websites from either side of the Atlantic being the ACAS site which is updated daily, and the CDC site. Another useful resource about recovery rate, and to establish facts, is from John Hopkins University

- [ACAS website](#)
- [Disease Control & Prevention](#)
- [John Hopkins](#)

Travelling

Travel insurance policies are generally responding if you contract Covid-19 while abroad and require treatment, or incur unexpected expenses, provided that you have not deliberately entered an area the [Foreign Office advises against travel](#) and that any expenses you incur are **agreed in advance** with insurers on their 24 hour help lines.

Many of our clients are asking us for clarification on their trips booked later in the year. Voluntary cancellation is not insured, and as yet there is nothing to trigger compulsory cancellation from the government beyond the 30 days ban on the FCO

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website. We are sure this will change, and, when it does, more definitive answers will be obvious.

The British Insurance Brokers Ass. [BIBA website](#) is being kept up to date on travel issues and other matters on coronavirus.

Interruption to your revenue, operations or events

There is a myth, fuelled by exaggerated reporting, that there is insurance in existing policies for the business interruption costs incurred as a result Covid- 19. Today's BBC news is beginning to correct this, as you may have seen.

There is little, if any, cover for businesses under general insurance policies for costs from an interruption - or loss of income - in the absence of physical damage to your or surrounding premises.

In general terms insurance exists to cover losses from an unlikely or fortuitous risk. Insurance is not designed, and indeed the industry is not capitalised, to cover major global systemic risks. such as pandemics or war risks.

Although very costly specialist pandemic insurance covers can be purchased by the healthcare, hospitality and leisure sectors, though there are few such policies in force across the developed world.

In the Chancellor's statement on 17 March the Government indicated that they have taken enough steps for insurance policies that cover coronavirus to be 'triggered'. We think it is important to point out that the relevant cover impacted is only in respect of disease-triggered Business Interruption policies which include coverage for the virus.

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A small number of policies may provide some cover and will usually list the specific illnesses/diseases that are covered, or exclude viruses such as coronavirus.

In the limited number of policies where there is some cover for what our industry calls "non damage business interruption" it tends to fall into four categories:

Firstly, the policy provides coverage for a list of named contagious diseases. If Covid-19 not named = **no cover**.

Secondly, the policy provides blanket non-physical damage coverage to a limit of typically £100,000 or £250,000. This will normally exclude causation by SARS or similar atypical pneumonia = **no cover**.

Thirdly, the policy provides blanket non-physical damage coverage to a limit of, typically, £100,000 or £250,000, provided that a public authority closes the premises.

Fourthly, the policy provides coverage for unspecified contagious diseases provided that a public authority closes the premises.

Should the third or fourth example operate then working out what can be claimed is the next challenge.

Our friends at Fenchurch Law, who help us and our clients with complex claims, have published an excellent explanation repeated here:

"Causation: Even where cover for Business Interruption losses is established, there will inevitably then be disputes over causation and measurement of loss. Where a business elects to implement or follow certain measures for the protection of its employees or customers, the position will be different from that where it is following mandatory orders from a public authority. Even where a business is forced to close or scale down its operations, there will

be arguments over to what extent the losses are caused by the immediate effects on the business, rather than the effects on the wider marketplace and the absence of customers.

We can therefore anticipate 'wide area damage' type arguments being raised by insurers, relying on the principle in the Orient Express case, where a hotel in New Orleans was prevented from recovering its lost profits following Hurricane Katrina. [this was] on the basis that damage to the wider area meant that even if the hotel had been able to continue operating, it would have had no custom-anyway.

The insuring clause, formula and any trends clause will need to be examined very carefully in order to understand whether such principles have any application to a claim for Business Interruption losses in the aftermath of a COVID-19 outbreak.

Notifiable Diseases: Some policies provide cover for losses caused by any 'notifiable' disease, which may give rise to difficulties in the case of a novel disease that does not become notifiable until some way in to the period of loss. A decision of the Hong Kong Court of Appeal in the aftermath of the SARS pandemic established that such a clause had the result of reducing the amount of loss covered in two ways. First, losses suffered before the date on which the disease became notifiable were not covered. The decision of a competent authority to make the disease notifiable did not act retrospectively. Secondly, the starting point for establishing the amount of profit lost was the period after the advent of the disease, but before the disease became notifiable, not the period before the first incidence of the disease. To the extent that the business's profitability has already suffered before the disease becomes notifiable, this will therefore affect the amount the

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business is able to claim as loss of profit going forward."

To summarise –

- Insurers did not intend to cover a Pandemic or Epidemic risk
- There is very little cover in policies
- Where there is some cover then Business Interruption claims will be a challenge.
- Insurers are starting to put explicit Covid-19 exclusions on new policies and renewals.

Working from home

Working from home raises several issues to consider:

1. Do you have sufficient insurance for all your laptops and any other kit being out of the office at one time? Please contact us if these numbers require amendment.
2. Are your main premises secure, watertight and being visited? Please advise us of what is happening with vacated premises, so we can agree full cover with insurers, as this is a change in the risk you have originally presented to insurers. Also please bear in mind that most insurance policies automatically reduce cover or restrict it entirely when premises are unoccupied for a specified length of time -normally 30 days.
3. Have you addressed the Health and Safety risk of employees at home? There is a lot of guidance about this on the Health and Safety Executive and gov.uk websites, specific to each type of industry
4. Have you revised your IT/ Financial security policy to recognise that fraudsters and cyber criminals' area already actively working to exploit home working to access your funds?

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Am I covered if my employees catch Covid-19 at work?

We have been asked this question several times this week, as many of our clients in essential services are being forced to keep working.

If you, as an Employer, are considered liable for a work-related injury, you should expect your Employers' Liability policy to respond. However, our view is that an employers' potential liability for an employee contracting coronavirus in the course of work is extremely remote.

Your contracts with customers and suppliers

There is a lot of discussion about the effect of "force majeure" clauses enabling companies to avoid contractual obligations for the unforeseen effect of Covid-19.

"The literal translation of "force majeure" is "superior force" and in practice it means the happening of events outside the control of the contractual parties (for example, natural disasters, epidemics or the outbreak of hostilities)"

This, from an article about contracts and the doctrine of frustration from another lawyer we work closely with, Kerman & Co, who advised the Ryder Cup following 9/11, which you can find [here](#)

Directors and Officers liability (and Trustee Indemnity)

Directors and Officers liability policies cover you for wrongful acts, or breach of fiduciary duty, in running your organisation/business, and responds to claims made against individual Directors/executives.

If you are likely to have a liquidity situation please talk with us early, particularly if renewal is imminent – as we foresee D&O insurers being reluctant to insure those who do not have a demonstrable roadmap to recovery.

Also, to protect you personally, please minute at board meetings the rationale behind key decisions.

Call to action

- ✓ All of us at Innovation Broking are happy to be a sounding board with you to think things through. Please call your normal contact, rather than our claims team – unless you have an active claim situation.
- ✓ If you are working at home please address the questions 1-4 in this briefing
- ✓ If you anticipate a liquidity crisis please talk to us about your D&O insurance

And finally, on a positive note

Chubb Insurance, who are a world leader in insuring clinical trials, have offered two research clinics in China pro bono insurance on their vaccine trials.

We hope the briefing note is helpful and please note that this is generic advice for our client base, and all policies vary in their wordings. To better understand your particular policy wording and its application please call us.

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19 March 2020