



BRIEFING PAPER

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Coronavirus: Business interruption insurance

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Summary

As this is a fast-moving policy area, this briefing should be regarded as up to date on the day of publication.

Business interruption insurance compensates policy-holders for costs arising from events that close or severely disrupt operations. The coronavirus pandemic has led to many claims, as well as disputes about whether and how far policies do (or should) provide cover for losses.

Demands for Government action

Many businesses wanted the Government to declare the novel coronavirus a notifiable illness and to order businesses to close. They expected that this would allow them to claim under business interruption policies. The UK Government made Covid-19 a notifiable disease on 5 March 2020 and advised many businesses to close on 16 March.

The importance of policy wording

But the insurance industry warned that few policies were likely to provide cover, even if the Government forced businesses to close. Over the past decade or so, insurers had redrafted policy wording to exclude diseases not explicitly named.

The Government and the industry advised businesses to refer to the specific wording of their policies. Businesses could also consider the other forms of support available.

Continuing disputes and potential legal action

Many policy-holders argue that the wording in their policies is not clear or seems to permit claims, although their insurers have argued the opposite. Small businesses can complain to the Financial Ombudsman Service (FOS) about this.

The Financial Conduct Authority (FCA) notes that few policy-holders are likely to be covered. It is seeking a judgment on specific policy wording from the High Court.

The future

Some commentators noted that the scale of the disruption is such that the industry would not in any event be able to cover the losses. This might be a case where the State should take charge.

1. Government actions and statements

Potential business interruption claims tend to rely on specific Government actions – most notably the declaration of notifiable diseases and requirements to cease operating or trading.

The Government [declared Covid-19 a notifiable disease in England](#) on 5 March 2020, bringing England into line with [Scotland](#) (22 February) and [Northern Ireland](#) (28 February). It was declared a notifiable disease in [Wales](#) on 6 March. This change meant that all confirmed or suspected cases must be reported to government authorities.

On 16 March, [the Prime Minister made a statement](#) advising the public to observe social distancing, to work from home if possible and to “avoid pubs, clubs, theatres and other such social venues”.

The following day, while announcing the wider package of government support to businesses, the Chancellor asserted that “changed medical advice” would be sufficient to allow claims from businesses with “a policy that covers pandemics”. He went on that “for those businesses that do have a policy that covers pandemics, the Government’s action is sufficient and will allow them to make an insurance claim against their policy.”¹

The then shadow Chancellor, John McDonnell, urged more “clarity” in the Government’s position. He asked whether the Chancellor would “make it clear to the insurance companies that those in the hospitality sector—the pubs, the clubs, the theatres, the festivals—are closing on the instruction of the Government?”. He stated that doing that would mean that “most of them, even if they do not have “pandemic” in their insurance policies, will be covered.”²

The Chancellor confirmed that the insurance industry had agreed that it would equate the Government’s “advice” with a “ban” on the operation of these sectors. He said that “the insurance industry will honour insurance contracts that would have been triggered if the advice had been to ban certain things, rather than it being advisory not to do them.”³

Notably, the Chancellor’s response did not indicate that “most” businesses would now be able to claim on their insurance, as had been suggested by the Shadow Chancellor. As discussed below, this reflects somewhat differing expectations of business interruption insurance that would influence stakeholder priorities and reactions.

On 23 March, [the Prime Minister made a further statement](#) that converted general advice into an instruction – and so began the lockdown.

¹ HC Deb, 17 Mar 2020, [c932](#)

² Ibid., [c934](#)

³ Ibid., [c936-937](#)

2. Early business priorities and reactions

At the start of the crisis, [many businesses urged the Government](#) to declare Covid-19 a notifiable disease and to order the closure of businesses. They believed that this would enable them to make claims under business interruption and cancellation policies.

But it was not clear how many businesses had insurance policies that would actually pay out should the Government do this – and this matter was missed in some discussion.

On 4 March, [the BBC reported](#) that the “government has bowed to pressure and changed its stance on insurance to cover firms for coronavirus losses in England”. The Government said that “this will help companies seek compensation through their insurance policies in the event of any cancellations they may have to make as a result of the spread of the virus”.

The report also noted that the Association of British Insurers (ABI) had said the Government’s decision “was unlikely to apply retrospectively” and that “standard business insurance policies are designed and priced to cover standard risks, not those that are very unlikely, such as the effects of Covid-19”. It urged policy holders “to check the small print of their policies.”⁴

As the BBC report noted (and as discussed in the next section), the insurance industry was warning that few businesses would be covered at all. Not all reporting included the industry’s caution. For instance, in [“Coronavirus declared a 'notifiable disease' by government in boost for worried firms”](#), *The Mirror* stated that “[t]he official designation means that companies will be able to claim on their insurance for cancellations they have been forced to make because of Covid-19.”

Reporting often highlighted other barriers rather than the general issue of non-coverage. For instance, [in another article from 4 March](#), the BBC highlighted other stipulations – although the article later went on to quote industry cautions about the wording and general exclusions discussed in the next section:

Thousands of businesses may not be able to claim for losses incurred by the coronavirus outbreak, despite the reclassification of the disease.

On Wednesday the government said it would declare coronavirus as a “notifiable disease”, a classification required by many insurance policies.

But the Association of British Insurers says most business insurance policies are still “unlikely” to cover losses.

Many policies will only cover firms if the virus is found on-site.

Several insurers are telling customers that they should check the detail of their policy to see whether they are covered.

⁴ BBC News, [“Government clarifies coronavirus insurance stance”](#), 4 March 2020

It has left businesses worried about expected virus-related losses.

Lara Lloyd from Totnes in Devon runs residential art courses and trips abroad. Her family-run business, Coombe Farm Studios, has already had a number of cancellations.

Her insurer told her that they would pay for loss of profits caused by the occurrence of disease on-site, and then only if the premises are closed on the order or advice of "a competent authority".

The Prime Minister's advice to "avoid" establishments on 16 March led to complaints from businesses that they had been left "in limbo" and would need an outright "ban" to enable them to take wider action, including business interruption and cancellation insurance. [*As The Times reported:*](#)

Employers' groups said that the government's position would destroy demand but that without a formal order to shut their doors businesses would be "left in limbo" in their negotiations with lenders, suppliers, landlords and local authorities.

They are also less likely to be able to make an insurance claim than if closure were forced upon them.

Hospitality groups said that some companies had been experiencing falls in trade of more than 50 per cent and warned that tens of thousands of jobs were at risk.

Kate Nicholls, chief executive of UK Hospitality, a trade body for the hospitality industry, said that Mr Johnson's stance was "catastrophic for businesses and jobs".

She added: "The government has effectively shut the hospitality industry without any support, and this announcement will lead to thousands of businesses closing their doors for good, and hundreds of thousands of job losses. This latest advice leaves the industry in limbo, with no recourse to insurance."

3. The insurance industry's position

Since the issue first arose the Association of British Insurers had asserted that most businesses were unlikely to have cover for pandemics. They urged customers to refer to the specific wording of policies and to discuss the matter with their insurers or brokers, as set out in a statement and associated guidance on 4 March:

Does standard business interruption insurance provide cover for businesses who are not able to operate due to the effects of Covid-19?

- Insurance for business interruption resulting from Covid-19 is likely to be rare. Businesses who are concerned about the impacts of Covid-19 should check the scope of their cover, and check with their insurance adviser or broker. Standard business insurance policies are designed and priced to cover standard risks and are therefore unlikely to provide cover for the effects of global pandemics like Covid-19.
- Businesses may have chosen to purchase cover that will specifically provide for business interruption arising from 'notifiable diseases'. However, this type of extension is not commonly included as standard.

[...]

Are there any other extensions to business interruption that may provide cover?

- Some coverage may exist if the business has purchased a 'non-damage, denial of access' extension to a business interruption policy. Again, purchase of these extensions tends to be rare and this is not generally covered under standard business interruption policies.
- Generally, 'denial of access coverage' applies to cordoned off areas and loss of trade resulting from a denial of access to the premises (e.g. as a result of a police cordon). If a business is forced to close or is told to close by an appropriate authority or is cordoned off, this could trigger a claim under a 'non-damage, denial of access business' interruption extension if the infectious disease cover is unspecified or if it includes Covid-19.⁵

Insurance Age [reported a number of insurers' approaches](#) on 9 March. Axa explained its approach to the question of notifiable diseases as follows:

Axa confirmed it would only cover diseases already specified in insurance contracts and did not word its contracts to refer to a general class of notifiable disease.

Covid-19 was first identified earlier this year and was listed as a notifiable disease last week.

⁵ ABI, "[ABI comment on Coronavirus and commercial insurance](#)", 4 March 2020 (accessed 9 March 2020). The original text is now available at Barnes Roffe, "[Covid 19: Insurance](#)" (accessed 19 May 2020)

Axa said in a statement: “In general, when our Business Interruption policies provide an extension in cover for infectious diseases, they list the diseases by name. Only for those diseases will they compensate for financial losses resulting from premises having to close.

“Our wordings don’t refer to a general class of notifiable diseases, but they name each disease individually. When Covid-19 was added to the list of notifiable diseases in England, it did not change policy coverage.”

It stated that UK insurers use this precise approach of naming individual diseases rather than referring to a group because they cannot cover risks that they can’t assess.

3.1 The industry’s earlier review of policy wording

Commentators from within the industry have [maintained that insurers had recast general wording of policies to minimise their exposure to pandemics](#), not least in light of the earlier Sars outbreak:

Like all insurance products, the small print of business interruption policies carries a list of exclusions — and infectious diseases are typically one of them. The insurance industry started to model the impact of epidemics following the Sars outbreak in the early 2000s.

“The insurance industry foresaw what we are seeing now,” says Eric Dinallo, chair of the insurance regulatory practice at law firm Debevoise & Plimpton. “The insurance companies managed this exact risk and exposure appropriately.”

Businesses have been able to pay for add-ons to policies that would cover infectious diseases, but they have not been popular with customers. Indeed, some insurers say that even these additions were not designed to cover the sort of catastrophic damage unleashed by Covid-19.

Huw Evans, director-general of the Association of British Insurers, said: “These covers were written to protect, say, a restaurant against an employee getting norovirus, coming into the restaurant, spreading the norovirus around the premises and then the premises having to be shut for a period to be deep cleaned and the loss of business that would follow.”

“Some people have argued they should cover a global pandemic which affects everything, but that’s not what these policies are for,” he added.

Nevertheless, it is not clear that all policy wording (even if intended to do so) excludes claims arising from the pandemic, [as highlighted by the Financial Conduct Authority](#).

3.2 Principles for dealing with claims

The ABI has published [a set of principles that insurers should follow](#) when dealing with claims from policy-holders who have valid cover:

While the majority of customers will not have purchased cover for the effects of COVID-19 on their business, where cover does apply, ABI members have a clear set of principles for the handling of these claims to reassure customers at this uncertain time,

clarifying and reinforcing existing best practice in claims handling. Business interruption claims can, in general, be complex to assess and determine quantification.

They often require a clear understanding of the business and how it was operating before the interruption, however, insurers are experienced in dealing with these issues and in supporting their customers through this process.

1. Business interruption claims can require specialist expertise, so insurers will ensure clear, accurate and timely communication with customers when dealing with these claims.
2. Insurers will support their customers throughout the claims process, with dedicated teams of experts and appropriate resources to manage the volume and complexity of COVID-19 business interruption claims.
3. Insurers will clearly explain to their customers what information is needed to enable the swift assessment and quantification of their business interruption claim.
4. Insurers recognise that cash flow is critical for the survival of businesses at this time. Where a customer's policy covers certain losses for business interruption as a result of COVID-19, insurers will pay the claim as soon as they receive evidence to support this.
5. Insurers will seek, where possible, to make interim or part payments where claims are ongoing.
6. These interim or part payments will flow from the claim and evidence presented, helping to relieve some of the more immediate pressures that customers are facing
7. Where an insurer receives evidence in support of a valid claim for business interruption that clearly shows that the policy limit for the claim will be exceeded, they will make payment to the customer up to the maximum policy limit for that claim without undue delay.
8. Insurers will promote a culture of providing timely support to their customers, with the involvement and oversight of senior or executive level representatives where appropriate, enabling business customers with cover to put plans in place to deal as best they can with the most pressing issues.
9. Where an insurer reaches a decision not to pay a claim, they will notify their customer promptly and set out their reasons in full in plain English. This should include details of the insurer's complaints procedure.
10. Where customers are not satisfied, their complaints will be dealt with by insurers promptly and be considered by a person or persons with expertise in the subject matter who was not involved in the original decision. Where a firm is unable to resolve a complaint, customers will be given clear information about their option to take their complaint to the Financial Ombudsman Service and/or seek independent legal advice.

4. How many policy-holders are covered?

It is not clear how many holders of business interruption insurance have policies that would enable them to make a claim relating to the coronavirus pandemic. As well as absolute figures relating to the total number of policies, it has become increasingly clear that policy wording varies and, in some cases, might be open to dispute.

On 17 March 2020, the same day that he had asserted that the Government's actions had enabled businesses to make claims, the Chancellor acknowledged that "very few businesses actually have the requisite [pandemic] insurance."⁶ For those businesses, the Chancellor said that the [non-insurance-related measures he'd announced](#) would help.

On 19 March, John Glen, Economic Secretary to the Treasury replied to an urgent question from Kate Green MP about policies' approach to notifiable diseases. While emphasising that he was discussing the matter with the industry, he noted that "5% [of businesses] take out insurance for non-specified diseases, and 5% for specified diseases".⁷

As part of the Treasury Committee [inquiry into the economic impact of coronavirus](#), the Chair, [Mel Stride MP, wrote to the ABI](#) on 26 March 2020. He asked how much the industry expected to pay in business interruption claims, and how members were dealing with such claims.

In [its response](#), the ABI emphasised its commitment to supporting customers, but also the scale of demands that the industry faces:

ABI members estimate they will pay £1.2 billion in claims to policyholders as a result of Covid-19 covering losses by customers for business interruption, travel, events, weddings and school trips. Working estimates of the breakdown of the £1.2 billion are £900m for business interruption, £275m for travel insurance and £25m for events, weddings and school trips. If the period of business closures and travel restrictions continue well into the summer it is reasonable to expect this number would rise further.

It added:

[W]e are also painfully aware that the majority of businesses are uninsured for global pandemics, as is the case throughout continental Europe and North America. Although ABI members expect to pay £900 million in business interruption claims, most policyholders are not covered for pandemic losses. We recognise this is a very worrying time for those businesses and agree strongly that the UK should examine public-private partnership models to find a lasting solution that can provide more extensive and more affordable coverage in future for businesses wishing to purchase insurance against pandemics.

⁶ HC Deb 17 Mar 2020, [c941](#)

⁷ HC Deb 19 Mar 2020, [c1150](#)

Nevertheless, some policy-holders have questioned whether the wording of some policies does in fact exclude claims. [At least one class action is being prepared in the UK:](#)

Companies are considering a class action lawsuit against [Hiscox Insurance](#) over failure to pay business interruption claims relating to the government-imposed coronavirus lockdown, despite policies they argue are “unambiguous” in offering protection.

PR company Media Zoo said on Sunday that itself and “dozens” of other businesses who have also had [claims](#) refused are coordinating a response, which may be in the form of a class action or a complaint to the [Financial Ombudsman Service](#).

The company’s policy wording says [business interruption](#) claims can be made if a public authority makes the business premises unusable due to “an occurrence of any human infectious or human contagion disease.”

“We took out the Hiscox business interruption insurance believing the company would honor its obligations,” said Rachel Pendered, Media Zoo’s managing director. “To find out that it has no intention of doing so simply because it is going to be expensive is shocking.”

Hiscox said the policy would only be triggered by “certain specific events at, or local to, the premises.” The insurer said its policies were not designed to cover the extraordinary circumstances caused by the pandemic.

“Like terrorism and flood, which have government-backed insurance schemes, pandemics like coronavirus are simply too large and too systemic for private insurers to cover,” a spokeswoman for Hiscox said.

As discussed below, the Financial Conduct Authority is also seeking greater clarity about the wording of policies.

5. Regulatory responses

5.1 The Financial Conduct Authority

Amid the continuing concern and uncertainty about the extent of business interruption insurance coverage, [the FCA wrote to insurers](#), reminding them of the FCA's wider [expectations about treatment of customers during the crisis](#). The FCA also accepted that few customers would be eligible to claim on business interruption policies:

Based on our conversations with the industry to date, our estimate is that most policies have basic cover, do not cover pandemics and therefore would have no obligation to pay out in relation to the Covid-19 pandemic. While this may be disappointing for the policyholder we see no reasonable grounds to intervene in such circumstances.

In contrast, there are policies where it is clear that the firm has an obligation to pay out on a policy. For these policies, it is important that these claims are assessed and settled quickly.

The letter went on to recommend making interim payments where appropriate. Referring to potential legal action about disputed wording, the FCA noted that smaller firms may find it easier and more efficient to use the [Financial Ombudsman Service's complaints procedure](#).

On 1 May 2020 [the FCA signalled its intention](#) "to bring relevant cases to court as soon as possible for an authoritative declaratory judgment regarding the meaning and effect of some... insurance policy wordings where there remains unresolved uncertainty." It said that it was "working to identify a sample of cases representative of all the most frequently used policy wordings that are giving rise to uncertainty, where it would be appropriate for us to bring such proceedings."

On 15 May 2020 the FCA called for affected businesses to send them examples of disputed policy wording by 20 May 2020:

The coronavirus pandemic will have affected policyholders in many different ways. The issues relevant to the intended proceedings will be wide-ranging and complex. We recognise we will better achieve our consumer protection and market integrity objectives if the proceedings cover as broad a cross section of policies and issues as is compatible with an expedited court process. We are reviewing extensive material provided by insurers with the aim of delivering on that objective.

So, we are inviting policyholders of BI insurance who are in dispute with their insurers over the terms of their policies to engage with us, should you wish us to take these arguments into account as part of the test case. In particular, we ask that you send us:

- your (or your representative's) arguments as to why you consider cover should be available in cases where you consider your insurers have not responded appropriately to a claim;
- the wording of the policy that has not responded; and
- brief relevant facts of the case.

We need policyholders' arguments now as we intend to seek the court's view on relevant policies as soon as possible, and we will consider all arguments and information you raise to us by Wednesday 20 May 2020. Where you are a member of an action group pursuing action against an insurer or of a relevant trade body, please could you also identify this clearly in your correspondence.

The FCA has set up [a webpage](#) for the information of interested businesses, where they can also sign up for email updates.

5.2 The Financial Ombudsman Service

The Financial Ombudsman Service (FOS) can help [some micro-enterprises, small businesses and charities](#) resolve disputes with their insurer. It has published [information about insurance for businesses](#). This asks insurers to provide explanations of exclusions and to consider what is "reasonable and fair":

- When looking at claims that arise from something related to the coronavirus the starting point remains the terms of the policy the business has taken out. And the first thing to consider is whether the claim the policyholder has made is something that falls within the cover offered by the policy.
- If the claim falls within the scope of the policy then the insurer should either pay the claim in line with the terms and conditions of the policy – or explain why an exclusion or condition in the policy means that it doesn't need to do that.
- But insurers should not only consider a strict interpretation of the policy terms but what's fair and reasonable in the particular circumstances – taking into account in particular the unprecedented situation that the response to the coronavirus has created.
- Insurers should take into account government and industry guidance in making decisions on claims.

[...]

- Of course given the fast moving nature of the situation, many businesses making business protection claims may already be in financial difficulties because of a sudden loss of business. Insurers might wish to consider where there's a potentially valid claim if there's scope to make interim payments earlier than they might otherwise do.

6. The future: insurance companies or the State?

Immediately before the initial announcement of the support measures for businesses in the 2020 Budget, Sir Charles Bean of the Office for Budgetary Responsibility had referred to the potential role of the State as “insurer of last resort” in these extraordinary circumstances.⁸ He was referring to the role of state in protecting the economy overall:

Businesses have complained that because they have not been formally told to close, they cannot claim on their insurance.

Sir Charles Bean, a member of the OBR’s committee, said that the government should act as the “insurer of last resort” because coronavirus is an “act of God”.

He said: “There’s quite a lot of discussion I have heard about wanting the government to mandate bars and restaurants to close so people can claim against their insurance policies.

“We seem to forget insurers have limited pockets. We are talking about such a deep and widespread problem here all you are doing is passing the problem onto an insurer.

“This to me is exactly the case where the state should be stepping in. The question of how you do that is much harder.

“You need the state to be there as the insurer of last resort against what is effectively an act of God. The state surely has to have a role.” He added: “Big early action is better than half-hearted action that’s late.”

The Chancellor later reiterated the new focus on additional measures for businesses and noted his concern about suggestions that insurance companies should be required to pay out more widely for business interruption:

With regard to retrospectively changing insurance policies [...] that would most likely cause solvency issues with insurance companies, so it is perhaps not the most appropriate course of action, which is why we have several other measures for providing support directly to businesses in those circumstances. [...] it is important that we think more broadly about direct support.⁹

While the pandemic continues, the potential scale of claims and expectations for support suggest that future arrangements will have to consider different models if they are to be sustainable. [The Treasury Committee has already discussed such re-insurance models as Pool Re](#), which involves a public-private “arrangement” to help manage the cost of insurance claims after incidents of terrorism.

⁸ Steven Swinford & Gurpreet Narwan, [It’s just like the war, says budget watchdog](#), *The Times*, 17 March 2020

⁹ HC Deb 17 Mar 2020 [c941](#)

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