

Coronavirus (COVID-19) – business interruption insurance considerations

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Please note: the information contained in this legal update is correct as of the original date of publication

With instances of COVID-19 rapidly increasing throughout the UK, many businesses are considering the potential impact on their businesses if they are forced to temporarily close (or if a precautionary decision is taken to do so) as a result of the outbreak. This bulletin provides a brief overview of the key factors when considering whether any such closure is likely to be covered under conventional business interruption policies.

Overview of business interruption insurance

Most businesses will have the benefit of business interruption cover, which generally covers loss of gross profit or loss of income in the event the business is interrupted or adversely affected due to reasons beyond the policyholder's control. Conventional business interruption cover is subject to a 'material damage proviso', namely that in order for an interruption to be covered it must be caused by physical damage that is insured under the policyholder's property damage policy (e.g. interruptions caused by fire or flood). However, many policies also include cover for interruptions caused by other factors. Depending upon the specific cover under the policy, interruptions caused by COVID-19 may in some cases be covered under a business interruption policy, subject to the considerations shown below.

Public authority closure

Most policies contain cover for interruptions caused by restrictions imposed by public authorities. Usually, public authority closure cover is limited to specific causes, which often include the outbreak of a disease. However, different policies deal with this in different ways. Cover may be subject to one or both of the following:

- Is the disease notifiable?

Where policies cover losses arising from interruptions caused by the outbreak of a disease, cover is usually subject to the disease being declared a 'notifiable human disease'. COVID-19 was declared a notifiable human disease by the UK Government at 18:15 on 5 March. However, this does not have retrospective application, so for policies that require a disease to be notifiable as a pre-condition to coverage, any closure prior to this date will not be covered.

- Has COVID-19 been confirmed at the premises?

Cover under some Business Interruption policies only applies where the disease has been detected at the premises that are to be closed, whereas others only require there to have been an order from a competent authority that the premises be closed as a result of the disease. This can be significant because in many cases businesses will be closed as a precaution. In those situations, many businesses will not benefit from cover.

Voluntary closure

Many businesses are considering a temporary closure as a precaution against the further spread of COVID-19. Whilst that might be a sensible precaution to take, most business interruption policies will not cover losses arising from a precautionary closure or from a closure arising from the fear or threat of a disease. In most cases, an order to close from a public authority is a pre-condition for coverage under the policy. Equally, a decision to require individuals who may have been exposed to COVID-19 to self-isolate will not be covered by most policies.

Time excess

Where a business interruption policy does respond, it is important to note that it will usually be subject to a time excess or franchise period, which is very often a set number of hours or days. Where the policy is subject to a time excess, no cover will be in place for any losses suffered during the period of the excess. Where this is expressed as a franchise period, the full loss will be covered, subject to the interruption lasting longer than the franchise period.

Recoverable losses

It is important to remember that, as with all insurance policies, the policyholder is under a duty to minimise its loss. The steps that can be taken will be specific to each business, but by way of example, could include:

- facilitating home and remote working
- reducing any variable costs, where possible
- attempting to fulfil orders using other suppliers
- arranging meetings at alternative locations, where possible and appropriate

This bulletin is intended to provide general guidance only. It is important to check your specific policy for its terms and conditions. If you are unclear as to whether your particular policy responds, you should speak to your insurance broker in the first instance.

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