

## COVID-19 – FURTHER GUIDANCE II

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This is our third bulletin addressing the COVID-19 global pandemic. Most UK businesses will by now have settled into running their operations remotely and staff will be adapting to the restrictions on movement imposed by the Government last week. The position for Members' operations based overseas will vary: a more extreme lockdown is currently in place in parts of Europe, such as France, for example, whilst staff are beginning to return to their offices in parts of Asia. Members' businesses across the globe may currently be dealing with different stages of the crisis but all will need to contend, in due course, with the widely predicted spike in coverage disputes.

### COVERAGE DISPUTES

There has been much written in the press about the number of policy wordings that will not respond to this global pandemic. As a consequence, many insureds may consider they have an unexpected gap in cover, albeit that the current situation was not countenanced when their cover was taken out. Perhaps not surprisingly, Business Interruption (BI) cover has received the most press attention. It is difficult to imagine a more extreme BI scenario than that currently faced by many businesses. Nevertheless, the vast majority of BI policies will not respond, since they will not have been designed with a global pandemic in mind.

BI cover is typically triggered by physical damage. For those policy wordings that do include cover for infectious diseases, those diseases are usually listed at the outset and so would not include COVID-19. Wordings which are broad enough to include a newly identified infectious disease during the policy period, tend to anticipate the infection itself being at the business premises which then require some decontamination. This is clearly different to the current situation, where the Government has mandated closure of so many business premises. In a nutshell, most BI policies will currently offer no benefit to the insureds who have bought them.

The simple fact is that a global pandemic will not have been contemplated when most insurance policies, whether BI or otherwise, were bought. Nevertheless, where cover does not respond, and significant sums are involved, it is inevitable there will be coverage disputes.

### GOVERNMENT INTERVENTION

People understandably look to the insurance industry for recompense in a crisis such as this. The reality is that the scale of losses suffered are beyond anything that the insurance industry could support. The Government has acknowledged that insurance cover cannot be rewritten, retrospectively, to cover a risk which is different to that intended at the time of placement. It has also recognised that intervention is required and an unprecedented package of financial aid has already begun to unfold. This includes a variety of grants and guaranteed lending facilities which are available to different sizes of business.

## PRACTICAL TIPS FOR INTERMEDIARIES

Intermediaries cannot change the way in which business was handled at placement and the advice that was given then, or may have subsequently been given, as this crisis has developed. The advice, at least at the outset, could not have contemplated the situation we now face. What Members can do is maintain a dialogue with clients and markets regarding the cover which is in place and any claims which are made under it.

### Communication

The COVID-19 pandemic is self-evidently something that is in the public domain and insurers will be well aware of its impact across the global community. Even so, it will be important that insureds continue to comply with all policy provisions, insofar as that is possible. Where this is difficult, steps should be taken to advise insurers in the usual way. If security conditions applying to a policy, for example, cannot now be complied with, this should be flagged up to the insurer. Where significant changes are having to be made to an insured's business, these should be discussed with insurers. Such changes might concern the way in which a product is manufactured, or even a change in what that product actually is.

Some insurers are reported to have waived the requirement to advise where premises have become unoccupied but, if there is any doubt, again insurers should be advised. According to the ABI, if a business has to temporarily close because of COVID-19 and appropriate steps are being taken to mitigate the risk of damage to the property whilst unoccupied, insurers will be flexible around the period of unoccupancy specified in the policy wording. Where any new security requirements are imposed to mitigate the risk posed by unoccupancy, these need to be clearly explained to clients and confirmation sought that they can be complied with. Where they cannot, the new requirements will need to be challenged with insurers.

Claims provisions which require immediate notification may present an issue where premises are unoccupied. An insured may be unaware of an incident such as water damage having occurred, if the premises cannot be accessed for a period. Where possible, efforts should be made to agree with insurers that such provisions should be amended to 'as soon as reasonably practical', although this may meet some resistance. Insurers will have written the risk on the basis that immediate measures will be taken to mitigate damage once it has become apparent, which in the water damage scenario will not happen if the insured is unaware of the problem. Insurers may argue that asking them to change the notification requirement is effectively asking them to rewrite the cover retrospectively, to cover the risk as it is now presented.

### Claims Handling

There is likely to be a spike in claim notifications, across many classes of business, and it is how these claims are managed which should now be a particular focus. Handling a larger than usual volume of claims may prove something of a challenge for Members to manage whilst working remotely. However, efforts should be made to ensure claims handling systems are as robust as possible, to minimise the possibility of Members becoming embroiled in disputes.

In particular, we would recommend the following:

- The date a claim is notified must be clearly recorded, as must all steps taken to pursue it on behalf of the client;

- The client must be kept updated - where there is unwelcome news to be passed on, this should be done without delay. It is generally better to deliver difficult news in person, so consider using one of the many video conferencing facilities available, where possible, rather than relying on email or phone calls. Where video conferencing is used, a record of the conversation must appear on the file in the usual way;
- MGA Members should ensure that the file evidences why any claim is falling outside the normal timeframe for handling a claim of that type, and what steps are being taken to progress it. This should guard against subsequent claims for late payment damages, where policies are governed by one of the laws of the UK, and hence subject to the Insurance Act 2015;
- Adequate supervision of less experienced team members will be critical. Where a claim is not progressing as a client might hope, the client's expectations will need to be carefully managed.

## Team Work

For all business, whether placing/underwriting or claims handling, we would reiterate our previous advice that it is important to continue to operate as a team. Speaking regularly with colleagues and having regular team meetings, using video conferencing where possible, will prevent people from feeling isolated whilst they work. It will also make it more likely that junior members of staff will seek guidance when they need it, and increase the chances of challenging situations being shared.

## GRIFFIN'S LIABILITY ADVICE SERVICE

The Griffin team remains available, on the usual phone numbers and email addresses, to provide liability advice on any matter which is causing potential concern from a professional indemnity perspective. This may be particularly valuable in the current climate where Members are likely to be handling an increased number of contentious claims. Members will be an easy target for disgruntled clients, who may be disappointed in the outcome of a claim. As always, we welcome the earliest involvement in such matters to aid their swift resolution.

In the usual way our advice is from a professional indemnity risk management perspective. We continue to strongly advise Members to stay up to date with the latest Government advice.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

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