

COVID-19

As the threat of a COVID-19 epidemic in the UK grows, the potential impact on businesses unable to continue their operations becomes an issue. An intermediary, as with any other professional, has a duty to act with reasonable skill and care in carrying out instructions on behalf of a client. So what is the position of an intermediary that, through no fault of its own, finds itself unable to perform its duty? The answer will depend on the extent to which the intermediary has prepared for a potential emergency scenario and how that has been documented. In short, the intermediary needs to be able to demonstrate that all reasonable steps have been taken, to ensure it can continue to service clients' business in an emergency situation.

PRACTICAL STEPS

There are some practical steps that Members can take to ensure they are as well prepared as they can be to deal with the current scenario. It is essential that any steps that are taken are documented, as a record that the Member has done what it reasonably could to manage the risk.

Business Continuity Plans

This is the time to be reviewing contingency arrangements within Business Continuity Plans (BCPs), which may need to be implemented at very short notice. BCPs are critical to the stability of business. Members should have a comprehensive documented BCP in place which takes into consideration Lloyd's Emergency Trading Protocols. Steps should now be taken to:

- check that the BCP is up to date and takes account of any IT, business facility, staff, client, underwriters, service providers or other stakeholders, and incorporates any recent market changes to practices, and includes all contact information, telephone numbers and e-mail addresses; and
- ensure that a full, current and up to date copy of the BCP is remotely accessible by all employees who have a role in the BCP response team. Employees should be discouraged from keeping a hard copy of the BCP, since this may quickly go out of date.

Remote Working

Staff should only access company information via a secure Virtual Private Network (VPN). Members should review the number of licences in place and whether that is likely to be adequate in the event a significant part of the workforce, or possibly the workforce as a whole, is required to work from home for a period.

Members may wish to encourage staff to:

- take laptops and other essential equipment home with them as a matter of routine, to facilitate remote working should that become necessary; and
- ensure that the equipment's software is up-to-date and meets the corporate security standard, particularly where using their own personal equipment; and

- ask those with remote access to confirm that they have recently accessed the system remotely without difficulty. Staff who do not regularly use the remote access route often encounter difficulties when doing so. Steps should be taken now to avoid any IT support being swamped with requests for help at the same time; and
- avoid sending company information to their personal hard drive, for example to facilitate printing documents, which may create confidentiality and/or data protection issues.

Supervision

The BCP may have been prepared on the basis that staff will be working from a back-up site but does it consider a scenario where staff are all working from home? This raises challenges from a supervisory and peer review perspective. Clear guidance will be required from senior members of staff to their teams, concerning the checking and sign-off procedures they should follow.

The current situation is understandably causing much uncertainty and it is difficult for businesses to plan ahead when matters are so fluid. The practical tips outlined above should help Members to demonstrate that they have taken reasonable steps to manage the risk. Where there is any disruption to the way in which business is usually handled, a clear record of that disruption, and of alternative steps taken as a result, should be retained.

In the usual way our advice is from a professional indemnity risk management perspective and we strongly advise Members to stay up to date with the latest official health and travel 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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© Tindall Riley & Co Limited

Managers: Griffin Managers
Regis House
45 King William Street
London EC4R 9AN
Telephone 020 7407 3588
Email griffin@tindallriley.com
www.griffin-insurance.co.uk