

## Insured or not insured? Recovering your business interruption losses – your questions answered

Here we answer all the questions our viewers asked before and during our webinar on 10<sup>th</sup> June.

**Q: For a firm which has different underwriters now than originally, can they claim against both underwriters for the drop off in business? Will each say you should claim against the other?**

A: Duncan: I would claim against both of them and see what comes back. Different policies are worded in different ways; some are claims made policies and some are claims occurring, so have a go at both and also go for a refund on premium from your current policy.

Adam: I concur with that; from that perspective, claim from both; there is nothing to lose. Otherwise, you risk each insurer pointing their finger at the other.

**Q: The government required us to close our events business, what sort of clauses can we claim on?**

A: Duncan: It very much depends on the insurance you hold; the events companies we insure will tend to have event cancellation cover with communicable disease extension; that's a fairly black and white 'you're covered or you're not' situation. For business interruption, if event organisers have got that cover, you will have the same hurdles to jump as we discussed earlier. Take a careful look at what you've got – you may be fortunate.

**Q: Insurance policy wording allowing for claims based on notifiable diseases within 25 miles of the premises – would we be allowed to claim under that clause for Covid-19?**

A: Adam: It will depend on the terms and conditions of that policy – that's a good starting place to look; there is potential there and it's certainly worth greater scrutiny.

Duncan: I would agree – you need to look at your policy wording, I'm a pessimist, I think the chances are slim, but it's worth a pop.

Adam: I'm an optimist, Duncan, I don't think there's anything to lose by looking.

**Q: A supplier to the retail trade has had a lot of cancellations – what type of wording should he look for in his policy to cover the losses incurred?**

A: Duncan: I think a standard business interruption claim is unlikely to have much success. If he has trade credit insurance, that will be something to look at; it may be more one for the lawyers in terms of breach of contract.

Jenny: I think Duncan is right – it possibly is more of a breach of contract claim, rather than an insurance matter. But it is worth looking back through your policy, discussing it with your broker and seeing if there are ways in which that can be carved out. Failing which, check the terms of the contract, as there may be an opportunity to negotiate a favourable resolution.

**Q: Insure and insured come to a limited settlement, and then subsequently the test case gives a wider interpretation of the policy, meaning that the amount of settlement would have been**

**higher under that interpretation; can the insured go back to the insurer at some point, given that they have already accepted a settlement?**

A; Adam: Generally any settlement in 'full and final' is the end of the matter. However, the FCA require insurance companies to carry out a full review of all policyholders following the outcome of the test case. Therefore, this indicates to me that any settlement pre the test case, unless it was in full, could be reopened.

**Q: The company has an infectious disease extension to their business interruption policy which covers them if they have to close, so you would think they're in a good position, but their insurers have insisted that this does not apply because they had to close on government instruction, not because of an outbreak at their premises. How can they challenge that decision?**

A: Duncan: This is definitely a notifiable disease but your policy may actually list which diseases the insurance is covering; if it doesn't, it gives you a bit more hope. This is a notifiable disease which is a danger across the country, in every premises, with every person, so I would push for this but it will all come down to your policy wording.

Adam: It will do, yes. This is one of the issues the FCA are looking at in terms of the effect of lockdown – in particular issues of the causation.

Jenny: Yes, the FCA has specifically put to the court how do you define if you have had a notifiable event, particularly if you have people who've had symptoms but not been tested. We are in uncharted territory at the moment but there's certainly mileage in looking at it and seeing if an argument could be carved out. There are arguments on both sides and no clear authority.

**Q: Re dental practices – are you aware of them making successful claims?**

A: Duncan: This is a really difficult one – it will come down to policy wording. You're at risk of claims against you yourself infecting staff and patients – it's a real minefield.

Adam: Unfortunately it comes back to policy terms and conditions – I have reviewed a few dental practice policies, and sometimes my advice has had to be stark, but dig out your policy wordings and schedules, it will depend on the extensions or additional perils that have been included.

**Answered by:**

Duncan Sutcliffe, Director, Sutcliffe & Co. Insurance Brokers

M: 07831 783 489

E: [duncan@sutcliffeinsurance.co.uk](mailto:duncan@sutcliffeinsurance.co.uk)

Adam Finch, Partner, Dispute Resolution, Harrison Clark Rickerbys

M: 07772 481 550

E: [afinch@hcrlaw.com](mailto:afinch@hcrlaw.com)

Jenny Raymond, Partner, Dispute Resolution, Harrison Clark Rickerbys

M: 07725 241 081

E: [jraymond@hcrlaw.com](mailto:jraymond@hcrlaw.com)