



Coronavirus

U.K. Insurance Policy Wording Considerations
9 March 2020



The Coronavirus situation could cause significant financial impact across a wide spectrum of businesses, especially for those with operations in the worst affected areas.

This Technical Bulletin considers in general terms how typically currently worded insurances for U.K. insureds might respond to the Coronavirus outbreak, the exact position will depend upon the specific policy wording. It is also quite possible if the outbreak worsens that for certain classes, such as Business Interruption, insurers may seek to impose Coronavirus coverage restrictions.

For U.K. Employers' Liability, Public Liability and Business Travel policies, before employees are allowed to travel to the affected areas it would be prudent to advise insurers, via Willis Towers Watson, of the potential plans so as not to risk being in breach of policy terms.

Business Interruption Policies

A standard U.K. Business Interruption policy is triggered by physical damage to property used by an insured at its premises. Even if it can be argued that actual (not suspected) contamination by Coronavirus is physical damage to property, contamination is generally excluded unless caused by a Defined Peril (i.e. fire and special perils) which would not include accidental contamination, unless the policy has specifically been extended, and then the extended cover could be subject to a sub-limit.

There are several Business Interruption extensions (see below) which, if included in a Business Interruption policy, might possibly afford some coverage, although such extensions are normally subject to fairly modest sub-limits (and sub-limits are often subject to an annual aggregate) and only tend to cover interruption to the business for a relatively short period of time.

In general, these types of extensions are mainly designed for a specific isolated incident occurring at (or sometimes near) an insured location and coverage is often conditional upon an order of closure or limitation of access by the

appropriate authorities (though some Infectious Disease extensions only require that there is an "outbreak" at or sometimes near an insured location). Normally the insured location will be limited to the "insured's premises" but very occasionally this may extend to include suppliers and/or customers premises.

It is worth noting a potentially relevant limitation of standard U.K. Business Interruption cover highlighted in the legal case *Orient-Express Hotels v Generali*. In this case an insured whose hotel was damaged by hurricanes could not satisfy the "but for" test of causation i.e. even if their hotel had not been damaged, it would have suffered the same Business Interruption loss because of the devastation to the surrounding area, due to the operation of the "trends clause" which would take account of this factor. There may be arguments that could be raised that such a limitation does not always apply to the Business Interruption cover in so far as it has been extended to cover restrictions in access to an insured location or loss of attraction, depending upon the circumstances.

Infectious Disease Business Interruption Extension

The most likely relevant extension is an Infectious Disease extension, although traditionally these were included only where an insured had a specific exposure (e.g. hospitality/leisure industry) but over the years these extensions have become more commonplace. There are a number of aspects clients should bear in mind for these extensions, such as:



is cover only provided for a restricted list of specific diseases (Coronavirus is unlikely to be listed) or is there broader cover e.g. a notifiable human infectious or contagious disease; in the legal case *New World Harbourview Hotel Co. Ltd & Ors v ACE* the courts held that “notifiable” meant that there had to be a mandatory legal requirement to notify the disease, and Business Interruption cover only commenced at the point when the disease became “notifiable”;



if the broader cover is provided are there any relevant exclusions e.g. any infectious disease which has been declared a pandemic by the World Health Organisation; as at the date of publication shown at the top of this document the World Health Organisation has not declared this Coronavirus a pandemic, but this may change;



does the extension only respond to an occurrence at the insured location or does it extend to include an occurrence in the vicinity, if so, how is “vicinity” defined (a wide definition might be within 25 miles).

Non-Damage Business Interruption Extension

A Non-Damage Business Interruption extension may take the form of either a Denial of Access Non-Damage or a Loss of Attraction Non-Damage (or a combination of both) extension. These extensions will either exclude disease, in which case there is no cover, or it will be silent on disease. If these extensions are silent, although it may not be the intention of insurers to cover disease, it might still be possible to argue cover applies, if for example the insured location is closed down or sealed off on the instruction or advice of the appropriate statutory body.

Some extensions will require that the reason is because of some sort of danger or disturbance. Some extensions will also apply if the area in the vicinity of the insured location is closed down or sealed off, if so, how is “vicinity” defined (it may not be defined or it may be limited to say X miles, with 1 mile not being uncommon).

Liability Policies

U.K. Employers’ Liability

U.K. Employers’ Liability policy should respond to cover the insured’s legal liability as employer for any injury or illness suffered by their employees in the course of their employment. Furthermore, many policies extend to cover temporary overseas business travel.

There are few or no exclusions in a typical U.K. Employers’ Liability policy and as this is a compulsory insurance, insurers would be obliged to pay a claim. However, insurers may seek recovery from the insured if they can show that the insured did not take reasonable steps to prevent such injury or illness, although it is likely that they may only succeed where the insured has acted recklessly.

Public Liability

Current policies are unlikely to contain specific pandemic exclusions, but other more general restrictive terms could be relevant, depending upon the circumstances. Insurers may look to breach of reasonable care conditions to refuse indemnity, although again it is likely that they may only succeed where the insured has acted recklessly. It is conceivable (again depending on the circumstances) that insurers may consider whether any other potential policy restrictions may be relevant and if this proves to be the case we will provide a further update as necessary.

Public Liability insuring clauses often use either “accidental” language within their insuring clause (meaning that the onus is on the insured to prove injury etc. was accidental). They may contain Intentional or Deliberate Acts exclusions which have a similar effect, although the onus is on the insurer to prove an exclusion applies.

Business Travel Policies

Repatriation costs

Insurers may provide cover for emergency evacuation of people that are currently within the affected regions, due to a natural disaster or life-threatening situation, and if the U.K. Government advises it.

Much will depend on an insurer's definition of 'natural disaster', if they have one, and if the outbreak of an infectious disease is included. Some policies provide cover in the event of political intervention, i.e. if the Government advise people to return home for safety reasons. The current situation following the outbreak of Coronavirus would probably qualify.

Disinclination to Travel

This is a common exclusion. For trips already booked but not yet commenced, it is unlikely cover would be given. However, insurers may take a different view in order to mitigate any potential claims if a person does go ahead with the journey.

Emergency Medical Costs

Cover will not be provided by insurers if people travel to regions against the advice of the Foreign Office, and subsequently become ill/infected. However, people who become ill during journeys that are not subject to such Foreign Office advice/restrictions will be covered as per normal policy cover and conditions. It is therefore recommended that the latest Foreign Office advice is checked before arranging any journey outside the U.K.

Cancellation

Cover applies once a journey has been booked, and due to circumstances outside the insured's control. Cover would not be given for cancelling journeys, to China for example, that are booked AFTER there is general public awareness of the Coronavirus situation.

The key is to seek the early advice of brokers and insurers on the situation.

Contact

Please contact your usual Willis Towers Watson contact if you wish to discuss any of the issues mentioned in this Bulletin.

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Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include COVID-19 coverage.

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