



COVID-19 – Is the loss of profit covered by insurance?

As businesses are seeing growing levels of disruption associated with the Coronavirus pandemic, they may be wondering whether they have cover through their insurance policies.

Losses related to the Coronavirus might be recoverable, but this is likely to be a difficult area to navigate and require specialist advice from your insurance provider.

Loss of profits cover, or business interruption cover, is included as part of a business's commercial insurance, and most commonly triggered when there is some physical damage to insured property. There is a concern that losses associated with Coronavirus will be excluded as a "force majeure". So, we would recommend businesses be proactive and seek specialist advice to determine whether Coronavirus will trigger cover in their policy.

The FCA has embarked on a test-case to provide clarity and certainty on the availability of Business Interruption insurance for Covid-19 losses. It is hoped that this will save time and legal costs and provide some level of consistency between different insurers.

There are two main issues for the Court to decide:

1. whether the business interruption losses are covered by the policy terms; and
2. if there is cover whether the losses suffered were caused by the insured event.

No doubt your own lawyer can also provide more information, but if required we can put you in touch with specialist insurance litigation lawyers for further advice, or even a second opinion as to your situation. There is currently discussion in the sector on the possibility of some firms putting together potential class actions. Lower court judges found in favour of policyholders' arguments in the majority of key issues in September but the FCA and a group of insurers are appealing the judgement. The UK Supreme Court is due to hear the appeal later this year.

Policies will include standard terms, usually intended to put businesses back into the same position they would have been "but for" Coronavirus.

These calculations will need to be substantiated with reference to historical trading patterns, budgets and forecasts and other, potentially complex, financial analysis. It is for this reason that claims under this type of policy are often controversial in their implementation.

We have a team of specialists able to advise as to how such a claim can be compiled. Our team includes experts accredited with the Expert Witness Institute, Society of Expert Witnesses, Chartered Institute of Arbitrators, and the Association of Certified Fraud Examiners. We have the knowledge and experience to support businesses through any negotiation of an insurance claim, including, if it comes to this, litigation proceedings.

Please get in touch with us as soon as possible if you think this might be an issue for you and your business. Timely preparation and planning will ensure that you are gathering the information you need to submit a well-presented claim in due course.

As always if you want more information, or if we can help in any other way, please get in touch.

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