



COVID CLAIMS

BUSINESS INTERRUPTION SPECIALISTS

Insurance Claim

Many businesses have been unable to trade as usual during the COVID-19 restrictions, causing them unprecedented financial loss.

Pubs, Leisure Venues, Hotels & Guesthouses and Clothing Retailers are just a few of the industries that have been particularly affected by the Government's order to close non-essential businesses.

With more and more countries on lockdown as a result of the COVID-19 pandemic, will your business be able to claim on Business Interruption insurance to recoup your losses?

That, it seems, is the \$64,000 question!

The coronavirus pandemic has led to widespread disruption and business closures, resulting in substantial financial loss, and consequently many customers have made claims for these losses under their Business Interruption insurance policies.

There has been widespread concern about the lack of clarity and certainty for some customers making these claims, and the basis on which some firms are making decisions in relation to claims. That's because usually, Business Interruption policies tend to specifically list the diseases they cover and only pay out on those that are known.



SO, WHAT REALLY IS BUSINESS INTERRUPTION INSURANCE?

Business Interruption insurance is insurance coverage that replaces business income lost in the event of a disaster. This could be, for example, a fire or a natural disaster. Business interruption insurance is not usually sold as a separate policy but is either added to a property/casualty policy or included in a comprehensive package policy as an add-on or rider.

Let's look at an example...

In the event of a serious incident such as a fire etc, your business could be out of action for months, and you may not fully recover financially for an even longer period of time.

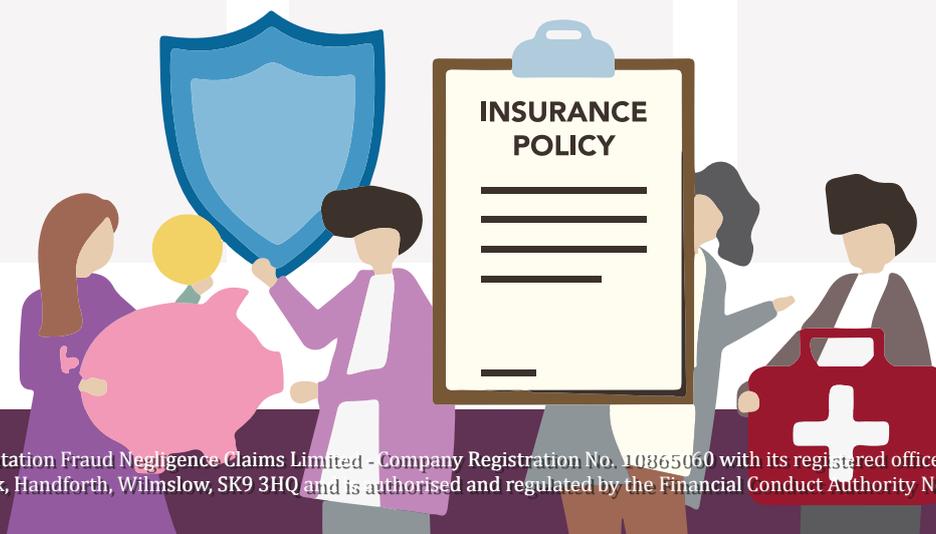
Unfortunately, most businesses do not have the financial means to cope with their income being hugely reduced or even stopping altogether, especially when they have staff to pay etc. It's a sad fact too that even though you've stopped being able to produce your product or provide your service, your customer's need will still be there, and however loyal they are to you, they will inevitably have to look elsewhere for the products and services they need, making your business's comeback that bit more challenging.

This is where Business Interruption Insurance comes into play.

WHAT BUSINESS INTERRUPTION INSURANCE COVERS

In very simple terms Business Interruption Insurance, like most other insurances, is designed to put your business back in the position it would have been in had the event/loss not occurred.

That's sounds simple, right? But the reality can be quite complex. How effective your business interruption insurance cover is, depends on the key areas you want to be covered for, and for how much. Factors like payroll need to be considered, as well as the amount of gross profit you could potentially lose, should a major event occur etc.



THE EFFECT ON YOUR TRADING COULD LAST FOR YEARS SO THAT NEEDS TO BE COVERED TOO

Correctly arranged Business Interruption Insurance can deal with all these situations, which is why you should seek professional help when purchasing this type of cover.

You should include things like cover for an interruption period of not less than 24 months and the value of cover should be for an amount that takes into account the projected future performance of the business.

It's important to understand the meaning of all the policy terms to understand how the cover is designed to work.

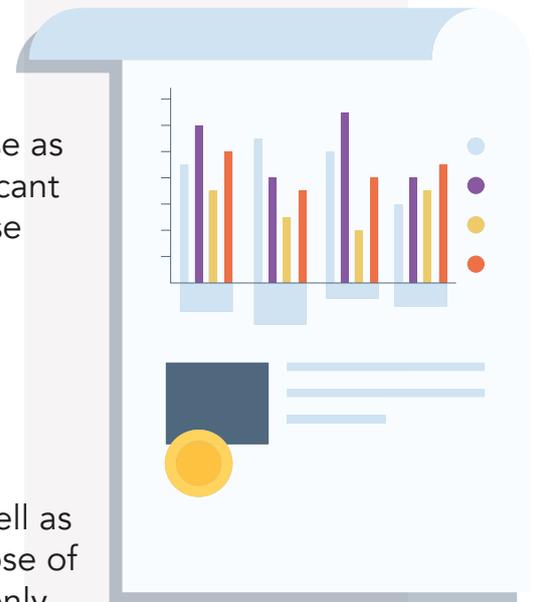
The extra cost of the premium shouldn't be too much as huge losses are relatively rare - but they do happen, and it could be you!

PRIMARY AND SECONDARY LOSSES

Even if your business hasn't had to specifically close as a result of the pandemic, you may have lost significant trade and revenue as a result of your customer base having to close.

Examples of this include;

- **Pubs** – The enforced lockdown closing pubs completely has had a devastating effect on this industry. As did the recent 10pm curfew. As well as the loss of trade, many businesses had to dispose of stock that they were unable to sell, and which only had a limited shelf life.
- **Restaurants** – Similarly to pubs, this industry has been hit incredibly hard by the pandemic, having again to cancel bookings and events and disposing of out of date food stuff.
- **Breweries** - Whilst this industry sector has been able to continue to trade, they will have suffered significant financial losses as a result of the pubs and hospitality industry having to close and therefore not buying their products.
- **Hotels** - With the ban on traveling, the majority of hotels have had to close so will have incurred primary losses of people not booking



rooms. Plus, they will have had secondary losses from not being able to hold conferences, weddings and other events etc.

- **Theatres** – As well as the losses incurred by having to close their doors and cancel all performances, they will have incurred secondary losses of having to refund ticket sales, plus the loss of income due to not being able to sell refreshments etc

BUSINESS INTERRUPTION INSURANCE

Business interruption insurance can cover some or of the following items dependant on the policy you purchase:

- **Profits:** Based on prior months' performance, a policy will provide reimbursement for profits that would have been earned had the event not occurred.
- **Fixed Costs:** These can include operating expenses and other incurred costs of doing business.
- **Temporary Location:** Some policies cover the costs involved with moving to and operating from a temporary business location.
- **Commission and Training Costs:** In the wake of a Business Interruption event, a company will often need to replace machinery and retrain personnel on how to use the new machinery. Business interruption insurance may cover these costs.
- **Extra Expenses:** Business Interruption insurance will provide reimbursement for reasonable expenses (beyond the fixed costs) that allow the business to continue operating while the business gets back on solid footing.
- **Employee Wages:** Coverage of wages is essential if a business does not want to lose employees while shutting down. This coverage can help a business owner make payroll when they cannot operate.
- **Taxes:** Businesses are still required to pay taxes, even when disaster hits. Tax coverage will ensure a business can pay taxes on time and avoid penalties.
- **Loan Payments:** Loan payments are often due monthly. Business Interruption coverage can help a business make those payments even when they are not generating income.

- **Civil Authority Ingress / Egress:** A business interruption event may result in Government-mandated closure of business premises that directly cause financial loss. Examples include forced closures because of government-issued curfews or street closures related to a covered event.

THE MOST COMMON FORM OF BUSINESS INTERRUPTION COVER IS FOR LOSS OF GROSS PROFIT

When making a claim against this, insurance companies will

- Agree the revenue that would have been earned in the period affected by the Damage
- Deduct the actual revenue earned (if any) to produce a shortfall
- Apply to that shortfall the Rate of Gross Profit as defined in the policy
- Add any increased costs incurred to avoid a reduction in revenue
- Deduct any costs that the business has not incurred, (but which would normally have been incurred), to generate the lost revenue, had the damage not occurred
- Apply any proportionate reduction (average) in accordance with the terms of the policy

For some companies, standard business interruption insurance may only cover physical damage at a property, which in turn results in the business being unable to continue to trade. But most policies should cover more eventualities.

Some businesses may find their contingency insurance policies contain specific exclusions for pandemics, and of course, the fact remains that even if a business has this type of insurance cover, a successful claim will still require compliance with all the other relevant terms and conditions of the policy.

That's the position 1000's of companies have found themselves in, when trying to make a claim as a result of losses they've incurred due to the COVID 19 pandemic.

If that sounds like you, don't panic just yet as good news is on the way!

BUSINESS INTERRUPTION INSURANCE

Britain's financial watchdog, the Financial Conduct Authority urged insurers to pay out to businesses affected by coronavirus as quickly as possible.

Unsurprisingly, Insurance companies kicked back, saying that a number of firms won't actually be covered at all, as some Business Interruption policies don't make provisions for disruption caused by a pandemic - meaning insurers won't be liable pay out to those companies affected by the virus.

In a letter to the heads of insurance firms, the Financial Conduct Authority initially agreed with the Insurance companies and said *"Based on our conversations with the industry to date, our estimate is that most policies have basic cover that do not cover pandemics and therefore insurers would have no obligation to pay out in relation to the pandemic."*

"While this may be disappointing for the policyholder, we see no reasonable grounds to intervene in such circumstances."

One insurance provider AXA also said on its website: *"As coronavirus was unknown until recently, there will be very few policies that cover it. There are some policies that cover compulsory closure caused by any notifiable infectious diseases; however, the vast majority list specifically the diseases they cover."*

The Association of British Insurers (ABI) too issued a statement supporting AXA's claims.

The ABI said: *"Irrespective of whether or not the Government orders closure of a business, the number of firms won't have purchased cover that will enable them to claim on their insurance to compensate for their business being closed by the coronavirus."*

“Standard Business Interruption cover – the type the majority of businesses purchase – does not include forced closure by authorities, as it is intended to respond to physical damage at the property, which results in the business being unable to continue to trade.”



Cue Rishi Sunak!

This stance and these comments led to the Government stepping in, to ensure businesses were not unfairly penalised by the emergence of COVID-19, a previously unknown virus that no-one could have protected their livelihoods against, as it simply didn't exist prior to 2020!

GOVERNMENT INTERVENTION

Back in March 2020, to answer concerns about the lack of insurance coverage, the UK Chancellor, Rishi Sunak, announced an unprecedented range of measures designed to support businesses through the COVID-19 pandemic.

Sunak said that “for those businesses which do have an insurance policy that covers pandemics, the Government’s action is sufficient and will allow businesses to make an insurance claim against their policy”.

In practice however, many policyholders have experienced difficulties in successfully asserting claims against insurers for business interruption losses. A number of major insurers and their representative bodies have stated their belief that, in most cases, business interruption policies will not respond to losses caused by (i) COVID-19; or (ii) the UK Government’s response to COVID-19.

This led to a test case being raised in the High Court, by the Financial Conduct Authority, ‘to seek legal clarity’ on the interpretation of certain Business Interruption policies, for the avoidance of doubt.

THE FINANCIAL CONDUCT AUTHORITY’S TURNAROUND

On 1 May 2020, the FCA announced that, by way of court action they have raised a case *“designed to resolve a selected number of key issues causing uncertainty.”*

In the litigation, the FCA and their legal team put forward the best possible arguments on behalf of policyholders.

A key cause of the uncertainty is that business interruption policy terms, or more commonly, extensions to existing policies which cover business interruption losses, often require a 'trigger' for the policy to respond, with such triggers including (i) *physical damage to premises*; (ii) *denial of access to premises*; or (iii) *in some cases, the occurrence of a specified type of disease*.

The tension between insurers and policyholders regarding business interruption losses allegedly caused by COVID-19, and the UK government's response to it, generated substantial public attention.

Despite the strong public statements on each side of the debate, however, for many common Business Interruption policies or extensions, there is scope for uncertainty regarding whether business interruption losses caused by the COVID-19 pandemic are covered.

This is why the clarification was sought.

THE RULING

On 15th September 2020, the High Court in London handed down its judgment in the Financial Conduct Authority's (FCA)'s business interruption insurance test case, finding in favour of the arguments advanced for policyholders on a majority of the key issues.

The case was brought to provide clarity for thousands of policyholders making business interruption claims, and their insurers following the disruption caused by Coronavirus to businesses.



The ruling is complex, runs to over 150 pages and deals with many issues.

The judgment says that most, but not all, of the disease clauses in the sample policy documents, provide cover. It also says that certain denial of access clauses in the sample provide cover, but this depends on the detailed wording of the clause and how the business was affected by the Government response to the pandemic, including for example whether the business was subject to a mandatory closure order and whether the business was ordered to close completely.

The test case has also clarified that the Covid-19 pandemic and the Government and public response were a single cause of the covered loss, which is a key requirement for claims to be paid even if the policy provides cover.

Christopher Woolard, Interim Chief Executive of the FCA, commented:

'We brought the test case in order to resolve the lack of clarity and certainty that existed for many policyholders making business interruption claims and the wider market. We are pleased that the Court has substantially found in favour of the arguments we presented on the majority of the key issues. Today's judgment is a significant step in resolving the uncertainty being faced by policyholders. We are grateful to the court for delivering the judgment quickly and the speed with which it was reached reflects well on all parties.'

'Coronavirus is causing substantial loss and distress to businesses and many are under immense financial strain to stay afloat. Our aim throughout this court action has been to get clarity for as wide a range of parties as possible, as quickly as possible and today's judgment removes a large number of those roadblocks to successful claims..'

'Insurers should reflect on the clarity provided here and consider the steps they can take now to progress claims of the type that the judgment says should be paid.'

WHAT THE JUDGEMENT MEANS FOR POLICYHOLDERS

The judgment will bring welcome news for many policyholders, and even though the test case does not determine how much is payable under individual policies, it will provide much of the basis for doing so.

THE APPEAL

Unsurprisingly, the insurance Companies involved in the test case launched an appeal, but the FCA lodged a counter appeal on behalf of policy holders.

In January this year, the Supreme Court substantially allowed the FCA's appeal, meaning great news for policy holders.

The judgment brings to an end legal arguments under 14 types of policy issued by six insurers, and a substantial number of similar policies in the wider market which will now lead to claims being successful.

This completes the legal process for impacted policies and means that many thousands of policyholders will now have their claims for coronavirus-related business interruption losses paid.

WHAT NEXT?

The issues surrounding Business Interruption policies are complex and have the potential to create ongoing uncertainty for both customers and firms. The variation in the types of cover provided and wordings used mean it can be difficult to determine whether companies have cover and can make a valid claim. This has led to uncertainty and disputes, with many customers who believe they have valid claims having these rejected by their insurer.

Some insurance companies are also digging their heels in and are making the claims process difficult by requesting in-depth and costly Forensic Accounting Reports from those businesses submitting a claim. For a lot of businesses, this requirement will be cost prohibitive to them making a claim.

This is where we can help.

Even if you have already been told your insurance policy doesn't cover you for losses incurred as a result of the COVID 19 pandemic, it's definitely worth getting a second opinion.

It's not unheard of for an incorrect decision to be made by insurance companies, or for some companies to just be unhelpful in the hope you'll just 'go away' without questioning their decision.

If this has happened to you, there's far too much to lose for you not to get an expert opinion on the matter, especially when it's free!

