



What next?

On Sunday 10th May, Prime Minister Boris Johnson, gave us a glimpse into what the short to mid-term future might look like in England, by declaring that from:

- Monday 11th May, people in England who "can't work from home" will be "encouraged to go to work"
- 1 June 2020 Many schools in England may be ready to reopen "in stages"
- 1 July 2020 potential reopening of some of the hospitality industry and of public places.

The devolved governments of Scotland, Wales and Northern Ireland, have conflicting approaches in areas and the debate will continue over the forthcoming weeks, whilst Taoiseach Leo Varadkar had previously set out a five-stage roadmap effective from 18th May to reopen the Republic of Ireland in a "slow phased way."

Post-Lockdown Challenges

If anything is certain in these times, it is that uncertainty will continue post-lockdown. As the rate of infections across the UK and Ireland start to fall, many parts of the UK are looking forward to returning to Business As Usual (BAU). But will BAU look radically different to what it did pre-lockdown?

COVID-19 was first recorded in the UK in York at the end of January, since which time the number of recorded cases has exceeded 200,000 and deaths have passed 30,000 (6 May 2020). But without a vaccine it is difficult to see how life will return to normal.

Lesson Learnt

There are no recent examples of a world pandemic where so many countries have been hit at the same point in time. Some commentators have compared COVID-19 to the Spanish flu of 1918, Asian flu of 1957, Hong Kong flu of 1968 and the 2009 H1N1 Swine flu pandemic.

Looking at the last pandemic in 2009, within four weeks of being detected, health supplies were available to prevent and treat H1N1 which limited its effect on the wider community.

Spanish flu is perhaps the best example of a pandemic to compare to COVID-19 as it has similarities, including the deterrent of social distancing - the only tool we currently have at our disposal. Although in 1918, medical practitioners were looking for a bacterial cause, not knowing it was a virus. The mortality rate is also different and historical perspective on the pandemic should be considered. A mortality rate of around 1% for COVID-19 compared to 2.5% for Spanish flu has led to some parts of society to question whether the damage being caused to the economy is something worth paying. Let's not forget that COVID-19 is highly infectious and a lot of people are going to contract it without the availability of a vaccine.



We therefore have a record of dealing with pandemics and understanding how we have responded in the past is something we can consider when strategies are developed for responding to pandemics today.

Meanwhile Italy have lifted working restrictions but only around 50% of Italians have returned to work due to confidence worries, whereas Germany is slowly returning to BAU on the back of extensive testing to keep those known to have the virus away from others. The concern here is perhaps whether Germany will suffer from a second wave on the back of lower numbers of the population having contracted the virus, which has already occurred in Japan, this assuming there is a degree of immunity for populations in those countries which have higher numbers of people with COVID-19. The world is watching...

Recession?

The purposes of various government schemes, such as the furlough scheme, is to prevent a depression such as the one seen in the 1920s but this does not necessarily mean that the country will not enter a recession. It has been suggested that the UK faces a longer period of recession as many refuse to go out after the lockdown is lifted, with media quoting surveys suggesting that only 10% plan to adopt their usual working and social patterns after the pandemic ends.

Well-publicised measures on increased cleaning and social distancing by all businesses are intended to hold Coronavirus at bay while keeping economies running. However, these measures could lead to a reduction in Gross Domestic Product (GDP) due to the fear of catching COVID-19, which may inhibit people from going to pubs and restaurants or taking flights. The physical barriers from anti-viral precautions can cause tasks to be performed slower and therefore some workplaces will be less productive.

The Centre for Economic and Business Research (CEBR) found that one in ten businesses said there is a "high risk" they will enter into insolvency as a result of the downturn created by the coronavirus outbreak. In addition, it found that 51% of businesses said there is at least a small risk they may face insolvency. The CEBR points to a long recovery period that could last years rather than months, with GDP levels unlikely to return to 2019 until after 2022.

Consequences of COVID-19 Claims

The decline of businesses is likely to result in reduced demand for insurance products and perhaps an increase in fraudulent activities - history tells us there is a correlation with recession.

Insurers are now confirming their liability for business losses due to COVID-19, leading to some claims being declined due to the absence of cover. Struggling UK businesses have made their intentions known regarding mass litigation against insurers for the failure of Business Interruption (BI) policies to cover lost earnings.

Regardless of whether insurers are contractually obliged to pay these claims, the reputational fallout should not be underestimated. Some businesses could simply stop buying BI cover in the wake of insurers refusing claims for businesses who believe their policy should pay out. The Financial Times has reported that a third of businesses surveyed would not purchase business interruption insurance.



Relying on vague policy wordings to exclude claims is unlikely to improve the situation, especially as an important rule for the application of insurance in interpretation of contracts is that of *contra proferentem*. This rule is that any ambiguity in the words in the contract will be interpreted against the party who drafted the document and thus will be to the benefit of the other party.

Legal action could lead to a change in how the industry writes future policies and we are already starting to see some changes to policy wordings at renewal and in respect of new business. Alternatively, we may see a rise in premiums as insurers look to recover losses, which may result in further bad publicity.

If insurers look to ensure all losses from pandemics are excluded, will the government face pressure to provide future cover for pandemics. A steering group of UK insurance leaders have met and held discussions with Pool Re to examine the possibility of creating a similar scheme for pandemics known as Pandemic Re. We may also see a rise in Parametric Insurance, a form of risk transfer in which a pre-established payment is made to the insured party in the event of a specific catastrophe event such as a pandemic.

Further consequences of COVID-19 on the insurance industry could be:

- Increase in fire claims due to home bonfires, DIY works, overloading of home electrics
- Increase in fault and corrosion issues in commercial premises as machines are left unused
- Legionnaires disease issues with water supplies and ACU units left unused in commercial premises
- Surge in claims as restrictions are lifted as the population's behaviours, activities and habits may change
- Backlogs in claims handling impacting service - customer expectations are not met so more complaints
- Customers may not want suppliers on site
- Customers may not observe social distancing, whether deliberately or by accident
- Customers may not disclose COVID-19 symptoms so that site visits can still take place
- More costly labour and materials with longer periods of reinstatement
- Longer periods of disruption and indemnity periods.

Regulation

On 1st May 2020 the Financial Conduct Authority (FCA) announced it intends to seek legal clarity on BI insurance to resolve doubt for businesses who are facing uncertainty on their claims.

It is also proposing a series of measures to support both consumers and businesses who hold insurance products and who are facing other issues due to COVID-19. The package of measures sets out the FCA's expectations that insurance firms should consider whether their products still offer value to customers in the current situation and whether they can be doing more for those suffering a financial impact.

The FCA is seeking to bring to court what it believes are the key relevant cases which will provide the greatest clarity on specific policy clauses as soon as possible to get an independent judicial view on these disputed BI insurance policies if there remains unresolved uncertainty.

Coronavirus may also be making it harder for people to afford their insurance and premium finance payments. The FCA is setting expectations for firms to take steps to help customers alleviate temporary financial distress



and maintain insurance cover that meets their demands and needs. Insurers will have a range of options they consider are appropriate to the contractual position: giving customers premium payment holidays; waiving administration and cancellation fees; relaxing charges or interest incurred for missed payment; extending cooling off periods; partly refunding premium payments where the whole amount has been paid up front.

The Association of British Insurers (ABI) recently stated that only a small number of businesses have policies that could provide coverage against COVID-19. It has also confirmed that whilst the vast majority of BI policies do not cover pandemics, the Government has confirmed it will not seek to retrospectively amend contracts.

Given that the regulators are positioning themselves for court, it does question whether they will look for wider powers once this pandemic is over.

McLarens' Approach

McLarens UK and Ireland have established a specialist COVID-19 Complex Technical Team of senior adjusters and accountants to lead the claims arising from the pandemic, providing technical guidance and ensuring consistency in approach. The team comprises:

William Wilson	Head of Major Loss – Ireland	william.wilson@mclarens.com
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David Fillingham	Technical Lead – UK Casualty	david.fillingham@mclarens.com
Mark Simmons	Head of Construction & Engineering	mark.simmons@mclarens.com

Through this core technical team, we have established a scalable model of 75 experts with extensive experience in commercial property and business interruption. We have a COVID-19 specific process to ensure that every COVID-19 related claim is handled with the same level of forensic investigative focus demanded of such claims. Having now seen many referrals and multiple policy wordings across almost every business sector, our adjusters are now well attuned to the subtleties of these complex and potentially emotive claims.

Despite the reduction in non-COVID-19 claims referrals since the lockdown restrictions took hold, we have maintained our capacity fully, to ensure that we have the available resources to support our clients' in anticipation of the expected surge in both COVID-19 related and BAU claims as we emerge from lockdown.

All new losses to McLarens should continue to be instructed through the normal channels. Further technical bulletins will be issued as the situation develops.

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