



ASIC
Australian Securities &
Investments Commission

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16 October 2020

**To: Directors of general insurers, Lloyd's coverholders
and general insurance brokers (brokers)**

Dear Directors

**Handling business interruption insurance claims arising
from the COVID-19 pandemic (COVID-19)**

This letter outlines:

- ASIC's work in relation to business interruption insurance policies held by small businesses, and
- how general insurers, Lloyd's coverholders and brokers should approach handling claims on these policies in light of COVID-19.

On 27 April 2020, ASIC set out our expectations of general insurers when responding to COVID-19 in relation to all policyholders. We confirmed that we were committed to working constructively and pragmatically with general insurers to help Australians affected by COVID-19 to recover, and to aid the general functioning of the Australian economy.

We reminded general insurers about their duty to handle insurance claims with utmost good faith. While this applies to all insurance products, the purpose of this letter is to specifically focus on the handling of claims on business interruption insurance policies by small business policyholders.

ASIC's objectives and work

ASIC has been monitoring issues relating to business interruption insurance and COVID-19 for some time. We have been working with the Australian Prudential Regulation Authority (APRA), the Australian Financial Complaints Authority (AFCA), and the Insurance Council of Australia (ICA).

Our objectives in undertaking this work are to:

- where possible, minimise harm to Australian small businesses by ensuring that:

- information provided to policyholders about policy coverage before claims are lodged is clear, accurate, balanced and does not, whether deliberately or inadvertently, mislead or deceive;
- where policies do respond to losses arising from COVID-19, claims are assessed and, where appropriate, paid in a timely manner that is consistent with the duty of utmost good faith (this helps ensure that financial pressures on Australian small businesses are not exacerbated by slow payments);
- help provide clarity for policyholders and general insurers on whether business interruption insurance policies issued to small businesses respond to losses arising from COVID-19; and
- help maintain, facilitate and improve the performance of the general insurance market.

We are monitoring the development and progress of the proceedings filed on 13 August 2020 in the Supreme Court of New South Wales, now being decided by the NSW Court of Appeal. This case will determine the effectiveness of certain infectious disease exclusions found in many Australian business interruption insurance policies. We refer to this as the 'Australian test case'.

We have also been monitoring international developments, including the recent decision of the High Court of England and Wales in *The Financial Conduct Authority v Arch Insurance (UK Limited) & Ors* [2020] EWHC 2448 (Comm).

We have undertaken a review of business interruption insurance policies issued to small businesses to better understand the range of policy wordings, and the numbers of claims and disputes.

ASIC has collected and reviewed 392 policy wordings issued by general insurers to Australian small businesses (businesses employing less than 100 people).

While a considerable number of these policy wordings contain exclusions for losses arising from pandemics, including exclusions that are subject to the Australian test case, we identified a range of policy wordings that may respond to losses arising from COVID-19.

This includes cover under so-called 'infectious disease', 'prevention of access' or 'closure by authority' coverage clauses. How the individual policies respond will, of course, depend on the relevant facts of each claim and the particular policy wording.

Handling business interruption insurance claims

In light of our analysis of business interruption insurance policies, and the Australian test case, we consider that general insurers, Lloyd's coverholders and, where appropriate, brokers, should take the following approach when handling claims brought by Australian small businesses relating to business interruption losses arising from COVID-19.

1. For all policies

General insurers, Lloyd's coverholders and brokers should take steps to ensure that any information they provide to policyholders about policy coverage before claims are lodged is clear, accurate, balanced and does not, whether deliberately or inadvertently, mislead or deceive.

We strongly encourage general insurers, Lloyd's coverholders and brokers to communicate with policyholders in a way that not only meets minimum requirements not to mislead or deceive, but also helps Australian small businesses make appropriate and informed decisions about whether they should lodge claims for business interruption losses arising from COVID-19.

2. Policies that do not contain a pandemic exclusion or that contain a limited exclusion

Regardless of the outcome of the Australian test case, some policies may respond to losses arising from COVID-19 because they:

- do not include a pandemic exclusion; or
- contain a pandemic exclusion that applies only to 'infectious disease' coverage clauses and not to other coverage clauses in the policy such as 'prevention of access' or 'closure by authority' coverage clauses.

As with all insurance claims, claims on these policies should be assessed and, where appropriate, paid in a timely manner to ensure that financial pressures on small businesses are not exacerbated by slow payments.

If there are reasonable grounds to pay part of a claim but not to pay the full claim, we encourage general insurers and Lloyd's coverholders to make an interim payment.

3. Policies with a pandemic exclusion that refers to either the Quarantine Act or the Biosecurity Act

Most business interruption insurance policies sold to Australian small businesses contain an exclusion for losses arising from a pandemic where the 'disease' has been designated under the now repealed *Quarantine Act 1908* (Cth), or the current *Biosecurity Act 2015* (Cth).

As the effectiveness of these exclusions is being considered by the Australian test case, general insurers and Lloyd's coverholders should have a plan for responding to the outcome of the test case. This plan should include how to communicate with policyholders if the NSW Court of Appeal finds in favour of policyholders in the case.

General insurers should also provide appropriate information to insurance brokers to pass on to small business policyholders.

In conclusion, we expect that you, as directors, will seek ongoing confirmation through board reporting that your firm's approach to business interruption insurance claims by small business policyholders is consistent with the approach outlined in this letter.

Please contact Emma Curtis, Senior Executive Leader – Insurers, Financial Services & Wealth at emma.curtis@asic.gov.au or on 02 9911 5338 if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'KC' followed by a long, horizontal flourish.

Karen Chester
Deputy Chair