

COVID-19 / CORONAVIRUS STATEMENT

Update 18 January 2021

The Test Case outcome

The media have reported on the conclusion of the Supreme Court appeal from November following the High Court case in September. This decision only potentially affects **5% of all policyholders**, and does not universally apply to all policies, despite the tone of the reporting in the media.

The 5% of policies in question had disease and/or non-damage denial of access extensions where the policy wording mentioned specific words and phrases. The remaining 95% of policies are clear in their scope of cover and are unaffected by the outcome. The Supreme Court appeal ruling only affects the small number of policies that were involved in the earlier High Court case.

The list of affected wordings can be found at: <https://www.fca.org.uk/publication/corporate/bi-insurance-test-case-list-affected-insurers-policies-15-july.pdf>

Why was it not covered?

Pandemic risk was never intended to be covered by any small business insurer and **no premium was collected** for this aspect of risk. One of the core principles of insurance is “the losses of the few are paid for by the masses”. When a situation occurs that affects a large number of policyholders and becomes “the losses of the masses are paid for by the masses”, this is called a “fundamental risk” and is generally excluded.

Other examples of uninsurable fundamental risks are war and radiation. For fundamental risks, the country looks to the Government for support. The UK insurance industry pays out around £7.8bn a year in small business claims (fire, flood, storm etc) and collects premiums totalling a roughly similar amount. The Government support packages for businesses for Coronavirus comes in at £350bn+, so you can see why it is beyond the scope of insurance!

But my policy mentions disease and/or denial of access

Business interruption cover is designed to protect income following a **physical** loss (fire, flood etc). Some policies (mainly retail and leisure policies) contain *extensions* for a specific list of diseases that may occur at the premises or in the immediate area. The diseases on the list are well known diseases with predictable behaviour. Because of the limited scope of the intended cover, these extensions typically have a maximum indemnity limit of £10k to £50k.

For example, if you have a chickenpox outbreak at your premises and are closed by the health authority for a short period whilst it is dealt with, this is what the disease extension was designed for. A small number of insurers made the mistake of leaving the definition of this extension too wide, hence the Test Case mentioned above. These extensions have been amended for all new business and renewals since.

Will it be covered going forward?

All insurers who made the mistake of not being clear with their wordings have now amended them to be explicit that there is no cover. The size of pandemic risk is beyond the scope of insurers, but the Government may setup a fund for it going forward (possibly called Pandemic Re) which the industry would front in an administrative capacity. Similar has been done in the past with terrorism (Pool Re) and high risk flood (Flood Re).