

# Rowlands & Hames – Coronavirus / Covid-19 Guidance Newsletter

*Newsletter 5 - As at 12pm on 12<sup>th</sup> June 2020*

## Introduction

---

Welcome to the latest Covid-19 newsletter from Rowlands & Hames – previous newsletters can be found at <https://rowlands-hames.co.uk/coronavirus-covid-19-rowlands-hames-advice/>

## BACK TO WORK GUIDANCE & ADVICE BY SECTOR

---

Please refer to our website at <https://rowlands-hames.co.uk/covid-19-newsletter-4/> for current Covid-19 risk management guidance and advice by sector, trade and occupation.

With non-essential retailers returning on Monday 15<sup>th</sup> June, it's especially important to ensure you've fully prepared and be Covid-secure. Consider the Government's guidance sector by sector, the insurers' advice and your own Health & Safety Consultant's recommendations.

## BUSINESS PREMISES – PROPERTY UNOCCUPANCY UPDATE

---

Since the initial lockdown insurers have generally agreed to maintain full coverage during temporary unoccupancy where this was the result of a government regulation.

Whilst we are now well on the way to 'returning to work' insurers will generally continue to maintain 'full cover' where the sector/trade remains in lock-down by Government order e.g. hotels, pubs, restaurants, leisure centres etc.

However, where restrictions on occupying the premises have already been lifted or the Government has announced a date for lifting the restrictions (i.e. retailers from 15<sup>th</sup> June is expected), should a business decide to remain closed for business despite being permitted to open, the insurer's standard unoccupancy terms will immediately trigger (usually entailing a reduction in cover with certain perils excluded and higher excesses potentially – see your policy documents).

Please speak to us urgently if you intend your business premises to remain closed for business, despite being permitted to open by the Government, so we can negotiate with the insurer.

## UPDATE - FCA COURT CASE SEEKING JUDICIAL DECLARATIONS ON COVID-19 RELATED BUSINESS INTERRUPTION (BI) POLICY WORDINGS

---

Whilst the insurance industry has generally never intended (or had the capacity) to insure epidemics/pandemics and their policy wordings reflect this, a small number of insurers have (inadvertently) left themselves open to Covid-19 related BI claims due to their policy wordings not being that clear. The FCA is seeking a Judicial Declaration so as to avoid the need for individual court actions.

More details have been released about a test case being brought by the FCA. The test case, which will ultimately reach court in the second half of July, involves a sample of 17 insurance policy wordings that have been collated by the Financial Conduct Authority, and which it says capture the majority of the key issues that could be in dispute.

Now the FCA has released a copy of its 184-page claim, which names eight companies - Arch Insurance (UK); Argenta Syndicate Management; Ecclesiastical Insurance Office; Hiscox Insurance Company; MS Amlin Underwriting; QBE UK; Royal and Sun Alliance; and Zurich Insurance. Other insurers/wordings may be affected following the outcome of these test cases.

The FCA is believed to have filed claim forms and particulars for the court to consider earlier this week, and on June 16th there is a case management conference scheduled - this should include the court fixing the precise dates for what may be a five to 10 day hearing in July.

In around two weeks' time it is anticipated that the insurers will have to have filed their defences; following that, the FCA files its skeleton arguments ahead of the hearing itself.

R&H is keeping its eye on the results of this Court case which will inevitably take some weeks yet. Where we have lodged a claim on clients' behalf (where cover is not clear-cut), we have refused to accept insurers' initial repudiations and asked all insurers to leave the claims 'open' pending the court's judgements.

## MOTOR TRADE – DEMONSTRATION OF VEHICLES

---

If you are a motor trader selling vehicles and would normally accompany a potential purchaser for a test-drive, this may not now be possible given social distancing.

Almost all motor trade dealers allow for accompanied demonstration only – unaccompanied demonstration is not normally provided (due to the risks of fraud and theft!) However, given Covid-19's social distancing arrangements, should you wish to consider temporary 'unaccompanied' cover, subject to additional terms and premium, please contact us.

## POLICY COVER GOING FORWARD – CONSIDERATIONS

---

We encourage you to review your sums insured and other coverage at this important time...

### **Property & Theft**

#### Stock

Review your current stock (replacement) sums insured, particularly if you had reduced or deleted stock during the lock-down; consider the impact of suppliers' new prices, or replacement suppliers if the usual supplier is no longer trading; consider the impact of any exchange rate impact or unavailability of 'cheaper' replacement stocks from certain countries. Avoid under-insurance and the Condition of Average's proportional settlement in a claim scenario.

#### Machinery & Equipment / Tools

Review the adequacy of your reinstatement (as new) sums insured for all your contents equipment and machinery, also considering the impact of exchange rates on the replacement cost of equipment and machinery and delays in replacement times/increased costs. Avoid under-insurance and the Condition of Average's proportional settlement in a claim scenario.

#### Buildings/Tenants Improvements

Consider if the shortage of buildings materials/labour during and the post Covid-19 lockdown has impacted (demand outstripping supply etc.) upon the reinstatement costs of buildings and tenants' improvements. Avoid under-insurance and the Condition of Average's proportional settlement in a claim scenario.

#### Computers & IT

Returning equipment from employees' homes OR equipment remaining at employees' homes post lockdown permanently. Equipment taken home during the lockdown was permitted by insurers, but if this becomes more permanent (as we are seeing signs of), we will need to advise the insurers.

### **Business Interruption (BI)**

#### Indemnity Period

You may need to review your cover and adjust to suit the 'new normal'. Always consider 18, 24 and even 36/48-month indemnity periods given your particular circumstance. How quickly would you be back 'up and running' despite all the inevitable insurers' and other authorities' investigations and enquiries, architectural delays, planning, interested-party representations, building delays (due to Covid-19 security) plus the extended lead-times in obtaining replacement machinery (again due to Covid-19 security in production).

#### Gross Revenue, Insurance Gross Profit, Gross Rents

BI 'looks forward' so be sure your estimates/sums insured reflect the 'new normal' for your business. Few firms will have adjusted their BI sums insured/estimates during the lockdown awaiting a better understanding of how their trading will fare post lockdown but keep an eye on your BI sums insured and adjust as often as you require to reflect your findings. Avoid under-insurance and proportional claims settlement at all costs.

Year-end declarations – Stock, Business Interruption, Wages and Turnover, Marine sendings etc

Many firms' original estimates (pre-Covid-19) will end-up too high in reality given the impact of Covid-19 – it is always worth submitting a year-end declaration of actual figures once the previous policy's period has expired – there may be premium due back to you.

### BI Extensions

Many firms may have deleted their Business Interruption extensions temporarily during the lockdown (as they were of little use during the interruption). Be sure to reinstate these just as soon as you know your likely re-opening date (in case they're triggered just before opening date). If you need a reminder of these Extensions, get in touch.

## OTHER COVER / POLICIES IMPACTED POST-COVID

---

### **Employers' Liability**

Be sure to follow Government Guidance, insurers' advice and your Health & Safety consultant's advice at all times. Ensure your management team and all employees follow the guidance and that all your team has confirmed, in writing, they will abide by the Rules you've set out for your own business and know disciplinary action will be taken, if not. Be sure your team are fully aware you are following the Guidance and you are seen to follow the Guidance to avoid opportunists.

### **Public Liability**

In the same vain, again to avoid opportunists, allow customers to see you following the Guidance. Where customers remain on your premises for longer than a quick purchase/visit, ask them to sign and agree to your Covid-19 procedures. If they will not agree to the Covid-19 regulations and your Covid-19 Rules, we suggest you ask them to leave the premises.

### **Management Liability – Directors' & Officers' Liability / Corporate Liability**

Directors and senior staff can be held personally responsible, as well as the company, should there be any allegations of wrongdoing against directors/managers and the company in their handling of the post-Covid-19 arrangements. If you do not currently hold Management Liability speak to your usual R&H contact for a quotation. Quotes start from £250 or so.

### **Management Liability – Employment Practice Liability**

Companies may face an increased chance of employment disputes and tribunals during the post Covid-19 return to work, especially if there's issues over furloughing of staff, redundancy situations, or disciplinary issues for failure to comply with post Covid-19 Guidance and your own Rules. If you do not hold Employment Practice cover, please speak to your usual contact at R&H for a quotation.

Please speak to your usual R&H contact if you require any assistance with any of the above subjects or indeed anything insurance related.