

INSURANCE REGULATORS RESPOND TO CORONAVIRUS PANDEMIC

Over the last few days we have seen a number of insurance regulators announcing measures and guidance for firms trying to respond to the coronavirus (Covid-19) crisis.

In some cases, regulators have highlighted conduct considerations for firms dealing with customers in connection with the crisis. The FCA, for example, issued a statement for general insurers on 19 March on treating customers fairly in the context of coronavirus – which we discuss in detail below. Other regulators have highlighted the importance of clear communications with customers at this time, when customers may be concerned or unclear about the terms of their cover. In New York, for example, the Department of Financial Services (DFS) have called for all insurers who write business interruption coverage to provide information to the regulator about the volume of this business written, and also provide explanations to all policyholders on the scope of the cover they hold and whether it covers loss arising from a pandemic.

In addition to this regulatory guidance, the increased focus on the insurance industry in the context of the crisis means that insurers will also need to be aware of the heightened risk of reputational damage to them, and to the industry, which might result if being seen to not treat customers fairly. We discuss this further below.

Regulators are on their side seeking to relax some of the operational burdens on regulated firms in order to help them weather the crisis. The Bank of England and PRA issued a statement on 20 March postponing certain regulatory actions and deadlines (some of which will be relevant to insurers, which we discuss further below). EIOPA also published recommendations for national insurance regulators on 20 March advising that certain reporting deadlines be pushed back.

FCA statement 19 March – Insurance and coronavirus (Covid-19): expectations of firms

The FCA issued a [statement](#) on 19 March setting out its expectations for general insurance firms during the coronavirus pandemic. The statement applies general and existing FCA rules and guidance (for example, in relation to clear, fair and not misleading communication, considering customers' demands and needs and principles for dealing with vulnerable customers) – but makes it clear how it expects firms to apply these principles to the current situation.

Key issues

- Regulators announce a series of measures to mitigate the impact of Covid-19 on the insurance sector
- EIOPA calls for consistent supervisory approaches across EU member states in response to Covid-19, issuing recommendations to alleviate operational pressure on insurance firms
- In the UK, the FCA stresses the importance of operational resilience and the need to treat customers fairly. The BoE and PRA postpone non-critical regulatory workstreams and reporting deadlines to support business continuity
- In addition to the regulatory response, insurers should consider the risk of reputational damage both individually and to the wider industry resulting from any perception that they have not treated customers fairly

In this statement, the FCA:

- stresses the importance of **operational resilience and business continuity**. Firms are expected to have suitable systems and controls in place to manage the operational impact of the coronavirus crisis and ensure that customers are still treated fairly and communications remain clear, fair and not misleading;
- notes the increased customer demand for **travel insurance** and its fast-moving risk profile. It focused in particular on the need for travel insurers to treat their customers fairly during the whole lifecycle of a product from purchase, to claim, to renewal;
- advises that where a customer has an annual travel policy, and has already made travel arrangements that relate to the period after the renewal date, **insurers should act 'fairly' in considering whether to renew annual travel cover. This might involve renewing a policy on its original terms, even where to do so would guarantee a claim**; and
- makes clear that **motor and home insurers should not reject claims based on temporary changes resulting from the coronavirus crisis**. Policyholders may for example be working in a different location to normal – this should not invalidate a claim.

Renewals and product suspension

The coronavirus crisis has seen many insurers suspend certain product offerings, or consider the renewal terms of certain products, in order to manage their exposure to coronavirus related risks. The FCA, noting this, states:

- when considering whether to suspend a product, firms should consider the needs of the customer. **In some cases, where a customer is relying on a renewal for continuity of cover, "treating customers fairly" might require a firm to renew cover even where it would otherwise suspend the product**;
- firms should consider whether a policyholder was "given a reasonable expectation that cover would continue" in deciding whether to renew cover; and
- any changes to the policy terms (in particular, any amendments made to exclude coronavirus related claims) should be made very clear to the customer prior to renewal.

This represents a new test for firms – under existing regulation, renewal is at the insurer's discretion and the customer has no right to expect or demand that an insurer renews their cover. Insurers will face a challenge: balancing on one hand the FCA's expectations, which might require them to take on additional risk they would typically not incur, against, on the other hand, their prudential obligations to manage exposure to risk. The FCA does not comment specifically on pricing, so insurers may seek in part to achieve this balance by ensuring that pricing is both reasonable and prudent.

Mid-term adjustments

The FCA also notes that some firms wish to make mid-term changes to their existing policies. It states that it expects any firm which is considering doing to consider:

- whether there is a written term in the contract allowing this adjustment, and, if so, whether this term is being applied properly and is fair and transparent under the Consumer Rights Act 2015 (or, for older contracts, the Unfair Terms in Consumer Contracts Regulations 1999);
- whether due regard has been given to the customer's interest and duty to treat customers fairly; and
- whether there is any other reason in law or regulation which should be complied with in the circumstances.

None of this guidance is new, but the fact that it is included in the FCA statement suggests that the FCA is paying close attention to any coronavirus related mid-term adjustments firms might seek to make.

Exclusions

The guidance mentions, but does not address in detail, the application of exclusions in existing policies. Firms will however be expected to apply any exclusions in a manner that is consistent with the principle of treating customers fairly and consistent with general rules and guidance on claims handling, including the requirement to handle claims promptly and fairly and to not unreasonably reject a claim made by a customer.

Response

The Association of British Insurers (ABI) issued a short [statement](#) responding to the FCA's guidance, stating that "insurers are doing everything possible to support their customers at this worrying time". It also echoed the FCA in stating that people working from home will be covered by home insurance, as well as motorists using their vehicles for essential reasons. It did not however address the guidance on product suspension and renewals.

Key workers

Insurers will be required to consider their operations to determine which individuals would be considered a "key worker". This will be particularly important in light of the latest government restrictions on travel and movement and childcare at schools. The FCA has published steps insurance firms should take to identify key workers in financial institutions. The FCA notes that firms are best placed to decide which staff are essential for the provision of financial services and should identify the activities, services or operations which, if interrupted, are likely to lead to the disruption of essential services to the real economy or financial stability. The FCA recommends that the Chief Executive Officer Senior Management Function be accountable for ensuring an adequate process so that only roles meeting the definition are designated.

An increased focus on the insurance industry

In addition to the regulatory guidance, insurers will be aware of the risk of reputational damage to them individually and to the industry in general which might result from being seen not to treat customers fairly.

There is an unprecedented focus on the insurance industry as a result of the coronavirus crisis and it is possible that insurers might become the target of public anger and frustration as the crisis deepens. The Times today cites insurance industry leaders' fear that "they will join bankers as hate figures after the coronavirus pandemic".

The last week has, for example, seen a great deal of attention from the public and the press on business interruption cover, particularly with respect to

whether or not cover is linked to business closure following government direction. The ABI made statements on 17 and 18 March in an attempt to clarify that many business interruption insurance policies will not respond to closure of premises as a result of coronavirus, even where this is the result of government direction. This is because in these cases the majority of businesses take out cover which is clearly linked to physical damage to property and if there is no such damage, no claim can be made. In a limited number of cases however the cover may be broader and include closure due to the presence of an infectious disease and/or the inability to use insured premises due to action, advice or direction of competent authorities. The press coverage of the ABI's statement, however, was more unforgiving in tone – with the Guardian headline being "insurers refuse to pay out on virus shutdown claims".

In the context of this increased scrutiny, both from the FCA and the public, insurers should carefully consider terms of relevant policies to determine whether the scope of cover and any exclusions support a rejection of a coronavirus related claim. Where the position is not absolutely clear on the face of the contract, the insurer should factor in this recent, specific guidance from the FCA as well as its more general guidance on treating customers fairly and not unreasonably rejecting customer claims.

Bank of England and EIOPA announce measures 20 March to address the challenges of coronavirus (Covid-19)

On 20 March the Bank of England and PRA [announced](#) a number of measures aimed at alleviating pressure on dual-regulated firms in the wake of the coronavirus crisis.

In its statement, the Bank:

- notes that the PRA's approach to Senior Manager Function (SMF) applications will be reviewed with a view to reducing regulatory burden. It is not clear at this stage whether this means that individuals will be able to carry out functions pending approval but we expect the Bank to release more information in due course. We would also expect the FCA to take a similar approach as many SMF functions are approved by both regulators;
- postpones or pauses a number of ongoing Bank workstreams, including the consultation on operational resilience;
- states that the Bank and PRA will seek to postpone non-critical regulatory requests, on-site visits, deadlines and certain Section 166 reviews in order to reduce the regulatory burden on firms; and
- postpones a number of other planned workstreams, primarily affecting banks and building societies, including its annual 2020 stress test and implementation of Internal Ratings Based (IRB) models.

EIOPA also published recommendations for national competent authorities on 20 March which ask regulators to:

- allow firms to delay submission of certain annual supervisory reports for year-end occurring between 31 December 2019 and 1 April 2020 for up to eight weeks. These include the Regular Supervisory Report (both solo and group) and certain of the Quantitative Reporting Templates. Similar flexible approaches should be taken to any national specific reporting or

additional requirements such as ORSA reporting deadlines or audit requirements;

- allow firms to delay certain quarterly reporting submissions relating to the period between 31 March and 30 June 2020; and
- allow an eight week delay for the publication of certain parts of the Solvency and Financial Condition Report for year end occurring between 31 December 2019 and 1 April 2020.

EIOPA also confirms that (re)insurers should consider the current situation to be a "major development" for the purposes of article 54(1) Solvency II and should include information on the impact of coronavirus in their reporting.

The PRA published its response on 23 March, announcing that it will accept the delays recommended by EIOPA.

A developing situation

Please note that this update was produced on 24 March and reflects the position as of this date. The situation is fast-moving and we can expect regulators to make further announcements in the coming weeks. We will provide further updates as the situation develops.

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