



11/11/2020

Dear Client

### Coronavirus Update

Firstly may we take this opportunity to send you and your families our best wishes for continued good health during what is clearly an awful pandemic and a difficult time for many people.

As the country begins a second national lockdown it is important to consider the insurance implications of this and also for those businesses affected by a more localised approach under the government's tier system.

One of the principal concessions granted by insurers during the first national lockdown was the recognition that buildings temporarily closed did not trigger the unoccupancy condition widely contained within buildings insurance policies throughout the industry.

Unfortunately this concession has at this stage not been repeated by all insurers and therefore it is essential that if your business is now closed that you inform us of this and follow any requirements of the unoccupancy condition on your policy or where no condition is present on your policy then follow the risk management guidance we issued to you with your policy documentation. By not adhering to the requirements imposed on you by an unoccupancy condition you would be in breach and a claim could be refused. It is particularly important for those businesses originally ordered to close under the tier 3 localised government approach as those businesses will shortly be approaching the threshold upon which insurers must be told of the closure.

If you have adjusted your business as a result of either a local or National lockdown for example you are a restaurant that has started a takeaway/delivery service or a drinks manufacturer that has started to make hand sanitiser or even an office that has staff now working from home then again it is essential you inform us of this so we can ensure your policy is set up on the correct basis.

From a motor insurance perspective remember to let us know if you have temporarily laid up vehicles and notified them SORN to the DVLA. Conversely let us know when you take them off SORN before you put them back on the road.

You do have an ongoing duty to make a fair presentation of the risk to insurers which includes the duty to disclose all material information you know or ought to have known. The consequences of not disclosing all material information could result in your policy being declared void and result in a claim being refused or a proportionate remedy being applied so it is essential you inform us of any changes to your business since the policy was placed.

You may also have read in the press, news of a test case brought by the Financial Conduct Authority (FCA) on behalf of policyholders designed to bring legal clarity as to the effect of some business interruption policy wordings in relation to COVID-19.

Almost all insurance companies maintained that their policies were not intended to, and did not, provide coverage for business interruption losses arising from the global pandemic and/or subsequent official restrictions such as national lockdown. However, many areas of society felt that certain policy wordings, on a true interpretation (whether intended or not), may well indeed provide cover.

**Manchester:** Cobac House, 14-16 Charlotte St, Manchester M1 4FL

**T:** +44 (0)161 236 6969

**London:** 65 Leadenhall Street, London, EC3A 2AD

**T:** +44 (0)203 928 1200

**enquiries@bridgeinsurance.co.uk | bridgeinsurance.co.uk**

The FCA agreed and sought a judgment from the High Court as to the interpretation of a representative sample of policy wordings from a number of insurers. The sample wordings largely concern two types of coverage: (a) coverage for infectious or notifiable diseases (disease clauses); and (b) coverage for official actions or advice which affect a policyholder's ability to access or use the insured premises (denial of access clauses).

On 15 September 2020, the High Court handed down its judgment. The Court explained that the availability of coverage depends on a careful consideration of the particular wording of each policy, as well as other factors such as the type of business in question and the individual circumstances of how it was affected by COVID-19. The High Court concluded that there could be cover for some policyholders, but not for others.

We have performed an extensive piece of work to identify policyholders that following receipt of legal advice may have been affected by the FCA Test Case and if you fall into this category then a communication regarding next steps will be with you shortly.

That's not to say circumstances might change as part of any appeal process and there may be a different outcome for tier 3 local closures as opposed to a national lockdown. Should you therefore feel strongly that you have suffered a business interruption loss which may be covered under your policy then we encourage you to submit a claim against your policy as it will serve two purposes. The first will be to receive an official response from your insurer on the validity of any claim and secondly should the FCA Test Case change that validity then it places a responsibility upon the insurer to inform you of such change.

Please feel free to contact either our claims team or your normal account director here at Bridge if you would like to pursue this or indeed discuss any aspect of your policy coverage in relation to Coronavirus and the impact it is having on your business.

Yours sincerely.

Bridge Insurance Brokers Limited

**Manchester:** Cobac House, 14-16 Charlotte St, Manchester M1 4FL  
**T:** +44 (0)161 236 6969  
**London:** 65 Leadenhall Street, London, EC3A 2AD  
**T:** +44 (0)203 928 1200  
**enquiries@bridgeinsurance.co.uk | bridgeinsurance.co.uk**

Bridge Insurance Brokers Limited, Cobac House, 14-16 Charlotte Street, Manchester M1 4FL.  
Registered in England No. 996284. Authorised and regulated by the Financial Conduct Authority.

Brokerslink  
Partner



## Duty of Disclosure to Insurers under the Insurance Act 2015

### Insurance is a special type of contract

The law in the United Kingdom deems insurance to be a special class of contract which imposes onerous duties upon prospective Insured's and their agents, who are obliged to act with utmost good faith towards Insurers at all times. In addition they are obliged to disclose to Insurers, before the contract is concluded, all "material" information which is known to them. The obligation of disclosure is not limited to "material" information of which they are aware; it extends to those matters of which they ought to be aware in the ordinary course of their business.

### What is a Material Fact

The Insurance Act 2015 effective 12 August 2016 states that all information or every circumstance is material if it "would influence the judgement of a prudent Insurer in determining whether to take the risk and, if so, on what terms". Information may be deemed to influence the judgement of a prudent Insurer and be material even if it would not necessarily have led him to decline the risk or to have set an increased premium. What matters is that he would have reasonably taken the information into account. If there is any doubt whether information is material it ought to be disclosed to Insurers. Do not assume that information is known to an insurer merely because it is in the public domain.

### What are the consequences of non-disclosure?

Insurers are only entitled to avoid the policy and retain the premium paid in circumstances where they can establish that the misrepresentation or non-disclosure was deliberate or reckless. In all other scenarios the insurer has the following options available to them:

- If the insurer would not have entered into the contract it can still avoid the contract but it must return the premium.
- If the insurer would have entered into the contract but on different terms then it can treat the contract as if those terms are applicable.
- If the insurer would have charged an increased premium then it can proportionally reduce the value of any claim settlement.

### If you make a claim

The duties of utmost good faith and disclosure also apply to the claims process and to any situations during the period of the policy in which you are required, under the terms of the policy or otherwise, to provide information to Insurers including the extension or amendment or renewal of any policy.

### Your Obligation

Before any insurance contract is entered into, an Insured must make a fair presentation of the risk to the Insurer, in accordance with Section 3 of the Insurance Act 2015. In summary, the Insured must:

- a) Disclose to the Insurer every material circumstance which the Insured knows or ought to know. Failing that, the Insured must give the Insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries in order to reveal material circumstances. A matter is material if it would influence the judgement of a prudent insurer as to whether to accept the risk, or the terms of the insurance (including premium); and
- b) Make the disclosure in a reasonably clear and accessible way; and
- c) Ensure that every material representation of fact is substantially correct, and that every material representation of expectation or belief is made in good faith.

**Manchester:** Cobac House, 14-16 Charlotte St, Manchester M1 4FL

**T:** +44 (0)161 236 6969

**London:** 65 Leadenhall Street, London, EC3A 2AD

**T:** +44 (0)203 928 1200

**enquiries@bridgeinsurance.co.uk | bridgeinsurance.co.uk**

Bridge Insurance Brokers Limited, Cobac House, 14-16 Charlotte Street, Manchester M1 4FL.  
Registered in England No. 996284. Authorised and regulated by the Financial Conduct Authority.

**Brokerslink**  
Partner



### What you are expected to know

The Insured is expected to know the following:

- a) If the Insured is an individual, what is known to the individual and anybody who is responsible for arranging his or her insurance.
- b) If the Insured is not an individual, what is known to anybody who is part of the Insured's senior management; or anybody who is responsible for arranging the Insured's insurance.
- c) Whether the Insured is an individual or not, what should have been revealed by a reasonable search of information available to the Insured. The information may be held within the Insured's organisation, or by any third party (including but not limited to us, external contractors, the Insured's subsidiaries, affiliates or any other person who will be covered under the insurance)

If the Insured is insuring subsidiaries, affiliates or other parties, the Insurer expects that the Insured will have included them in its enquiries, and that the Insured will inform the Insurer if it has not done so. The reasonable search may be conducted by making enquiries or by any other means.

### An ongoing Requirement

This legal duty to disclose is continuous throughout the term of the insurance. If you have any doubt whether or not a fact, matter or circumstance is material it should be disclosed.

### Examples of Material Facts

Insurers need to be made aware of any changes to the risk which may occur during the course of the policy year. Whilst not an exhaustive list, some examples would include:

- Changes to the trade or occupation, including types of goods sold.
- Alterations to the security of the premises.
- Incidents which occur, even if a claim is not made.
- Criminal convictions/notice of intended prosecutions.
- Liquidation of business(es) and/or bankruptcies

**Manchester:** Cobac House, 14-16 Charlotte St, Manchester M1 4FL

**T:** +44 (0)161 236 6969

**London:** 65 Leadenhall Street, London, EC3A 2AD

**T:** +44 (0)203 928 1200

**enquiries@bridgeinsurance.co.uk | bridgeinsurance.co.uk**

Bridge Insurance Brokers Limited, Cobac House, 14-16 Charlotte Street, Manchester M1 4FL.  
Registered in England No. 996284. Authorised and regulated by the Financial Conduct Authority.

**Brokerslink**  
Partner

