

Q&A: COVID-19 EXPOSURE WITHIN THE H&L ENVIRONMENT



Certain policyholders will have a Contingent Business Interruption (CBI) extension on their commercial insurance policies that may relate to COVID-19 claims. Additionally, policyholders may have Cancellation of Bookings (COB) cover that relates to the inability of their guests to travel following quarantine.

CANCELLATION OF BOOKINGS

What is covered by the “Cancellation of Bookings” clause?

For those policyholders who have this cover, if a prospective guest, or a person with whom the guest has arranged to travel, has paid a deposit for a booking and that deposit is returned to the guest because he/she is unable to travel due to compulsory quarantine, the value of the deposit, up to the policy limit, is covered by insurance.

What is meant by “quarantine”?

Under the Disaster Management Act regulations of 25 March 2020, the term “quarantine” is defined as follows:

“quarantine” means the restriction of activities or separation of a person, who was exposed, or potentially exposed, to COVID-19 and could be a possible source of the spread of the disease, from other non-exposed persons, in such a manner so as to prevent the possible spread of infection or contamination to healthy individuals;

The concept of “quarantine” has a meaning (consistent with its ordinary meaning) within the regulations governing the national lockdown. The restriction of movement required by the national lockdown does not itself constitute quarantine.

Can a “Cancellation of Bookings” claim be made due to COVID-19 or the national lockdown?

This will depend on the specific policy wording, but in most instances cover is provided if a guest, or a person with whom the guest has arranged to travel, is unable to fulfil his/her booking as a result of being placed in compulsory quarantine in accordance with the definition provided above.

Any deposit returned to a guest who cancelled his/her booking due to the restriction of movement required by the national lockdown, but who did not meet the requirements of quarantine, is not covered by the policy.

What if a policyholder retains his/her guest’s deposit for accommodation at a later date rather than refunds it?

Cover is only provided for deposits that have been refunded to prospective guests. If a policyholder retains the deposit for accommodation at a later date, then this is not covered by the “Cancellation of Bookings” cover.

Can a policyholder claim for each deposit refunded or is the claim limited to the limit stated in his/her schedule?

The policy limit in the schedule applies to the total deposits refunded as a result of the specific guest’s compulsory quarantine. This means a policyholder can claim for the total of such deposits refunded, up to the limit stated in the policy schedule, for each booking cancelled.

CONTINGENT BUSINESS INTERRUPTION (CBI)

What is covered by the CBI clause?

This cover provides for loss following the interruption of a policyholder’s business as a result of a “contagious or infectious disease” within the radius of the insured’s premises.

What is the purpose of the “Contagious and Infectious Disease” CBI clause?

This type of cover has been available to policyholders for many years and was always meant to provide protection against a local outbreak of infection.

For example, if a policyholder has a guesthouse and there is an outbreak of cholera at the premises, the local municipality may require him/her to shut down his/her operations until he/she has confirmed that the disease has been eradicated. Under these circumstances, any loss in profits over the period during which the guesthouse is shut down is covered by the policy.

Does a policyholder have cover against COVID-19?

A policyholder has cover if they can evidence that the presence of the disease within the radial limit of their premises, as stated in their policy schedule, has interrupted their business and caused their loss.

The interruption must be proximately caused by the occurrence of the disease. For example, if a policyholder had to shut down their operations because one of their staff members became infected with COVID-19 then they may have a valid claim, as long as one of the provisos is met, for the period for which their business remained shut while they rectified the situation.

Is a policyholder covered for the national lockdown?

All businesses in South Africa have been affected by the national lockdown. This does not mean that those policies that have the “Contagious and Infectious Disease” CBI cover will have a valid claim.

The interruption of the business must be due to the occurrence of COVID-19 within the radial limit defined in the policy schedule, an insured peril, and not the national lockdown, which is not an insured peril.

But the national lockdown is in response to COVID-19, does this not mean that a policyholder is covered?

No, the national lockdown is not an insured event.

For example, if a policyholder cannot evidence that an occurrence of COVID-19 interrupted their business, his/her business will still be affected by the national lockdown. This does not mean he/she has a claim under the “Contagious and Infectious Disease” clause of the policy as the insured peril would not have been triggered.

They are required to evidence that their business was interrupted by the occurrence of the disease within the radial limit defined in the policy schedule, as this is the peril covered by their policy.

What is covered by the policy?

There are a number of bases on which losses are determined and these will be specified in the policy contract.

The basic tenet of this cover is that it aims to restore a policyholder to the same financial position he/she would have been in but for the presence of the disease, subject to the conditions of the policy.

How is the quantum of claim determined?

Some policies contain a clause that determines the mechanism for the quantification of damage caused by interruption of business, often referred to as the “trends” clause.

Once a policyholder can demonstrate that the conditions for a claim have been met, the base position against which damage must be assessed is the profit a policyholder would have generated within the current environment.

This is a fundamental premise of business interruption cover and means that the policyholder must assess how his/her business would have fared **but for** the interruption due to the presence of the disease.

A policyholder must therefore be able to distinguish between those losses caused by the presence of the disease and those losses caused by any other circumstances, such as the national lockdown.

For how long can a policyholder claim?

Each policy has a defined indemnity period stated in the policy schedule. This is the period over which damage must be assessed. Claims only need to be settled at the end of the indemnity period.

We recognise that many policyholders cannot wait until the end of their indemnity period to have their claims paid. In these circumstances, where a valid claim is made, we will consider, on a case-by-case basis, making interim payments in order to assist their business.

When does the indemnity period start?

The indemnity period starts once all conditions for a claim have been met i.e. the business has been interrupted by the occurrence of COVID-19.

If a policyholders circumstances allow, how must they submit and evidence their loss?

In order for a policyholder to make a claim, they must:

1. Identify the presence, at the relevant time, of COVID-19 within the radius stated in their policy
2. Provide proof that the interruption of their business was due to the presence of that COVID-19 manifestation itself and not some other cause
3. Quantify the damage caused by the presence of the disease itself, distinct from the impact of the lockdown or other circumstances

Policyholders should work with their intermediaries to formulate their claims based on the above requirements.

Is there a dedicated COVID-19 claims team at H&L?

All COVID-19 related claims will be centralised within H&L's claims team. All claims registered through normal H&L channels will be directed to this team.

To ensure effective recording and response to any queries you may have in respect of such claims, please direct them in writing to covidclaims@handl.co.za.