



FCA Draft Guidance: Business Interruption Insurance Test Case: Proving Presence of COVID-19

IFoA Response

The Institute and Faculty of Actuaries (IFoA) is a royal chartered, not-for-profit, professional body. We represent and regulate over 32,000 actuaries worldwide, and oversee their education at all stages of qualification and development throughout their careers.

Key points

The IFoA welcomes the FCA's draft Guidance on the BI Insurance Test Case (proving the presence of COVID-19). It is important that there is clarity for BI insurance providers and policyholders on the validity of claims arising as a result of the pandemic, and we hope the Guidance achieves the aim of easing the BI insurance claims process for policyholders and their insurers.

The Guidance is concise and clear, which should be helpful for the intended audience.

Examples of how to use the various datasets are included in the Guidance, but further explanation of the differences between the datasets/ their definitions would be helpful.

Encouraging insurers to publish those areas with proven COVID-19 cases has some benefit, but it could potentially result in fraudulent claims, as some policyholders could make dishonest claims in the knowledge that their claims may be unlikely to be contested.

It may be helpful to have no end date for the Guidance, in case there are ongoing claims at or after 31 December 2021.

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1. The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the FCA's draft Guidance on the Business Interruption (BI) Insurance Test Case (proving the presence of COVID-19). As the FCA note in its introduction to the draft Guidance, it is important that there is clarity for BI insurance providers and policyholders on the validity of claims arising as a result of the pandemic. We hope the Guidance achieves the aim of easing the BI insurance claims process for policyholders and their insurers.
2. In developing our response, we have drawn upon input from members working in the wider general insurance market, including members working for providers and others for insurance consultancies. It is important to note though, that as for any IFoA response, we have considered the FCA's draft Guidance from an independent, public interest perspective.
3. Note that this response does not cover matters that arise from the relevant Supreme Court judgment made on 15 January 2015. However, we note the draft Guidance explains this it covers aspects not under appeal.
4. The Guidance is concise and clear. We welcome this as it should be helpful for the intended audience – particularly Small and Medium Enterprise (SME) policyholders - in their assessment to establish whether COVID-19 were present within a particular distance from their insured premises.
5. The Guidance defines the scope as being for those policies with wording 'within a particular distance' but then helpfully adds that other policies with wordings 'within a vicinity' or 'no area mentioned at all' do not need to prove presence of COVID-19. Conversely, the Guidance also gives useful clarity on BI insurance policy wordings which are likely to be outside its scope.
6. The Guidance is helpful in setting out the differing considerations relevant in England, Wales, Scotland and Northern Ireland.
7. Examples of how to use the various datasets are included in the Guidance, but policyholders should understand the differences between these datasets and their definitions. This is not fully explained or highlighted in the Guidance. For example, both NHS and ONS require someone to have died, whereas the UK Government reported cases does not; NHS requires someone to have died in a hospital, whereas ONS does not. This information helps policyholders to assess themselves the pros and cons of using these datasets.
8. This above point is particularly important where the Guidance discusses the two methods policyholders could use to approximate areas or uplift for actual versus expected cases. These approaches are subjective, and require some policyholder understanding of simple maths. It may be inappropriate for policyholders to use the same uplift factors for each of the datasets.
9. It is plausible that a policyholder using one dataset could come to one conclusion, whereas their insurer, if using a different dataset, could arrive at a different conclusion. We suggest it would be helpful if the Guidance highlighted the key differences between the datasets, and what could happen if the results were derived from different datasets, flagging potential data errors.
10. Despite the Guidance providing additional clarity, there will inevitably remain some areas open to interpretation. For example the Guidance explains that it would be reasonable for policyholders to refer to people they know tested positive for COVID-19, or to use 'well-established media reports'. Some potential examples of what counts as 'well-established media reports' might be useful; for example, could this include a person being interviewed saying they have contracted COVID-19, or a particular care home emailing their residents' families?

11. The Guidance provides some useful principles to insurers as well as BI policyholders. For example, if a claim were rejected, insurers would need to provide more cogent evidence than policyholders have done. Other principles are also helpful: just one case is needed to prove the presence of COVID-19; if an insurer has accepted proof from another claimant, then the insurer should not require further claimants from the same area to prove the presence of the virus. In practice, insurers may need to establish a way to store evidence of the geographical prevalence of COVID-19, so that they can look at their claim history and determine whether a further claim from the same area is likely to be valid.
12. The FCA's encouragement to insurers to publish those areas with proven COVID-19 cases has some benefit, as it reduces the burden of proof on policyholders. However, it could potentially result in fraudulent claims, as some policyholders could make dishonest BI insurance claims in the knowledge that their claims may be unlikely to be contested.
13. We note the intention that the Guidance would cease to have effect on 31 December 2021, on the basis that all claims to which the Guidance could be relevant would have been resolved by that date. However, we suggest it may be helpful to have *no end date* for the Guidance, in case there are ongoing claims at or after 31 December 2021.
14. The Guidance could suggest that alternative evidence or methods not described in this paper could be used if policyholders or insurers consider them appropriate. It may also be helpful if the FCA were to update the Guidance if new (significant) appropriate sources or methodologies are identified for any of the four nations.

Should you want to discuss any of the points raised please contact Steven Graham, Technical Policy Manager, (steven.graham@actuaries.org.uk) in the first instance.

Yours Sincerely,



Steven Graham
On behalf of Institute and Faculty of Actuaries