

Risk Management for Professionals – Insurance Brokers

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Away from the immediate health ramifications of the C19 pandemic, the government's guidance – in terms of office closures, travel restrictions and self-isolation - provides the perfect storm for errors and omissions to occur within insurance broking firms struggling to cope with staff absences. This practical guide seeks to highlight some of the main areas of concern and what might be done to mitigate the risk of problems arising.

Operations management

- Check your video-conferencing facilities have updated software and that everything works. Consider adopting Skype - or other internet-based software that could be used at home - as a temporary alternative to any fixed office-based systems.
- Has your IT system recently been subjected to penetration-testing by your in-house team or external consultants? IT security is paramount at this time and vulnerability testing will help to identify potential weaknesses in your IT system. (see placing section below)
- Follow government guidance specifically for coronavirus and retain an audit trail of this; if complaints are received in the future regarding issues that you can prove only occurred through following national guidelines, it will be much harder for those complaints to be substantiated.
- Establish communication channels to keep in touch with employees. Regular telephone calls, messages and/or emails across different social media platforms and both personal/work numbers should form part of your contingency planning. A daily bulletin might be sent to establish these new lines of communication. Obtain personal emails and landline/mobile numbers for employees if not already held (consider data protection obligations here). Staff mental health issues are likely to be rife as a result of this situation, so keep a log of all measures that are being taken to combat this, just in case anything should arise in the future.
- Firms that are running at or near capacity (ie all staff are being fully utilised) are likely to feel staff absences most acutely. How lean are you running? Where is the spare capacity? If possible, put the spare capacity where you feel it is most likely to be needed now. If you have little/no spare capacity, do you have access to locum services or short term secondments if required?
- Assess your staff sickness policy and decide what – if any - discretion you might be willing to apply to take account of C19; will you continue to pay staff that are self-isolating whilst asymptomatic even if they cannot work remotely? For how long? What about those who cannot work fully/at all because they are looking after sick relatives or family members? Or who are dealing with home-schooling issues?
- What are your clients doing? See if they will disclose how they are working to check if you can adopt similar measures and have a compatible arrangement to theirs. This is of particular importance for brokers needing access to their insurer counterparts for placing purposes.

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Placing

- Set up a central diary for all renewals. As staff members fall ill, any dates that are not centrally held run the risk of being missed.
- Similarly, ensure that no paper files are held at staff members' homes; again, as they fall ill, it will be increasingly difficult both to keep tabs on what documentation is held where (which runs the risk of falling foul of data protection laws) and to retrieve documentation from the homes of people who are ill.
- Do you have current contact details for all of your insurer contacts? And have you tested them to ensure that they work and that the contacts are going to be available at the times you need them? Placing is often time-critical and it would be unfortunate to realise that your contact list is out of date when a client's renewal terms are on the line.
- Emphasise to clients that their insurance is likely to take significantly longer to place in the current environment than normal and that, as such, they need to give you instructions as early as possible, with full and up to date information to enable the duty of fair presentation to be complied with. Diarise to contact existing clients in respect of their renewals at least a month earlier than you would do typically, just to ensure that there is sufficient time built into the renewal process.
- For any new clients, if they contact you with insufficient time before their insurance falls due to enable you to carry out a full service for them in the current market conditions, do not take on the business. If you must take on the client, send them a full written warning of the possibility that they may not get a full service at the outset, and ensure that the client goes into the transaction in full knowledge of their predicament. Have a form of wording pre-drafted (and possibly approved by a solicitor or your insurer) that adequately protects you in this situation.
- Business clients are likely to struggle to provide you with full information at a time when they are denied access to their premises (and their records) due to C19. This therefore brings into question the extent to which they are able to comply with their duty to provide a fair presentation of the risk. It is therefore imperative that, in this scenario, you inform all prospective insurers that they may not have a fully accurate picture and that, whereas some/most of the information will be accurate, some/most may be best estimates. The duty of fair presentation does not just apply to the policyholder but to the broker as well, so ensure that you are fully protected not just from complaints by the insurers further down the line but also prospective claims from your clients if their future claims are declined. Any clients that are unwilling to allow you to make that disclosure to insurers as part of the risk presentation are not likely to be good clients; be wary.
- If you would normally visit a client (and its premises) to carry out a risk assessment or to evaluate what type/level of cover may be needed, your ability to perform your role properly will be necessarily impaired at this time of lockdown. As above, ask your client well in advance of renewal for all information that they can give you to enable you to perform a desktop analysis as best you can. And then inform the quoting insurer of what you have done and why. Whilst it can't be guaranteed (particularly in a hard market), one would hope that insurers will be sympathetic at this time but, even if they are not and they refuse to quote or impose higher terms, that is infinitely better for you than binding the cover without fully transparent disclosure and then running the risk of future claims being declined as a result.
- Where possible, try to include express infection disease/epidemic clauses into newly-incepting wordings, and seek to widen force majeure clauses to mitigate against the possibility that C19 and its effects may continue to be felt for some considerable time yet. To that end Lloyd's have issued a model contract extension wording (LMA5392) specifically providing for an automatic extension to kick in if Lloyd's is unable to open due to ongoing C19 issues. Similar wording might well be put in place in non-Lloyd's wordings to ensure that future renewals are catered for.

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- Following on from the above, and perhaps inevitably, many insurers are inserting new clauses into their wordings seeking to exclude any and all liability arising out of C19 issues. Consider these very carefully in the light of the risks that your clients are facing, particularly as regards their business interruption needs. Ensure that clients are fully and properly advised in relation to their potential uninsured exposure in the event that wordings cannot be agreed that fully protect your client into the future.
- Fraudsters and cybercrime opportunists thrive in situations where their victims have taken their eye off the ball. If firms are forced to operate with skeleton staff levels and remaining members of staff are forced to work harder to cover the gaps, the potential for criminal infiltration inevitably rises. Introduce refresher training where necessary, to ensure maximum awareness of risk factors, particularly if handling/transferring client monies. Identify areas where corners are most likely to be cut – and where systems may be most prone to third party infiltration - and implement strategies to mitigate the potential effects of these if at all possible.

Claims

- Ensure that your clients have your up to date contact details for all notifications and claims-related correspondence. As with the placing side of the business, consider setting up a central mailbox to ensure that emails do not go missing in the inbox of someone who may be ill or otherwise away from their work emails.
- Put all key litigation or diary reminder dates on all files together in one location (eg a communal diary or central database), which will make it easier to ensure that all files are covered in the absence of any of the day-to-day case handlers.
- If at all possible, seek to amend policy notification requirements so that notification to you as broker counts as effective notification under the policy. Any

policies that require you to send on a notification to the insurer in order for it to fulfil the policy requirements gives rise to a significant risk at the current time that the notification will not be picked up and that the resulting claim will not be accepted by the insurer. If practicable, try to flag those policies which require active notification by you, so as to ensure that they receive attention as and when needed.

Away from proactive risk management in respect of future claims, there is sadly likely to be an increase in discontent from policyholders desperate to mitigate their C19 losses and finding that very little of their situation is likely to fall for indemnity. This is particularly likely to be relevant to business interruption policyholders. We would be very happy to discuss with you an appropriate form of wording to be sent to such clients to explain the situation in a way that hopefully might prevent complaints turning into claims. Please do let us know if this would be of use.

The above is obviously a counsel of perfection and not all of the measures we suggest will be capable of being implemented within the time available. However, we hope that this provides you with some food for thought as to what other protective measures might be taken to prepare for what may be to come.

For further information please contact:



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