

COVID-19 - ONE YEAR ON

Insurance implications



We reflect on the past year – and look at what is next for event cancellation, travel and life/protection insurers

On 23 March 2021, the UK marked the anniversary of the announcement of its first coronavirus lockdown. On the same day, there was a glimmer of hope as the British & Irish Lions rugby union confirmed they intended to tour South Africa as planned this summer. Guidelines and protocols to get fans back into South African sports venues will be considered by the South African government in early April – but it remains unknown whether there will be overseas spectators.

As we edge slowly towards more 'normality', collaboration around the world, to include within the insurance industry, is key towards planning for and responding to the future risks of infectious disease and pandemics.

As we reflect, therefore, one year on from our articles on the insurance implications for the life, travel and event cancellation insurance industries [covid-19-insurance-implications.pdf \(cpblaw.com\)](#) and on reinsurance issues arising in pandemics [covid-19-reinsurance-perspectives.pdf \(cpblaw.com\)](#), we discuss how the insurance industry has responded to date, what risks face these types of insurance contracts and what the future could hold.

Tokyo 2020 Olympic & Paralympic Games

A matter of days after our March 2020 article, the postponement of the Summer 2020 Tokyo Olympic & Paralympic Games was announced. As recently as January 2021 there had been rumours that it could yet be cancelled, as COVID-19 cases were soaring worldwide, which could, according to Reuters, have led to the largest ever claim in the global event cancellation insurance market. The Olympics is believed to be insured for US\$2 billion, plus an additional US\$600 million for hospitality. There would also have been further losses from a wide range of insureds such as the International Olympic Committee and the local organising committee, which are believed to have about US\$800 million and US\$650 million insurance cover respectively.

Japanese Update (by Tomoki Debari and Ryosuke Takigawa of Insuralex member firm - Anderson Mori & Tomotsune)

According to the media reports in Japan, an event cancellation policy made a payment for the postponement of the Tokyo Olympic & Paralympic Games from 2020 until this summer. Even with the Games now scheduled to take place this summer, the Olympic and Paralympic organisers decided in early March 2021 that the Games would proceed without overseas spectators. On 25 March 2021, when the Olympic torch started the final leg to Tokyo, in readiness for the opening ceremony on 23 July 2021, a reduced group of 300 invitees watched the Grand Start of the Olympic

torch parade, with the public following the occasion via a livestream broadcast.

In response to the COVID-19 outbreak, the Japanese government have declared a state of emergency twice - in April 2020 and in January 2021 - during which many major events have been cancelled and most shops and restaurants are temporarily closed or subject to reduced business hours.

Despite the large number of event cancellations as a result of the outbreaks, causing many policyholders to seek to trigger cancellation cover under their insurances, cover was not provided under such policies in many cases as cancellation due to infectious diseases is typically excluded.

With regard to overseas travel insurance, during the last year the insurance policy period has been extended by Japanese travel insurers, in many cases, from until 72 hours after returning from the trip to until 30 days after returning. This allows travellers stranded outside Japan due to the global effects of the pandemic to obtain repatriation assistance where the policy would otherwise be regarded as having expired. Coverage for trip cancellation has also been relaxed by Japanese insurers, with cover being provided where travel has been suspended due to immigration control or quarantine measures ordered by foreign governments as well as travel alerts/bans issued by the Japanese government.

Most of the hospitals that provide COVID-19 treatment have reached their capacity due to the pandemic, so patients with mild symptoms cannot be hospitalised but have to stay in designated hotels or their own homes. Medical insurance policies covering hospitalisation are also covering a patient's stay in those designated hotels or the patient's own home pursuant to a doctor's certificate – with simplified certificates of hospitalisation and treatment being accepted by insurers in lieu of formal certification by doctors due to the sheer volumes involved.

A secondary impact of the pandemic has also seen patients with non-COVID diseases choosing to refrain from going to hospitals, so as not to risk COVID-19 infection in hospitals. In those instances, on-line medical care is included in outpatient treatment covered by medical insurance cover.

Travel and PA Insurance

The UK travel insurance industry faced challenges relating to cancellations. These shone a spotlight on the purpose of travel cover and what it is designed and priced to respond to. As explained in our article in March 2020, insurance covers fortuitous events, such as the unexpected illness of the insured causing cancellation.

However, where, for example, tour operators had cancelled package tours due to COVID-19 restrictions, the tour operators should have been the first port of call for those disappointed travellers to obtain their 14-day refunds, under the Package Travel & Linked Travel Arrangements Regulations (SI/2018/634). Those Regulations implemented the Package Travel Directive (EU) 2015/2302, in the UK, as of July 2018. The sheer scale of cancellations and lack of new holiday travel bookings understandably led to cash flow issues, and by May 2020 vouchers were recommended by the European Commission as an alternative, subject to the ability of the holidaymaker to change their mind and revert to a cash refund.

As the Chair of the Insurance and Financial Services All Party Parliamentary Group stated in 2020:

“We wish to remind travel operators and airlines of their specific legal obligations to pay refunds and protect their customers....instead of unnecessarily and unfairly diverting them to travel insurers who should only be dealing with claims when they become an irrecoverable cost, and not dealing with cases when a package travel provider is breaking the law in holding out on refunds”. A particular area of concern arose from delayed refunds, along the chain, in relation to school trips.

The second route for holidaymakers affected by the cancellation of their trip due to travel restrictions is a refund from their credit card firm, under Section 75 of the Consumer Credit Act 1974.

With France starting a new lockdown in early April 2021, there is caution as to how the movement around and between countries might pan out during the summer months. As of 25 March 2021, Boris Johnson stated that *“no decisions have been taken at all”* in terms of whether vaccination certificates will be adopted in the UK and he said that vaccine passports might only be possible once all adults are vaccinated. If such certification is adopted then the travel insurance industry may wish to consider whether or not this should be taken into account in travel insurance cover due to the underlying principle of insureds seeking to mitigate their loss.

Whereas holidaymakers may have been slow historically to study details of cancellation covers, an improved understanding of what a travel insurance policy is designed to cover and how the competitive premiums levels are calculated, means customers should start to be in a better position to make informed comparisons between policies at the point of sale, and in turn have a smoother claims process. More standardised wording, which was an approach that assisted the critical illness insurance market, may suit, particularly as regards use of words such as ‘quarantine’ and the interchangeable use of ‘epidemic’ and ‘pandemic’.

Consistent with this drive across all insurance products, in October 2020, Lloyd’s published a report: ‘Building simpler insurance products to better protect customers’ and in December 2020, the Chartered Insurance Institute produced a guide on ‘Transparency and Insurance’ which included comments on simplifying insurance for customers’ benefit.

For insurers, questions of aggregation in the Travel & PA insurance fields could arise as the range of time and the geographic spread are much wider than the usual anticipated risks, and the date of knowledge differs slightly between different jurisdictions. When considering the application of an event or occurrence-based clause, the perspective of an informed observer placed in the position of the insured should be adopted. Furthermore, a ‘state of affairs’ is generally accepted not to be an event. An event is what has happened, not the reason it has happened, which is the cause.

Issues such as the application of an ‘hours clause’ could also abound, and solutions will need to be devised going forward, particularly with the potential for pandemics to be more prevalent.

In relation to direct insurance causation issues that arise in Personal Accident claims, the PA market is familiar with considering issues of concurrent causes in the context of the accidental cover provided by that product. The recent comments on the application of the ‘but for’ test by the Supreme Court in the FCA test case earlier this year should not have a detrimental effect upon how that product operates as illness is a natural result of a natural cause and therefore by its nature not ‘accidental’ and not intended to lead to payments.

Event Cancellation

Summer 2020 saw Wimbledon cancelled for the first time in about 75 years due to COVID-19. The organisers claimed under their event cancellation policy, which they had been paying annual premiums of about £1.5 million, since cover was taken out after the 2003 SARS outbreak. The cancellation claim was anticipated by analysts GlobalData to be for in the region of £114 million. This year, the 2021 Wimbledon championships are reported to be going ahead - whether this is with or without venue spectators has yet to be decided.

The impact on both sporting and entertainment events has highlighted the importance of wide-ranging risk assessments and planning. This will enable brokers and insurers to better understand the risks involved and risk reduction measures to be put in place, as and when there is future capacity in the insurance market to provide event cancellation with communicable disease extensions. Even then, event organisers will need to ensure that the required level of emergency and health responders can be in place to allow these events to safely proceed.

The increase in 'in person' events is likely to rise incrementally this summer as the UK's roadmap out of lockdown unfolds. Glastonbury was shelved for a second year running when, by January 2021, it was unable to secure solely private insurance event cancellation cover, as the government had not embraced the organisers' plea for government engagement in finding a solution.

The UK government's £1.57 billion support package of July 2020 to the Cultural Recovery Fund, although welcome, highlighted gaps for those working in the live entertainment sectors, and the concern was that some would seek work outside the creative sectors and not return once COVID-19 had subsided.

The campaign group, 'Let Live Thrive', which includes insurer representatives, sought to heighten awareness when, in December 2020, the group wrote an open letter to the UK Culture Secretary to seek to engage the government to back event cancellation risks:

"The threat from coronavirus has decimated the viability of the contingency insurance market for insurers, meaning that event organisers are unable to access COVID-specific cover. Without this insurance, major regional and local live events across the UK will not go ahead in 2021.....But this isn't just a problem for next year. It's already nearly too late. The planning, insurance buying, and decision making is happening now. Though we can't predict the social distancing requirements for 2021 at this stage, this won't matter if contingency insurance remains unavailable; live events will simply not take place".

In the March 2021 budget, an extension of the Film & TV Production Restart scheme in the UK was announced along with an additional £300 million funding to the Cultural Recovery Fund. On 2 April 2021, a further round of recipients from this Fund was published. The UK Culture Secretary said that the £900,000 awarded to Glastonbury will "help the festival continue in 2021 with two smaller events this year, as well as to carry the festival through to 2022".

Glastonbury organisers, Emily and Michael Eavis, have recently announced a ticket-based global 'virtual' live-streamed event over 5 hours on 22 May 2021 #LiveAtWorthyFarm featuring Coldplay

and other performers in recognisable locations from across the farm, which the audience can enjoy from the comfort of their own homes. An application for a licence for a 2-day event in September 2021 has also been submitted by Glastonbury organisers.

Life, Critical Illness and Income Protection Insurance

Whilst, sadly, the majority of the deaths from COVID-19 in the UK have been in the older age groups whose group life cover would have ended when they retired or whose term assurance may also have no longer been in place, a significant amount of life policy claims have been paid to bereaved families or insured persons with critical illnesses due to COVID-19, in the UK. The ABI published claims figures on 18 March 2021 for claims in 2020 due to COVID-19 showing that £202 million has been paid, about £553,000 a day. Of the 11,198 claims, 10,205 related to individual life or critical illness policies (£128 million) and 993 relating to group cover (£73 million).

In the USA, during 2020, analysts have seen that deaths amongst those with medical conditions such as Alzheimer's and Diabetes have increased by more than 10% compared with previous years.

Critical illness claims in the UK have at present reduced overall, which is probably a reflection of people being less inclined to visit their doctor for tests during the earlier lockdowns (it is estimated that about 1 in 5 patients in England caught COVID-19 whilst an inpatient). This is a theme that is common across many countries. The volume of patients attending their GPs in England is expected to rise steadily during 2021 with the introduction of vaccinations and increased testing.

The concern from a critical illness insurance point of view is that the delay in accessing medical care could lead to more advanced conditions being diagnosed in future, when treatment options may be more limited or drastic, and prognosis reduced. The backlog of medical treatment will take some years to address within the NHS – especially where staff will require time to recover from the intense working hours undertaken during the pandemic.

In relation to income protection insurance, the ABI statistics released last month show £2.4 million (968 customers) have been paid to date to support them whilst they are too ill to work after contracting COVID-19 and its on-going effects on their ability to work. The effects of, and optimum treatment for, Long-COVID continue to be explored.

The virus causing COVID-19 appears to have four mechanisms, but studies are on-going and specialised medical units have been set up in the UK where feasible to monitor, treat and share best practice. Firstly, the virus directly attacks organs via their ACE2 receptor, it indirectly attacks organs by way of collateral damage from the cytokine storm, it indirectly causes damage to organs secondary to blood clots and it also indirectly causes damage from low blood and tissue oxygen.

The COVID-19 pandemic has brought forward some of the on-screen assessment methods, which had started to be seen in both the medical treatment, insurance underwriting assessment and insurance claim validation context, which will help with managing turnaround timescales going forward. There is less resistance to new methods as people appreciate the benefits that they bring. These new methods of assessment including greater access to on screen psychological therapies (removing travelling and waiting times) are expected to lead to increased access to such services, particularly amongst younger patients.

There has also been a common theme of increased mental health issues, which touches all countries of the globe, and a Domestic Abuse Bill is currently in its' final stages of parliamentary review in the UK before becoming law, in acknowledgement of the increased risks during the first lockdown of home partner abuse whether this is physical, psychological or economic abuse. 1 in 3 of women who are killed either had a current or former relationship with the perpetrator of their death. The financial services industry and employers are now more engaged in how they can play their part in identifying abuse and reducing the risks.

State and Insurance Industry Response

Looking at the bigger picture of how the insurance industry can play a part in planning for future pandemics – in the UK – 'Pandemic Re' was launched in April 2020 as a steering group, chaired by Stephen Catlin. Six working groups were quickly formed including in excess of 50 representatives of the UK insurance industry and a wide range of relevant organisations, such as the ABI, the NHS and Imperial College. Amber Rudd, MP was appointed to lead the 'Legal, Regulatory and Government Affairs' working group. Lloyd's and the International Underwriter's Association also provided their support for calls to devise a government supported insurance solution for future pandemics.

It was envisaged that Pandemic Re would draw on the experience arising from 'Pool Re' being set up, in 1993, in respect of terrorism events. A separate reinsurance initiative 'Recover Re' is also under review by Lloyd's, along with short term proposals of a 'ReStart' programme or a longer term reinsurance pool backstopped by a government guarantee – 'Black Swan Re'.

Providing a global perspective for these types of initiatives, on 16 March 2021, the Organisation for Economic Co-operation and Development (OECD), an intergovernmental economic organisation with 37 member countries, updated its' review of selected pandemic risk insurance programme proposals. There were principally focussed on the pandemic protection gap and business interruption ('Responding to the COVID-19 and pandemic protection gap in insurance' <https://www.oecd.org/coronavirus/policy-responses/responding-to-the-covid-19-and-pandemic-protection-gap-in-insurance-35e74736/>) but the OECD review usefully highlights key issues regarding infectious disease and pandemics which make them unusual from typical perils that are targeted by catastrophe risk insurance programmes. Key characteristics are the potential for a pandemic to affect all parts of the world (near) simultaneously making diversification in the insurance market a challenge, along with the high-level of uncertainty relating to the frequency and severity of infectious disease outbreaks.

Therefore, a form of state-backed (at least for higher layers) and insurance industry supported approach appears more likely, as the risk needs to be both quantifiable and absorbable in the market. As financial markets can be effected by pandemics then alternate risk transfer markets may have limited appetite.

CPB Comment

Many common themes arise in the effects of and response to the COVID-19 pandemic. However, a key component to the path through the current difficulties is collaboration. This is something that the insurance industry has always embraced. The medical world has demonstrated it by devising the various vaccines, which need to be shared around the world, and it is now in the hands of insurers working with state backing to devise future options for responding to the next infectious disease.

Special thanks for their contribution to this article goes to **Tomoki Debari and Ryosuke Takigawa** of Anderson Mori & Tomotsune (www.amt-law.com/en/) – Japanese member of the global network Insuralex (www.insuralex.com)

Any questions?

Helen has over 30 years' experience in advising the life, protection and A&H / specialty (re)insurance market(s) on contentious and non-contentious matters. If you have any questions regarding the insurance-related issues highlighted in this article, please get in touch with [Helen](#).

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