

FS21/5: Business interruption insurance test case: Proving the presence of coronavirus (Covid-19)

3 March 2021

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1 Summary

- 1.1 This document summarises the feedback we received to our draft guidance published for consultation on 11 December 2020. The draft guidance was published for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries on how the presence of Covid-19 in a relevant policy area ('RPA') may be proved, based on the High Court's judgment and declarations and the additional statements from the Supreme Court judgment in the context of insurers' obligations under our rules to handle claims fairly.
- 1.2 Our draft guidance set out types of evidence and methodologies which policyholders may use, together with links to further useful information for policyholders. It also set out our expectations for insurers and insurance intermediaries in relation to policyholders seeking to prove the presence of Covid-19 when making claims under business interruption (BI) policies.
- 1.3 Since we published our draft guidance, the Supreme Court handed down its judgment (*FCA v Arch and others* [2021] UKSC 1) on 15 January 2021 on the appeal made by some of the parties to the test case. As part of its decision, the High Court made declarations as to the types of evidence which policyholders can use to seek to prove the presence of Covid-19, and the methodologies they may use in that process. These declarations were not appealed to the Supreme Court, but the Supreme Court did make some statements that are relevant to the guidance and we have reflected these in the final guidance.
- 1.4 The final guidance is intended to:
 - (i) provide clarity for all parties
 - (ii) help ensure that the process of proving the presence of Covid-19 is made as simple as possible for eligible policyholders
 - (iii) enable policyholders to receive claim payments as early as possible
- 1.5 We explained in the draft guidance that we have not prepared a cost benefit analysis for this guidance as there is no statutory requirement to prepare a cost benefit analysis for guidance. In any event, we consider that issuing this guidance will not increase costs overall, or any cost increase will be minimal. It is more likely that issuing the guidance will reduce costs overall by reducing further disputes, increasing consistency of claims and clearly setting out in one place for the benefit of policyholders, insurers and insurance intermediaries alike types of evidence to prove the presence of Covid-19.
- 1.6 The guidance consultation period was initially due to close on 18 January 2021 but was extended to 22 January 2021 to enable respondents to comment on supplemental matters arising from the Supreme Court judgment. We received 73 responses from interested stakeholders, of which 71 were received prior to the extended consultation period deadline. 58 of these responses were received from policyholders or their representatives, 5 from insurers or intermediaries, 5 from trade bodies and the remaining 5 from other consumer representatives or law firms.

- 1.7 Several of the insurer and trade body responses questioned why it is appropriate for the FCA to provide guidance regarding the presence of Covid-19, the need for the guidance and on what basis we are providing this guidance. These responses noted that the High Court stated that it was not possible for it to issue guidance on proving the presence of Covid-19.
- 1.8 Some of the insurer and trade body responses also expressed a concern that the guidance was seeking to establish a rebuttable presumption in relation to policyholders proving the presence of Covid-19, and thereby reverse the burden of proof from policyholders onto insurers.
- 1.9 Some insurer and trade body respondents challenged the cogency of the geographical distribution and uplifting reported cases with an undercounting ratio ('undercounting') methodologies for proving the presence of Covid-19 in an RPA. They also questioned whether the Imperial and Cambridge/PHE models constitute reliable evidence.
- 1.10 Several insurer respondents questioned whether creating an expectation that they should look to apply relevant evidence and decisions made on RPAs to other policyholder claims potentially shifts the burden of proof. Some insurers also queried whether asking insurers to publish data on RPAs where Covid-19 has been proved created additional obligations and expectations for them, as well as potentially giving rise to practical difficulties (including around use of customer data and possible confusion if insurers reach different conclusions on the same RPA).
- 1.11 Many of the insurer and trade body respondents queried the scope of the guidance, particularly how appropriate it is to Scotland and Northern Ireland.
- 1.12 The policyholder and their representatives' responses were largely supportive of the need for this guidance. Many of those policyholders who provided feedback raised queries about proving the presence of Covid-19 where the policy wording requires evidence that the disease is 'at the premises'. Responses raised questions about the omission of 'at the premises' wordings from the test case and from the guidance. Policyholders also expressed concerns about the practicality of proving the presence of Covid-19 in more rural areas. Some questioned the need to prove Covid-19 was present given the Government's decision to impose a national lockdown. Others suggested the burden of proof should be reversed as insurers have more resources than the average small business.
- 1.13 Some policyholder responses expressed dissatisfaction with BI insurance or the actions of insurers and/or intermediaries handling their claims. Many indicated confusion regarding the claims or complaints process and the roles of various parties, including (but not restricted to) the FCA, insurers and intermediaries. They also raised queries about what losses they were covered for and interest payments.
- 1.14 A common theme in policyholder and intermediaries' responses was that insurers were not handling claims fairly. They identified delays in claims handling and poor communication as areas of concern.
- 1.15 Consumers in the hospitality and hair and beauty industries expressed a strong preference for the use of an undercounting ratio or weighted averaging methodology. They expressed concerns about the difficulty for small businesses attempting to prove the presence of Covid-19 given the lack of testing in the early days of the pandemic.

- 1.16 The Financial Services Consumer Panel was supportive of our proactive approach and suggested that the FCA require firms to establish simple, clear online tools that identify all data relevant to the group of claims, and well-designed claims forms that automatically populate, from the various data sources referred to in the guidance.
- 1.17 In this document, we respond to this feedback and explain the amendments we have made to the guidance to address the concerns raised and clarify our expectations. We also explain any additional actions we have taken further to the feedback received.
- 1.18 This guidance supports our consumer protection and market integrity objectives. It clarifies the evidence that policyholders can use to prove the presence of Covid-19 to assist them in the process of making valid claims. It also clarifies our expectations of firms handling relevant BI claims. It sets a clear expectation that where a policyholder has provided cogent evidence of the presence of Covid-19 in their RPA in accordance with the approach in the guidance, insurers should, in handling claims fairly, accept that evidence as sufficient to discharge the burden of proof on the policyholder.
- 1.19 We have also encouraged insurers, where possible, to adopt approaches that streamline and expedite claims handling. We encourage insurers to voluntarily adopt a transparent and facilitative approach to claims handling that assists policyholders to prove the presence of Covid-19 by particular dates.
- 1.20 We are now publishing our finalised guidance. This includes changes or additions in light of feedback to:
- confirm the basis on which we produce this guidance, noting that we believe that the guidance is issued in our role as regulator with the power to issue guidance on the meaning of our rules
 - clarify that the guidance does not seek to reverse the burden of proof, whilst making clear what evidence from policyholders should be sufficient to satisfy the burden of proof under our rules
 - provide more details and clarity regarding the application and use of the geographical distribution and undercounting methodologies to prove the presence of Covid-19
 - republish data previously published by Imperial College (using the model behind the Imperial report) showing the estimate of cases at the LTLA level during the early stages of the pandemic
 - introduce the FCA's Covid-19 calculator to assist insurers, insurance intermediaries and policyholders to identify whether there was at least one case of Covid-19 in the relevant policy area at any given date (if you would like to use the Covid-19 calculator, please [sign up for our BI test case email alerts](#) and you will get an email when the calculator is launched)
 - clarify our expectations of insurers to use the existing information they hold on the presence of Covid-19 as evidence to support other policyholder claims, where they already know that Covid-19 was present within the relevant policy area (RPA)
 - clarify that whilst we are encouraging insurers to publish data on RPAs where Covid-19 has been proved for the benefit of other policyholders, this is voluntary rather than a regulatory obligation or expectation

- confirm the scope and application of the guidance in relation to Scotland and Northern Ireland
- confirm that this guidance was not designed to assist in relation to certain types of coverage clauses but that it may be of assistance in some circumstances
- make minor changes to clarify our expectations or to reflect statements made by the Supreme Court that are relevant to this guidance and its application

1.21 The final guidance is for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries.

1.22 For insurers and insurance intermediaries, the final guidance is on firms' obligations under:

- the FCA Principles for Businesses (PRIN), in particular Principles 6 and 7
- the Insurance Conduct of Business sourcebook (ICOBS), in particular ICOBS 2.2.2R, ICOBS 2.5.-1R and ICOBS 8.1
- the Dispute Resolution: Complaints sourcebook (DISP), in particular DISP 1.4 and DISP 1.6.

It sets out our understanding of the meaning of firms' obligations to treat customers fairly and handle claims and complaints fairly, in relation to relevant non-damage BI policies.

1.23 The guidance comes into immediate effect upon being published on 3 March 2021.

1.24 We anticipate that the final guidance will assist policyholders with valid non-damage BI claims to evidence the presence of Covid-19 in the RPA for their policy, where this is required.

1.25 We expect firms to ensure that they are acting in accordance with our final guidance, adjusting their practices where necessary so that they meet their regulatory obligations and treat their customers fairly, in relation to the evidence of the presence of Covid-19 they require from policyholders making relevant BI claims.

2 Firm and trade body feedback

Appropriateness of guidance

- 2.1 Several insurers and trade bodies indicated that they did not think it appropriate for the FCA to issue guidance on proving the presence of Covid-19, referencing a statement by the High Court (at paragraph 567 of the [judgment](#)) that it was not possible for it to issue guidance for varying factual contexts and for the purposes of different policies.

Our response

- 2.2 The High Court statement was issued in the specific context of the test case and the court's own remit and ability to produce guidance in this regard. The High Court was not invited to, nor did it say anything about, what the FCA can or cannot do in its capacity as regulator, using its powers to issue guidance on the meaning of our rules. The guidance for firms is guidance on firms' obligations under:
- the FCA [Principles for Businesses \(PRIN\)](#), in particular Principle 6
 - the [Insurance Conduct of Business sourcebook \(ICOBS\)](#), in particular ICOBS 8.1
- 2.3 We believe that issuing the guidance is both appropriate and necessary, to facilitate fair claims handling by assisting SME policyholders in the task of proving the presence of Covid-19 and setting clear expectations for insurers and insurance intermediaries handling relevant non-damage BI claims.

Burden of proof

- 2.4 Some insurers and trade bodies also suggested that the guidance drafted went beyond the scope of the test case in some areas and imposed a rebuttable presumption on insurers.
- 2.5 These respondents stated that the draft guidance improperly reverses the burden of proof and contravenes the High Court's declaration that says that the FCA cannot establish a rebuttable presumption of the presence of Covid-19. This is because the draft guidance stated that, where a policyholder has produced cogent evidence in accordance with the guidance, this satisfied the burden of proof on the policyholder for the purpose of our rules. They said that there should be no need for insurers' counter-evidence to be 'clearly more cogent' to put the burden of proof back on to the policyholder. They also said that an insurer should be able to challenge the reliability of a policyholder's evidence even if it follows the approach in the guidance.

Our response

- 2.6 We agree that the introduction of a rebuttable presumption would not be appropriate, for example, a presumption that Covid-19 was present everywhere and that the burden should be on insurers to prove that Covid-19 was not present in the RPA. The guidance does not do that. Instead, the guidance describes sources of

evidence which policyholders can use to seek to discharge the burden of proof on them. The High Court declaration determined that the FCA could not establish a rebuttable presumption according to the pleaded position by the FCA in its capacity as the claimant in the test case on behalf of policyholders (which did not include expert evidence). As noted above, the High Court did not say anything about what the FCA can do in its capacity as regulator, so does not preclude us from using our powers to issue guidance (with the benefit of expert evidence) on how the burden of proof may be satisfied by policyholders for the purposes of our rules.

- 2.7 We note also that we asked insurers to explain why the proposed sources of evidence were not sufficiently cogent to discharge the burden of proof. We have received only one detailed response as explained below and we do not believe that this undermines our approach except in one respect, which is reflected in the revised guidance. We have, however, removed the suggestion that the counter-evidence provided by insurers needs to be 'clearly' more cogent from the guidance.
- 2.8 We believe it is appropriate that insurers' counter-evidence will need to be additional to that already presented to the FCA. Our view on cogency is based on the evidence we have received from our own expert, having reviewed the counter-arguments provided by insurers to us to date, including in response to our invitation to do so through the consultation. We do not believe that producing the same counter-arguments to policyholders through the claims process and expecting them to get their own expert to review them, would be fair.

Use of geographical distribution methodology and uplifting reported cases with an undercounting ratio ('undercounting') methodology

- 2.9 In the absence of specific evidence of a case of Covid-19 in a policyholder's RPA, our draft guidance proposed that insurers should accept the results produced from either one or a combination of two methodologies as proof of the presence of Covid-19. These are:
- a geographical distribution methodology, which involves distributing cases proportionately on the basis of population or geographical area and can be used where the RPA does not overlap entirely with the local authority or other area for which Covid-19 case data is available
 - an undercounting methodology, which recognises that testing was limited before the first national lockdown and involves using a statistical model (we cited Imperial College and Cambridge/Public Health England ('PHE') models) to estimate the real number of infections in an area

Some of the insurers and trade body respondents challenged the cogency of these methodologies and whether the Imperial and Cambridge/PHE models constitute reliable evidence. Some expressed a desire to have these reports tested by independent experts.

- 2.10 One respondent submitted an expert report in support of their argument that these methodologies are not sufficiently cogent to provide appropriate evidence for policyholders to use. They argued that:

- The Imperial and Cambridge/PHE models have insufficient validation for use as a predictive tool, and will not always produce estimates sufficient to discharge the burden of proof, especially in smaller policy areas with a 1-mile radius.
- The geographical distribution methodology is flawed because 'scaling down' case numbers from the areas used by Imperial/Cambridge – whole UK / UK regions - to 25 or 1-mile radius areas in proportion to population size or geographical area fails to take into account other factors meaning that Covid-19 would tend to be concentrated in particular locations rather than be uniformly spread (e.g. age, morbidity, presence of hospitals / care homes, 'super spreader events').

2.11 In the above context, this respondent believed that policyholders should instead be encouraged to use information about cases local to their business premises or extrapolating cases from hospitalisation data to provide appropriate evidence of the presence of Covid-19 in the RPA.

Our response

- 2.12 Further to the feedback received, we sought the advice of an expert epidemiologist who sits on SPI-M (a sub-group advising SAGE) in relation to the issues and concerns raised by insurer and trade body respondents, who we had worked with in proposing the methodologies. We are satisfied that he is appropriately qualified to provide authoritative advice in this area. Our response takes his advice into account.
- 2.13 We believe that the Imperial model (described as providing 'Estimated Cases' in Chapter 8 of the final guidance) is a valid model suitable for use as a predictive tool. We note that this model was peer-reviewed, draws strong inferences about the likely number of infections from verifiable data on deaths, uses conservative assumptions about initial seeding of infections and uses an infection fatality ratio that fits with the evidence from serology studies (which test antibodies to Covid-19). Similar conclusions can be drawn for the Cambridge/PHE model.

25-mile RPAs

- 2.14 In relation to 25-mile radius RPAs, we remain confident in the cogency of these methodologies and that they can provide appropriate evidence of the presence of Covid-19 for the purposes of our rules, which require insurers to handle claims fairly and not unreasonably reject them. This is subject to certain adjustments further to the feedback received, as described below.
- 2.15 We are confident that the Imperial model will produce cogent evidence in relation to 25-mile radius RPAs because:
- Imperial has published a new data set at local authority level (the Imperial Data). Where the local authority is entirely within the 25-mile radius RPA, and the Imperial Data shows estimated cases of at least 1 for that local authority, we are satisfied that this is cogent evidence of at least 1 case in the RPA.
 - Where no local authority is entirely within the 25-mile radius RPA, we acknowledge the 'scaling down' criticism of the geographical distribution

methodology, but we believe that use of the methodology remains appropriate with the new Imperial Data, for which less scaling is required (only one local authority is significantly larger than a 25-mile RPA).

- We accept that various factors mean that Covid-19 may be concentrated in particular locations rather than be uniformly spread and have removed from the guidance the suggestion of 'weighted average' distribution by geographical area. We continue to believe that 'weighted average' distribution by population size remains a valid approach. In reaching this decision, we note a study published in the prestigious journal *Nature* showing how the degree to which cases of Covid-19 are compressed into a short period of time (peakedness of the epidemic) is strongly shaped by population aggregation and heterogeneity. There are many other factors affecting distribution, but some would point to more uniform distribution rather than more concentration, for example people were moving about, and business premises would tend to attract people to them.
- Where the methodology shows a number of estimated or reported cases equal to or greater than 1, we believe that this provides cogent evidence that there was at least one infection within the 25-mile RPA, satisfying the burden of proof on the policyholder. This is the case where the policyholder is an SME that is an eligible complainant for the Financial Ombudsman Scheme, because it is not reasonable for such a policyholder to obtain their own expert evidence. The evidence would be indicative where the only local authority in the RPA is the Highlands Council of Scotland (because it is an order of magnitude larger than a 25-mile radius RPA). We believe that this is a reasonable conclusion, consistent with firms' obligations for fair claims handling under our rules.
- The guidance continues to acknowledge that it remains open to an insurer to produce counter-evidence, acting in line with our rules.

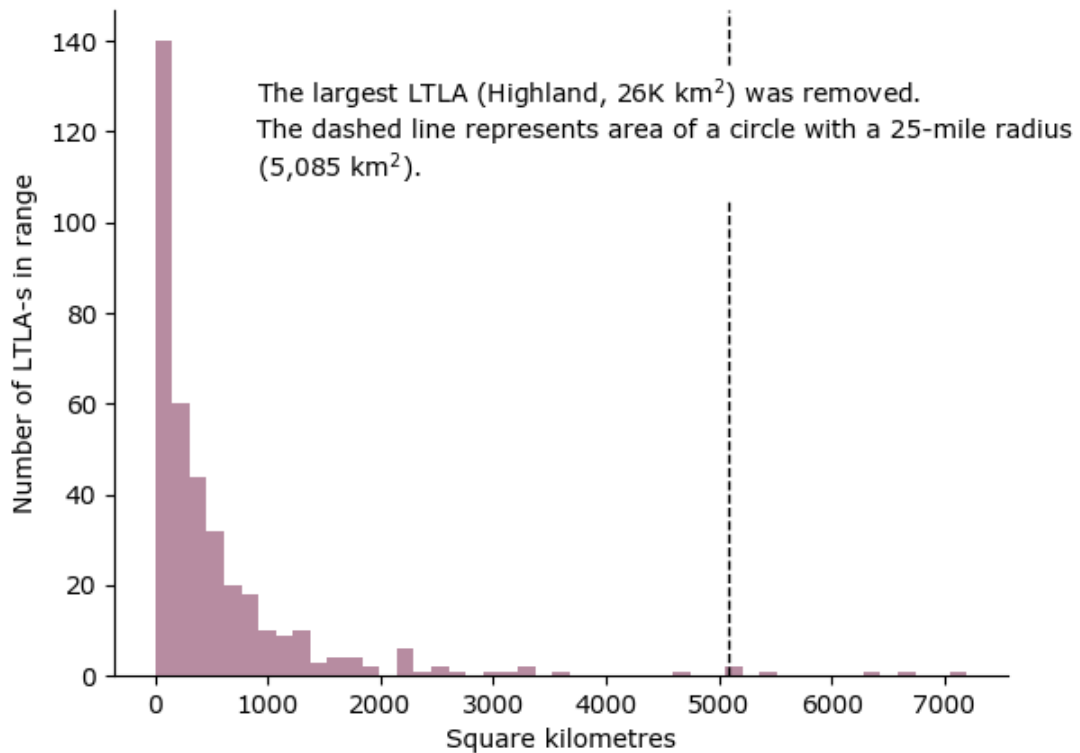
2.16 Doing the calculation for the 'weighted averaging' approach can be complex. We are creating a calculator to carry out the 'weighted averaging' of the Reported Cases (Chapter 7) and Imperial Data of Estimated Cases (Chapter 8). If you would like to use the calculator, please [sign up for our BI test case email alerts](#) and you will get an email when the calculator is launched. The guidance explains the steps that our calculator will take.

2.17 To address the practical concerns raised about mapping LTLAs to RPAs we have produced a histogram (shown in km²) to demonstrate that, for those policies with a 25-mile radius there are likely to be substantial overlaps with most LTLAs other than in the Highland Council of Scotland.

2.18 Out of 379 UK LTLAs:

- only 6 are larger than a 25-mile-radius circle: (Scotland) Dumfries and Galloway, Highland Council of Scotland, Aberdeenshire, Argyll and Bute, Perth and Kinross, (Wales) Powys; and only the Highland Council of Scotland is an order of magnitude larger
- Only one (City of London) is smaller than the 1-mile-radius circle

Figure 1: Histogram of the UK lower tier local authorities' surface areas



2.19 We have therefore retained but amended the guidance on undercounting (now described as 'estimated cases' and moved to Chapter 8) and geographical distribution methodologies for the 25-mile radius RPAs (moved to Chapter 9), including the statement that they can produce cogent evidence for policyholders to use, but using the new Imperial estimates at local authority level instead of the data sets used in the draft guidance.

1-mile RPAs

2.20 In relation to 1-mile radius RPAs we acknowledge that the geographical distribution methodology analysis is less reliable as the model is not designed to have the resolution necessary to produce an accurate prediction at this level. We have therefore amended our final guidance to say that use of this methodology for RPAs of 1-mile radius will produce indicative results, but the policyholder is likely to need additional evidence to satisfy the burden of proof.

2.21 We do not believe that the alternative approach for estimation of cases suggested by one respondent, to 'scale up' from local hospital tests or hospitalisation data is appropriate. This is because this sort of 'scaling up' will not work reliably as the testing capacity in hospitals was highly varied (and in some cases did not start until later in the pandemic), ascertainment rates were low and varied, and hospitalisation data is a less reliable predictor of case numbers than deaths (as used in the Imperial model).

- 2.22 We expect insurers to alert relevant policyholders, for example when accepting a claim in principle on a disease vicinity wording and requesting evidence, about the existence of the guidance and the FCA Covid-19 Calculator described in Chapter 9 (with website links) as part of their obligation to “provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress”. We have made additions to the guidance to reflect our expectations.

Insurers – other policyholder evidence

- 2.23 This section of our guidance proposes that where one policyholder has proved the presence of Covid-19 in their RPA, the insurer should not require other policyholders also to prove that the disease was present in the same location.
- 2.24 Several insurers and trade bodies raised a range of practical concerns about this section of the guidance including how they could determine whether a policy area “substantially overlaps” with another. Questions were also raised about whether this proposal reversed the burden of proof. Some insurers suggested that this introduced a new requirement and went beyond the scope of FCA guidance.

Our response

- 2.25 We have considered the points raised and have made clarificatory changes to assist insurers to apply the guidance. The guidance clarifies our expectation that insurers will use the existing information they have in relation to evidence of the presence of Covid-19, where they already know that Covid-19 was present within the relevant policy area. This seems a reasonable expectation in the context of a fair claims handling process and we have therefore decided to make minor adjustments to the guidance to provide clarity rather than remove this expectation as some insurers’ feedback requested.

Asking insurers to publish data on RPAs where Covid-19 has been proved

- 2.26 Some insurer respondents expressed concern that the inclusion of this within the guidance created additional obligations and expectations for them. They also raised practical concerns about how this might work, including around the use of customer data and the possibility of confusion arising if insurers reach different conclusions about the same RPA having been presented with different evidence by policyholders.
- 2.27 Intermediaries’ trade bodies requested clarity on whether they should also be publishing this data. They pointed out practical difficulties with publishing data on RPAs for multiple insurers. Some proposed that the data should be published by an industry body.

Our response

- 2.28 This guidance encourages insurers to do this to act in a fair and transparent manner to assist policyholders. We have not mandated the publication of data, rather suggested that this is one way that they can improve efficiencies in claims handling. We have retained it within the final guidance, while making amendments to ensure that it is clear that publishing this data is voluntary.

- 2.29 We also considered and sought to address the practical concerns raised by insurers via amendments to the guidance. These include making clear that the information could be published in an anonymised form, as well as noting that while some minor differences may emerge between any such data published by different insurers, the publication of such data would still assist many policyholders, and represents a more facilitative approach to claims handling.

Scope of guidance and application to Scotland and Northern Ireland

- 2.30 Some insurers and trade bodies asked whether the guidance could be prescriptive about the means by which Scottish or Northern Irish policyholders (outside of the jurisdiction of the High Court of England and Wales) can prove the presence of Covid-19. They also queried the appropriate dates for when Covid-19 became a notifiable disease in these jurisdictions.

Our response

- 2.31 The High Court declarations are likely to be persuasive in these jurisdictions, and our rules on fair claims handling apply there, so we have retained our guidance on policyholders' ability to use these sources of evidence in Northern Ireland and Scotland. We have clarified the dates Covid-19 became a notifiable disease in each jurisdiction and explained their appropriate use and application within the final guidance.

Using different data sets

- 2.32 The guidance references several different data sets. Some respondents requested more clarity about the differences between these data sets and how they could be used; noting, for example, the difference between NHS data reporting deaths in hospital settings and ONS data covering deaths in all settings. The differences are relevant when applying an uplift because using different data sets will produce different results.

Our response

- 2.33 Each of the data sets referenced in Chapters 4 to 9 of the guidance was identified by the High Court as a source of evidence that policyholders could use to prove the presence of Covid-19 in their RPA. We have provided an explanation of each data set in our guidance, and of how policyholders might use the data to evidence their claim.

3 Policyholder feedback

Scope of guidance and 'at the premises' policy wordings

- 3.1 We received significant feedback from policyholders and their representatives about the fact that wordings requiring the presence of Covid-19 'at the premises' have not been considered in the guidance.

Our response

- 3.2 Such policy wordings were not included in the test case and whether they cover losses from the national lockdowns has not been specifically considered by the Courts. We have considered and sought to address the issues arising in relation to 'at the premises' wordings in our [Policyholder FAQ](#).
- 3.3 The guidance was not designed to assist with these sorts of policies but may be of assistance in some circumstances.

Obligation to prove presence of Covid-19 and other policyholder concerns and complaints

- 3.4 Many policyholder respondents raised concerns and complaints regarding the obligation to evidence the presence of Covid-19 to make a successful claim under a BI policy when they believe it to have been generally prevalent within the UK at the relevant point in time.
- 3.5 Some policyholder respondents questioned the value of their insurance or raised complaints about the conduct of insurers in relation to BI claims, either in relation to claims being rejected, claims processes or timelines.
- 3.6 Some policyholder respondents also suggested alternative sources of evidence which could be used in some cases to prove the presence of Covid-19.

Our response

- 3.7 The legal position is that policyholders must prove the presence of Covid-19 where this is necessary to evidence their individual claims, and this position was confirmed by the High Court judgment and declarations. Our intention in issuing this guidance is to assist policyholders and make it as simple as possible for them to do this.
- 3.8 We note the concerns and complaints policyholders have raised. Where these highlighted potential conduct issues they have been referred to Supervision. We have also responded directly to these policyholders and reflected issues raised within our Policyholder FAQ, as appropriate.
- 3.9 We note these alternative sources of information and reflect these as appropriate within the final guidance and our Policyholder FAQ.

- 3.10 During the course of our consultation it became clear that policyholders need extra support to carry out the weighted averaging calculations needed to evidence a case of Covid-19 in their area. Given the complexity of these calculations we have created an online calculator to provide policyholders with the estimate they need to determine whether Covid-19 was present in their area at any given day. If you would like to use the calculator, please [sign up for our BI test case email alerts](#) and you will get an email when the calculator is launched.

Policyholder queries about coverage and other issues

- 3.11 Many policyholder respondents raised queries about their individual BI claims, often in relation to coverage or whether their policy responded. In some cases these responses illustrated confusion about the role of various parties (including but not restricted to insurers, intermediaries and the FCA) in the BI claims process.

Our response

- 3.12 Where these responses raise conduct issues relating to individual claims these cases have been referred to Supervision, as well as responding to the individual policyholder, as appropriate. We have also sought to clarify the guidance, and reflect the issues raised and address any confusion in our Policyholder FAQ, as necessary.

4 Other feedback and comments

Insurer compliance with guidance and FCA supervision

- 4.1 Some respondents, including policyholders and consumer representatives, expressed concerns regarding whether insurers would comply with the guidance once issued and asked for clarity as to how we will supervise compliance with the guidance.

Our response

- 4.2 We provide as much clarity as possible in the final guidance regarding how policyholders can prove the presence of Covid-19 and our expectations of insurers and what evidence they should accept as proof of the presence of Covid-19. As noted, we believe that the final guidance is on firms' obligations under the FCA Principles for Businesses (PRIN) and the Insurance Conduct of Business sourcebook (ICOBS). We will supervise firms' conduct in this regard as part of our broader supervisory approach in relation to relevant BI claims, which will include monitoring firms' progress in processing and paying these claims. If we see issues arising and firms' failing to meet their obligations to their policyholders we will intervene as appropriate using the full range of our regulatory tools

Complexity of using methodologies to prove presence of Covid-19

- 4.3 Some respondents, including policyholders and consumer representatives expressed concerns regarding the complexity of using some of the methodologies set out within the draft guidance to prove the presence of Covid-19.

Our response

- 4.4 We acknowledge the potential complexity of using some of these methodologies and have sought to provide as much clarity as possible about them and how to use them within our final guidance. This includes setting the methodologies out in order of their simplicity and providing relevant links and references for all relevant sources of information which policyholders may need to use in this process. We set out further supporting information for policyholders in our [Policyholder FAQ](#). We have also created a Covid-19 calculator to assist policyholders who want to use estimated case numbers or reported data but need to scale it to their policy area.

Policies requiring the presence of disease within a vicinity

- 4.5 Trade bodies and insurers queried our guidance that policies using a similar definition of 'vicinity' to that used in one of the [representative sample of policies](#) included in the test case ('RSA4') should be treated as having the same meaning as determined by the High Court (declaration 4) in respect of that policy. They pointed out that one word can change the meaning of a policy and the guidance should only apply where the definition mirrored that in RSA4.

- 4.6 One respondent suggested that, for a policyholder with UK-wide operations covered by a single policy, it was a reasonable extension of the principle decided on RSA4 that “vicinity” is the entirety of the UK and that the relevant date would be the earliest date for presence/occurrence of that disease, which is a factual question.

Our response

- 4.7 Where “vicinity” is defined using different words to those in RSA 4 then it may not be defined in a “similar” way and therefore the same interpretation of the High Court (declaration 4) may not apply.
- 4.8 Where ‘vicinity’ is not defined in the policy, the High Court held it meant “neighbourhood” and might encompass a greater or smaller area than a 1-mile radius, in a given case. However, other than in respect of policies that define ‘vicinity’ in a similar way to that in RSA4, it “cannot mean the entire UK simply because ... it would be reasonably expected to have an impact on the insured or its business.”
- 4.9 Where policies cover multiple different premises, it may be that there is more than one relevant ‘vicinity’, depending on the policy wording.

Insurer obligation to explain decision to reject claim

- 4.10 Some respondents, including policyholders and an insurance intermediary, believed that the guidance should set out an obligation for insurers rejecting a claim due to the failure to evidence the presence of Covid-19 to provide a clear reason for the decision not to accept the evidence presented to the policyholder.

Our response

- 4.11 We note insurers’ existing obligations to treat customers fairly under the Principles for Business and to handle claims and complaints fairly under ICOBS 8 and DISP. In this context, we do not think it is necessary to add additional specific guidance in relation to this, as we would expect to be able to intervene using the existing regulatory framework if any such issues arise.

Annex 1 – List of non-confidential respondents

We have treated all of the 58 responses received from policyholders and their representatives as confidential. A further 8 respondents requested that their response be kept confidential. The non-confidential respondents were as follows:

Association of British Insurers (ABI)

British Insurance Brokers' Association (BIBA)

Cottagesure Action Group

Financial Services Consumer Panel (FSCP)

Institute and Faculty of Actuaries (IFoA)

The London and International Insurance Brokers' Association (LIIBA)

RLK Solicitors Limited