Final guidance: Business interruption insurance test case - proving the presence of coronavirus (Covid-19)

3 March 2021

Contents

1 Summary

About this guidance

1.1 Following the onset of the coronavirus (Covid-19) pandemic we received many complaints from small and medium enterprise (SME) policyholders, MPs and other stakeholders. They complained about insurers taking a narrow reading of whether their business interruption (BI) policy wordings, which did not require damage to the insured premises, would provide cover in response to the situation. Our supervisory work confirmed that insurers were refusing the large majority of these SME BI claims, with genuine debate as to the meaning of some policies.

1.2 We decided that the quickest route to resolving the issue and providing certainty for all parties was to go to the High Court to seek a declaration on what the wordings covered. Given the potential harm for SMEs from the pandemic, we have been clear throughout that our overarching aim has been to achieve a final outcome with clarity and to do so swiftly. This is to enable eligible policyholders to receive claim payments as early as possible.

1.3 In June 2020, we began a test case in the High Court, which was then subject to a leapfrog (bypassing the Court of Appeal) appeal to the Supreme Court. Our counsel reviewed over 500 policy wordings to arrive at the 21 representative policy 'types' issued by the 8 insurers included in the test case. We selected wordings that were representative of the key issues in dispute at the time between policyholders and insurers, which led to us deciding which insurers we would invite to participate in the test case. These 21 policy types have 3 types of cover wording:

(i) cover for BI caused by an outbreak of disease within a specified radius (eg 25 miles or 1 mile) within the vicinity of premises

(ii) cover for BI caused by denial of access to premises, following public authority action, taken due to an emergency

(iii) 'hybrid' wordings which combine a requirement for both outbreak of disease and public authority denial of access to premises

Our role was to put forward the best policyholder arguments. We used the court's Financial Markets Test Case scheme, as it offered the quickest way to get an authoritative ruling.

1.4 The Supreme Court judgment (*FCA v Arch and others* [2021] UKSC 1) handed down on 15 January 2021 and High Court judgment (*FCA v Arch and others* [2020] EWHC 2448 (Comm)) handed down on 15 September 2020, provided authoritative guidance for the interpretation of the approximately 700 policy wordings identified as affected by the test case by about 60 insurers. Following the Supreme Court judgment, 14 out of the 21 policy types tested were found to have the potential to provide cover in response to the pandemic; 7 were not. The Supreme Court also found that cover may be available for partial as well as full closure of premises, and for mandatory closure orders that were not legally binding.

1.5 Some BI insurance policies require the policyholder to prove the presence of a disease within a particular area around their premises. As part of its decision, the

High Court made declarations on 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.

1.6 This document contains guidance for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries on how the presence of Covid-19 in a particular area may be proved. This is based on the High Court's judgment and declarations and the additional statements from the Supreme Court and in the context of insurers' obligations under our rules to handle claims fairly. This 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 and

(iii) enable those policyholders to receive claim payments as early as possible

1.7 This guidance is the FCA's view and it does not prevent policyholders using other sources of evidence or putting forward their own arguments in respect of the sources of evidence in this guidance. The FCA will shortly publish a Covid-19 Calculator to assist policyholders to carry out the calculations in Chapters 7, 8 and 9. The results of the Covid-19 Calculator can be used to evidence whether Covid-19 was likely to be present in their policy area but it is open to policyholders to carry out calculations themselves.

Who this guidance applies to

1.8 This guidance is for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries.

1.9 For insurers and insurance intermediaries, this document contains guidance 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

What this document sets out

1.10 **Chapter 2** sets out how policyholders can use this guidance.

1.11 **Chapter 3** sets out our guidance for insurers and insurance intermediaries on proving the presence of Covid-19.

1.12 **Chapters 4 to 9** set out our guidance on the specific evidence that policyholders can use to seek to prove the presence of Covid-19 in the Relevant Policy Area (RPA) that applies to their policy and claim.

Which insurance policies this guidance is relevant to

1.13 This guidance relates to how a policyholder might prove the presence of Covid-19 for the purpose of making a claim under an insurance contract that:

- was in force during the UK Government action primarily in March 2020 in response to the national Covid-19 pandemic
- which is of, or similar to, a type of policy found to provide cover for that action in the test case and
- which requires the policyholder to prove the presence of Covid-19 within a particular area around their premises

It may also be relevant to losses from later events such as 'local' lockdowns or subsequent national lockdowns.

1.14 The judgment and declarations from the Supreme Court and High Court relate to the laws of England and Wales. But they provide persuasive guidance that can be taken into account in other court cases including in Northern Ireland and Scotland, and by the Financial Ombudsman Service and by the FCA in looking at whether insurers are handling claims fairly. Most of the sources of evidence referred to in this document are available throughout the UK, but some are not relevant to Wales, Northern Ireland and/or Scotland.

Duration of the guidance

1.15 This guidance comes into effect on the date it is issued and ceases to have effect on 31 January 2022 (by when we expect that all issues relating to proving the presence of Covid-19 will have been resolved).

2 How to use this guidance

Introduction

2.1 As set out above, some BI insurance policies require the policyholder to prove the presence of a disease within a particular area before the policy will respond. This guidance is intended to help policyholders in this process.

2.2 The first step for policyholders is to determine whether the relevant coverage clause in the BI insurance policy being considered has wording that:

- requires the presence of disease within a particular distance, zone or radius from the premises – see, for example, the 'disease clause' in 'Argenta Type 1 of 1' or 'QBE Type 1 of 3' in the representative sample of policy wordings considered in the test case
- requires the presence of disease within a vicinity or area where events that occur within such area would be reasonably expected to have an impact on the policyholder – see, for example, the 'disease clause' in 'RSA Type 4 of 4' in the representative sample of policy wordings considered in the test case
- requires the occurrence of a notifiable disease without specifying a particular vicinity or area within which the disease needs to occur

If the policy contains one of the above types of wording, the policyholder should follow the steps set out under the relevant subheading below.

2.3 This guidance was not designed for proving the presence of Covid-19 for other types of policy wording but may be of assistance in some circumstances.

Policies requiring the presence of disease within a particular distance, zone or radius from the insured premises

2.4 Some BI insurance policies which the Courts decided should, in principle, provide cover for the pandemic require the policyholder to demonstrate that there was at least 1 case of Covid-19 in a specific zone relative to the insured premises, for example within a 25-mile or 1-mile radius from the premises. In this document, that zone is called the Relevant Policy Area, or 'RPA'.

2.5 Whether you need to prove the presence of a case on a particular date will depend on the policy wording. For most policy types, the policyholder will need to be able to show that a case occurred at any time prior to the interruption of their business in order to claim.

2.6 In presenting evidence to the insurer, a policyholder will need to explain which type of evidence it is, how it has been obtained and how it proves the presence of at least 1 case of Covid-19 in the RPA (references to paragraphs of this guidance may help with this). In some cases, a policyholder may not be able to gather sufficient evidence to prove the presence of Covid-19 in their RPA.

Policyholders with a 25-mile radius RPA

2.7 This guidance sets out 4 types of evidence on which a policyholder may seek to rely to establish the presence of Covid-19 in their RPA. If a policyholder can establish cogent evidence from one of these types, there is no need to establish other types of evidence.

2.8 We suggest that a policyholder with a 25-mile radius RPA seeks to use these types of evidence in the order set out below:

1. specific evidence (for example, media reports of a case near the premises) – see Chapter 4
2. NHS data on deaths due to Covid-19 – see Chapter 5
3. Office of National Statistics (ONS) data on deaths due to Covid-19 – see Chapter 6
4. reported cases of Covid-19 in different areas (for example, local authorities) – see Chapter 7 - the FCA will shortly publish a Covid-19 Calculator that a policyholder can use to gather this evidence.

2.9 If none of those 4 types of evidence is sufficient to prove the presence of Covid-19 in the RPA, for example because the evidence provides data for cases which could be inside or outside the RPA, this guidance describes 2 methodologies which a policyholder may use to nonetheless seek to prove the presence of Covid-19 in their RPA:

1. using an undercounting methodology: recognising that testing was limited before the first national lockdown, this involves using a statistical model to estimate the real number of infections in an area – see Chapter 8.
2. the geographical distribution methodology, where actual or estimated Covid-19 infections are 'averaged' across an area, weighted according to population size – see Chapter 9.

We will shortly publish a Covid-19 Calculator that a policyholder can use to gather the evidence in Chapters 8 and 9.

Policyholders with a 1-mile radius RPA

2.10 We suggest that a policyholder with a 1-mile radius RPA starts with considering 'specific evidence' (Chapter 4), then considers 'Reported Cases by Middle Super Output Area' (in Chapter 7) before using NHS data (Chapter 5) and the other sources of evidence in Chapter order. If a policyholder can establish cogent evidence of one of these types, there is no need to establish other types of evidence.

Policies that require the presence of disease within a vicinity or area, where the events that occur within such area would be reasonably expected to have an impact on the policyholder.

Policyholders in England and Wales

2.11 The High Court confirmed that the particular definition of 'vicinity' in the disease clause of the policy type underwritten by Royal & Sun Alliance Insurance plc (RSA)

and various other insurers and branded Marsh Resilience, referred to during the test case as RSA4, meant that, for that policy type, Covid-19 occurred within the 'vicinity' of all premises in England and Wales on 31 January 2020 (Court declaration 4). This was the date of the first positive test for Covid-19 in England. Policyholders with this type of policy do not need to prove the presence of Covid-19.

2.12 The definition of 'vicinity' in RSA4 is 'an area surrounding or adjacent to an Insured Location in which events that occur within this area would be reasonably expected to have an impact on an Insured or the Insured's Business'. Where other policies require the presence of Covid-19 within an area defined in a similar way to the definition of 'vicinity' in RSA4, we consider the same approach should be used as for RSA4[1].

Policyholders in Northern Ireland and Scotland

2.13 For policyholders in Northern Ireland or Scotland, the guidance for policyholders in England and Wales above is also relevant, except that Covid-19 should be treated as having occurred, for the purposes of the disease clause in RSA4 and similar clauses in other policies, within the 'vicinity' of all premises in those nations when the first positive test for Covid-19 occurred in those nations, which is:

- in Northern Ireland, 11 January 2020[2] (see Covid-19 Testing Details)
- in Scotland, 28 February 2020 (see Daily Update)

Policies requiring the occurrence of a notifiable disease

Policyholders in England and Wales

2.14 The High Court confirmed that Covid-19 'occurred' on 5 March 2020 in England and on 6 March 2020 in Wales within Hiscox1-3 (hybrid clauses) (Court declaration 3). Policyholders with these policies will not need to take any further steps to prove the presence of Covid-19. Where other policies have similar wording, the FCA considers the same approach should be used as for Hiscox1-3 (hybrid clauses).

Policyholders in Northern Ireland and Scotland

2.15 For policyholders in Northern Ireland and Scotland, Covid-19 should be treated as notifiable for these types of policies when it became notifiable in those nations:

- in Northern Ireland, 29 February 2020 (see The Public Health Act (Northern Ireland) 1967)
- in Scotland, 22 February 2020 (see Public Health (Scotland) Act 2008)

[1] High Court judgment – paragraph 140.

[2] Note that this date differs to that in the High Court judgment as the judgment refers to reported cases while the online tools use specimen dates.

3 Guidance for insurers and insurance intermediaries

Rules this guidance relates to

3.1 For insurers (including managing agents at Lloyd's) and insurance intermediaries, this is guidance on 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.

Insurers - general

3.2 Insurers should provide fair consideration and assessment of any evidence policyholders submit to prove the presence of Covid-19 where required under their policy. As part of that, we expect insurers to have regard to the guidance provided to policyholders in this document.

3.3 Where a policyholder has provided cogent evidence of the presence of Covid-19 in their RPA in accordance with the approach in this guidance, insurers should, in handling claims fairly, accept that evidence as sufficient to discharge the burden of proof on the policyholder. If the insurer does put forward counter-evidence in response to cogent evidence from a policyholder, the FCA considers that fair claims handling means that:

(i) the counter-evidence will need to be more cogent than the evidence put forward by the policyholder to put the burden of proof back onto the policyholder; and

(ii) the insurer will need to clearly explain to the policyholder the basis on which it considers that, in relation to the policyholder's particular claim:

- the policyholder's evidence does not discharge the burden of proof in relation to the minimal requirements of the policy, and
- the insurer's counter-evidence is more cogent.

3.4 We encourage insurers to adopt approaches that streamline and expedite claims handling having regard to the requirement to handle claims promptly and fairly. Accordingly, this guidance encourages insurers to voluntarily adopt a more transparent and facilitative approach to claims handling that helps policyholders to prove the presence of Covid-19 by particular dates. We expect insurers to act honestly, fairly and professionally in accordance with the best interests of policyholders and to have recorded how their approach meets that standard. For example:

(i) insurers may want to propose to policyholders a suitable and reasonably assessed date that Covid-19 will be deemed to have been established in one or more RPAs, with policyholders able to agree to that deemed date or seek to prove that an earlier or later date is relevant, where applicable

(ii) insurers may wish to publish on their websites, in an anonymised form (or with policyholders' consent), records of the RPAs in which cases of Covid-19 have been proved by policyholders, to help other policyholders when making claims, and ensuring compliance with any applicable laws on publishing this data

Insurers – responsibility for delegated tasks or functions

3.5 Where an insurer delegates any aspect of claims or complaints handling to a third party and appoints the third party to carry out any task or function covered in this guidance, the insurer should consider SYSC 3.2.3G. In particular, the firm should ensure that the third party is aware of this guidance and applies it as appropriate for any task or function they perform involving relevant non-damage BI policies on behalf of the insurer.

3.6 We remind insurers that they cannot contract out of their regulatory responsibilities (ICOBS 2.5.3G). So, for example, under Principle 3 an insurer should take reasonable care to supervise the discharge of outsourced functions by its contractor (SYSC 3.2.4G).

Insurers - other policyholder evidence

3.7 Where one policyholder has proved that Covid-19 was 'sustained', or 'occurred', or 'manifested' in a particular location for their policy (through whatever method), we consider that the insurer should not require its other policyholders also to prove that the disease was 'sustained', or 'occurred', or 'manifested' (as applicable) where their RPAs substantially overlap. We do not consider that it would be fair to put these other policyholders to the task of proving this where the insurer already holds adequate proof.

3.8 The insurer should tell these other policyholders that they do not have to prove the presence of the disease. The insurer should communicate this at the time that the other policyholder first notifies the insurer of the claim. Alternatively, where the insurer becomes aware of the evidence during the claims process, they should do this in the next communication with the other policyholder as part of the claims process, for example, when the insurer updates the other policyholder on the progress of their claim.

3.9 For the purpose of identifying RPAs that substantially overlap insurers could use, for example, the postcode sector for RPAs with a 25 mile radius or a postcode unit for RPAs with a 1 mile radius (except for any postcode sectors or units that are unusually large). The ONS website explains how to identify a postcode sector, made up of the postcode area (denoted by letters eg PO) a postcode district (denoted by a number eg 15) and a further number to indicate the sector (eg PO15 5). The postcode unit is the smallest geographic unit for a postcode and is indicated by the letters at the end of a postcode eg PO15 5RR. See the ONS website for further information. Website tools can be used to find the postcodes within a radius of a particular point, such as the 'UK Postcode Radius Search Map' on FreeMapTools.

3.10 If a policyholder has proved the presence of Covid-19, the insurer should accept that evidence as sufficient for other policyholders with the same radius of RPA in the same postcode sector (for 25 mile radii) or unit (for 1 mile radii). For example, if a

policyholder whose premises has a postcode of PO15 5RR has proved that a case occurred within 25 miles (or alternatively 1 mile), policyholders with 25-mile RPAs in the PO15 5 postcode sector (or alternatively with 1 mile RPAs in the PO15 5RR postcode unit) would be told that they do not need to evidence the disease.

Informing relevant customers about this guidance and the FCA Covid-19 Calculator

3.11 We expect insurers to alert relevant policyholders about the existence of this guidance and (once available) 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". This includes sending an individual communication to any policyholder who has made a claim and has not yet satisfied the insurer of the presence of Covid-19 in their area.

Insurance intermediaries

3.12 Insurance intermediaries helping policyholders with making claims should have regard to the guidance provided to policyholders in this document. We encourage insurance intermediaries to adopt approaches that streamline and expedite claims handling for their clients. For example, insurance intermediaries may want to publish on their websites records of the RPAs in which cases of Covid-19 have been proved by their clients, in an anonymised form (or with policyholders' consent). Anonymised records of this sort could help their other clients when making claims.

3.13 Insurance intermediaries helping insurers assess claims should have regard to this guidance in the same way as insurers.

4 Guidance for policyholders – Specific evidence

4.1 Court declaration 8.2(a) states that policyholders can in principle use, to prove the presence of Covid-19 in their RPA:

'specific evidence of a case or cases of Covid-19 in a particular location within the relevant policy area'.

4.2 The Court did not provide guidance on the types of specific evidence that might be used. It would appear reasonable for a policyholder to rely on any of the following to satisfy the burden of proof, for example:

- Personal knowledge of somebody within their RPA who:
  - tested positive for Covid-19
  - was diagnosed with Covid-19
  - (where the policy requires the disease to 'manifest' symptoms) manifested symptoms of Covid-19 or was diagnosed with Covid-19 whether or not they had symptoms (in each case, together with accompanying evidence)
- Reports from reliable media outlets of cases of Covid-19 at a care home, hospital, restaurant, school or other business in the RPA (such as a processing factory, food or goods distribution centres); see for example the case at Deloitte.
- Personal knowledge of a staff member who tested positive within a 7-day period after being present at the business premises (together with accompanying evidence). Paragraph 571 of the High Court judgment refers to the fact that the insurers in the Court case accepted that the infectious period for Covid-19 is, on average, 7-12 days. We have used the lower number of days for the purpose of the estimates in this section.
- Personal knowledge of a customer or guest who tested positive within a 7-day period after being present at their business premises.
- Contacting a local GP surgery to request information about whether they had a patient who tested positive or who displayed Covid-19 symptoms during the relevant period.
- Contacting a local school or university to request information about whether a student or teacher tested positive during the relevant period.
- Official statements or press releases from universities confirming a case of Covid-19. For example, the Bristol City Council and Bristol University joint statement on a case of coronavirus.

5 Guidance for policyholders – NHS death data

Policyholders who can use this chapter

5.1 This chapter can be used by policyholders with premises in England and Wales or Scotland where all the hospitals of one or more NHS Hospital Trusts (or Boards, in Scotland) are located within the RPA.

Policyholders in England

5.2 Court declaration 8.2(b) states that policyholders can in principle use:

'data published by NHS England on a daily basis recording the number of individuals who died in NHS Hospital Trusts in England after testing positive for Covid-19 (NHS Death Data), where an NHS Hospital Trust has recorded such a death on a particular date and:

(i) all hospitals in that Trust are within the relevant policy area; and

(ii) since inferences can be drawn from the NHS Death Data as to when Covid-19 was present in that NHS Hospital Trust, an inference may be able to be drawn that Covid-19 was present in the relevant policy area at a particular date (this may be more obvious in some circumstances than others, for example if an individual died in early March 2020 after testing positive for Covid-19, it is prima facie likely that Covid-19 was present in the local area at the time of death).'

5.3 This means that policyholders can use data published by NHS England, on a daily and cumulative basis, about the number of people who died in each NHS Hospital Trust after having tested positive for Covid-19. NHS Hospital Trusts can run one or more hospitals, and the data do not always pinpoint the specific hospital where the death occurred. Therefore, the Court's declaration confirmed that a policyholder can rely on the NHS Death Data in respect of a particular NHS Hospital Trust where all the hospitals of that NHS Hospital Trust are located within the RPA.

5.4 The policyholder can then draw appropriate inferences from the data to satisfy the burden of proof. For example, provided that the Trust hospital or hospitals are all within the RPA, if an individual tested positive for Covid-19, was admitted to one of the Trust's hospitals and died in early March, it is likely that Covid-19 was present in the RPA at the time of death. Policyholders are free to make arguments as to other inferences for insurers to consider, such as how long a patient was likely to be in the hospital with symptomatic Covid-19 prior to their death (see for example the inferences we suggest policyholders could make, at paragraph 6.5, about the average time between infection and death).

5.5 For further information about using the data from NHS England:

(i) See paragraphs 36 to 37A of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings, and the links there to the NHS Death Data, especially Daily Deaths. That website includes a spreadsheet entitled, 'Covid-19 total announced deaths [date]', and Tab 4 of the spreadsheet lists 'Deaths by trust'.

(ii) The NHS website contains details of how many hospitals are in each NHS Hospital Trust, and their locations. For example, clicking on 'North West Anglia NHS Foundation Trust' in that list, and then the 'Hospitals and clinics' tab, shows that there are currently 7 hospitals in that Trust. If that Trust recorded deaths due to Covid-19, and all 7 hospitals are in the policyholder's RPA, then the policyholder can rely on those data.

Policyholders in Northern Ireland

5.6 We have not identified the equivalent data sets for Northern Ireland. But alternative data sets are available in Chapters 6 to 8.

Policyholders in Scotland

5.7 For Scotland, daily death data, broken down by geography, local authority or NHS board for the period 1 March 2020 to present, is available on Tableau. To access the data choose tab 'data table' and select geography (Scotland, NHS board or local authority), then filter the data by 'location' (eg for NHS board 'Ayrshire and Arran) and the relevant date range.

Policyholders in Wales

5.8 For Wales, daily death data broken down by local authority or NHS Board is available on the ONS website. To access the data select the 2020 data set. The data is presented on an excel spreadsheet. The death data is presented in a number of ways. Policyholders may find it helpful to use the 'Registrations – All data' tab. Death data can be filtered by 'Health Board' under the 'Geography type'" heading. To identify the number of Covid-19 deaths in the Health Board for the relevant time period: (1) filter the cause of death by 'Covid-19' and (2) select the relevant week number(s) (corresponding with the week numbers in the year from 1 to 53) to filter the data to the relevant date range.

6 Guidance for policyholders – ONS death data

Policyholders in England and Wales

6.1 Court declaration 8.2(c) states that policyholders can in principle use:

'weekly data published by the Office of National Statistics recording the number of deaths that have occurred in England and Wales each week by local authority or health board where the death certificate mentions Covid-19 (ONS Death Data):

(i) where the local authority or health board was entirely within the relevant policy area; and

(ii) taking into account all of the deaths involving Covid-19 in a particular week in a particular local authority or health board area, as representing active cases in that local authority or health board area on (at the latest) the first day of that week (and it may be that the deaths in a particular week can safely be treated as active cases many days before the beginning of that week but additional evidence would be required on that).'

6.2 This means that policyholders can rely on data published by the ONS, on a weekly basis, showing the number of deaths in England and Wales in the year to date, including deaths where Covid-19 is recorded on the death certificate. The ONS publishes the data by local authority, health board and place of death – the ONS Death Data. The information is contained in a spreadsheet that can be filtered to show deaths involving Covid-19 by local authority or health board for a particular week of the year. Policyholders should open the spreadsheet and select the tab 'Occurrences – Pivot Table'. Policyholders should use the Cause of death drop-down to select 'Covid-19' and should also select a week number. The first week of January is Week 1. The week beginning 16 March 2020 is Week 12.

6.3 The ONS data is also available on the GOV.UK website. This website collates the death statistics from the 4 nations and can be filtered by nation, region or local authority. To extract the data select the relevant local authority and scroll down to the table headed 'Deaths within 28 days of positive test by date of death' or 'Weekly deaths with Covid-19 on the death certificate by date registered' then click on "Download" to download the .csv file.

6.4 Based on the above declaration, to be able to rely on the ONS Death Data, the policyholder can only refer to the data where the local authority or health board in question was entirely within the RPA. That will ensure the relevant Covid-19 cases were in the RPA. Separately, where the RPA is entirely within, or straddles, the local authority, please see Chapter 9 on geographical distributions, where a policyholder can use a distribution-based analysis to utilise ONS Death Data in that scenario.

6.5 ONS Death Data can be used (either cumulatively, or on a case by case basis) to evidence a case of Covid-19 in the RPA during a period before the death was reported. A policyholder could, for example, present evidence that there was a case of Covid-19 in their area for a period of 18 days prior to the death, based on:

- the estimate produced for SAGE by Co-CIN that the average time between symptom onset and death during the first wave was 13 days; and
- the estimate produced by the WHO and supported by analysis from the BMJ that the average incubation time for Covid-19 is 5-6 days from the date of infection to the date a person is symptomatic.

6.6 As such, if the ONS Death Data shows one or more deaths in the week commencing 30 March and ending 5 April 2020, the FCA considers that the policyholder may rely on that as demonstrating a case of Covid-19 in the MSOA by 18 March 2020, and possibly earlier than that, though the policyholder would need to provide additional evidence in relation to earlier dates.

6.7 For further information on the ONS Death Data, see paragraphs 38 to 40 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings.

6.8 Policyholders in Wales may also refer to the *Health in Wales* website, which gives information about the 7 local health boards in Wales that deliver services in their areas. Also, Public Health Wales provides rapid Covid-19 surveillance data on its website, including ONS daily death data by health board (see 'ONS Deaths' tab and drop down box 'Select Wales or Local Health Board').

Policyholders in Northern Ireland or Scotland

6.9 We consider that policyholders in Northern Ireland may use the GOV.UK website to seek to prove the presence of Covid-19 in a similar way to that described above for England and Wales.

6.10 In Northern Ireland the Department of Health releases daily statistics on Covid-19 on the Covid-19 Dashboard (see Quick Links and the pdfs for archive pages) for dates from 5 May 2020, including data of deaths by Local Government District. This daily update replaces the Daily Bulletin published by the Public Health Agency (and archived on their website) where you can find data on Covid-19 deaths by Local Government District from 24 March 2020 to 19 April 2020;

6.11 We have also identified the following national data sources for Scotland:

1. NHS Scotland provides information about the 14 regional health boards on its website.
2. Public Health Scotland provides a dashboard of information, including death information by regional health board on its website. To access this data, look at the top of the page for the 'Trends and Demographics' tab. The tab shows 'Covid-19 in Scotland Trends and Demographics'. Trend data can be sorted by NHS Board and Local Authority. To view the data for the relevant period take the following steps: (1) under "What information would you like to see" select 'Deaths (Covid confirmed)' (2) under 'Select location' choose one of the 14 NHS regional health boards. The dashboard will then display daily death information by health board on a bar chart.
3. The National Records of Scotland provides daily data on deaths involving Covid-19 on its website, including by NHS Board and Council Area of usual residence.

7 Guidance for policyholders – Reported cases

Policyholders who can use this chapter

7.1 This chapter can be used by policyholders with premises in any nation of the UK where one or more local authorities (or Middle-layer Super Output Areas) are located within the RPA. We will shortly publish a Covid-19 Calculator that a policyholder can use to gather this evidence.

Policyholders in all nations of the UK

7.2 Court declaration 8.2(d) states that policyholders can in principle use:

'data published by the UK Government recording the number of daily lab-confirmed positive tests of Covid-19 in a particular nation, region, UTLA or LTLA (Reported Cases):

(i) taking into account the Reported Cases on a particular date in a particular nation, region, UTLA or LTLA together with the Reported Cases two to three days either side of that day as being active on that particular date in that nation, region, UTLA or LTLA; and

(ii) when taking into account the Reported Cases in a particular LTLA or LTLAs, the LTLA or LTLAs are entirely within the relevant policy area.'

7.3 So policyholders can rely on the UK Government's Reported Cases of Covid-19 to seek to prove the presence of Covid-19 in an RPA, in certain prescribed circumstances, as explained further below.

How to locate the Reported Cases for the Court declaration's areas

7.4 The Reported Cases are records published by the UK Government. They state for each day and cumulatively, the number of lab-confirmed positive tests of Covid-19 in each:

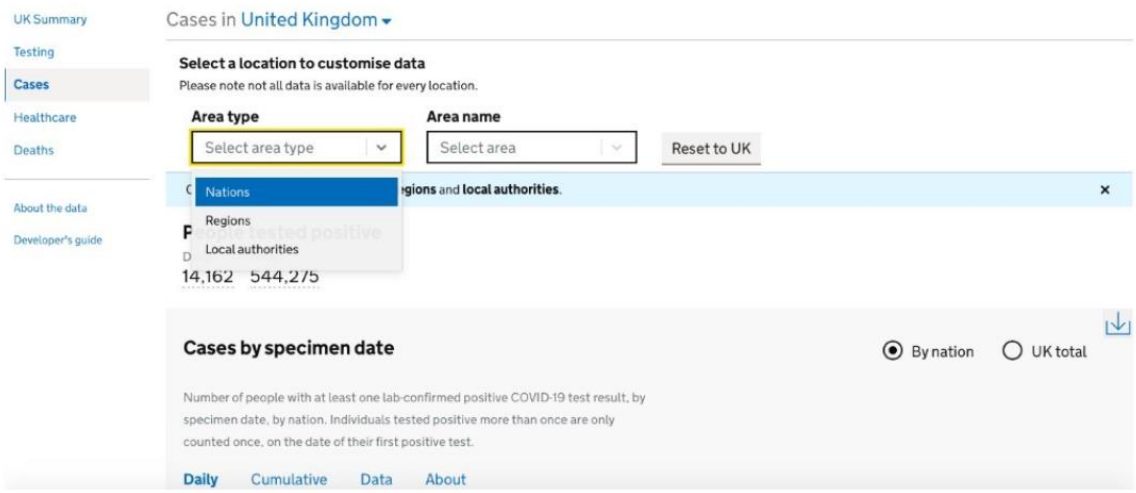
1. nation – England, Wales, Scotland and Northern Ireland;
2. region – East Midlands, East of England, London, North East, North West, South East, South West, West Midlands, Yorkshire and The Humber;
3. Upper Tier Local Authority (**UTLA**) – which includes Counties, Unitary Authorities, Metropolitan Districts and London Boroughs; and
4. Lower Tier Local Authority (**LTLA**) – which includes County Districts (Non-Metropolitan Districts), Unitary Authorities, Metropolitan Districts and London Boroughs. Examples of LTLAs are Luton and Stockport.

7.5 A map of local authority districts is available on the ONS website.

7.6 Policyholders can locate the Reported Cases in the following ways:

1. When opening the 'GOV.UK, Coronavirus (Covid-19) in the UK' webpage, the default shows Reported Cases on a UK-wide basis, but the drop-down arrow next to 'United Kingdom' in the heading of the webpage allows the user to search for a specific nation, region or local authority (incorporating both UTLAs and LTLAs):

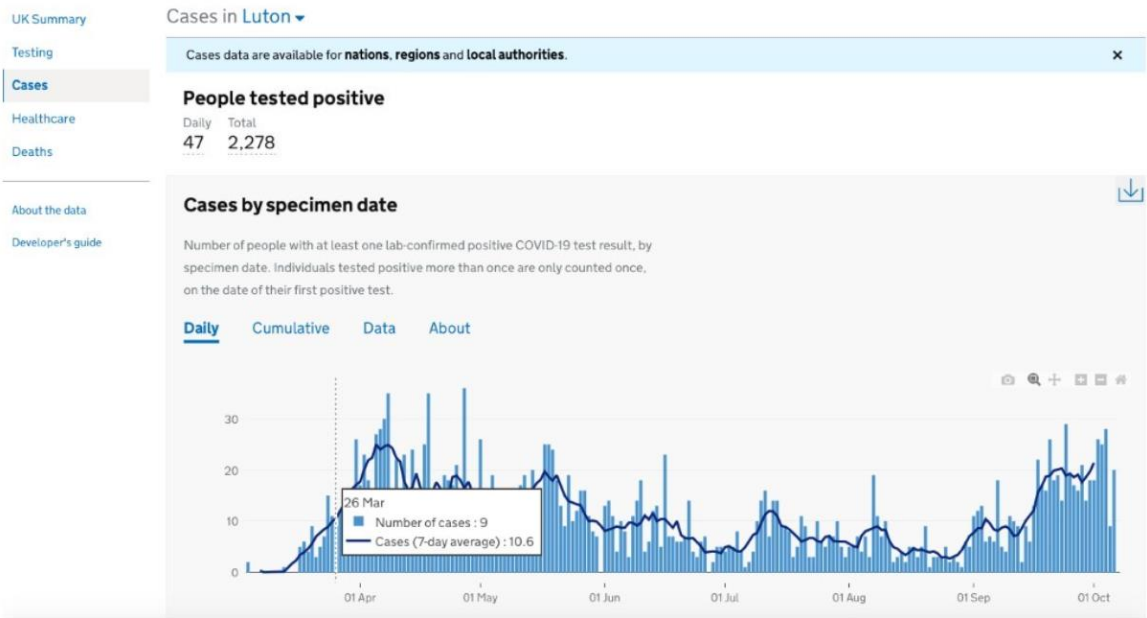
Figure 1: How to search for a specific nation, region or local authority (incorporating both UTLAs and LTLAs)



https://coronavirus.data.gov.uk/details/cases - Contains public sector information licensed under the Open Government Licence v3.0.

2. For example, if a policyholder wanted to search for Reported Cases in the local authority of Luton, then in 'Area type' they would select 'Local authorities', and in 'Area name' they would select 'Luton'. Hovering the cursor over the chart, they can see cases for a particular date. For example, on 26 March 2020 there were 9 new Reported Cases in Luton (and the cumulative total of Reported Cases up to and including that date is available by clicking on 'Cumulative', which gives 77):

Figure 2: How to search for Reported Cases in the local authority of Luton



https://coronavirus.data.gov.uk/details/cases - Contains public sector information licensed under the Open Government Licence v3.0.

3. Alternatively, policyholders can see the daily and cumulative Reported Cases for each UTLA and LTLA in a Gov.uk spreadsheet. Under the heading 'Supplementary downloads' and under the sub-heading 'Legacy download of cases from the previous version of the dashboard', click on 'CSV (stacked)' to open the spreadsheet. There is a screenshot of some of the data, shown as an example, in Appendix A to 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings.

How to use the Reported Cases in proving the presence of Covid-19 in an RPA

7.7 For most policy types, a policyholder will need to be able to show that at least 1 case occurred at any time prior to the interruption of their business in order to claim. Accordingly, once a policyholder has located the Reported Cases for a given area, the policyholder may use the 'Cumulative' cases as at the relevant date but also, in accordance with declaration 8.2(d)(i), the following 3 days. For example, if a policyholder wanted evidence of cumulative active cases of Covid-19 in Luton as at 26 March 2020, then they can rely on 77 cumulative cases as at 26 March and add the 32 daily new cases on 27, 28 and 29 March to give a total of 99 active cases occurring up to and including 26 March.

7.8 If a policyholder needs to prove that there was at least 1 case on a specific day, they can rely on the Reported Cases for that specific day, and for the 2 to 3 days either side of that day, as proving that there were active cases of Covid-19 in that particular area on that day. For example, if a policyholder wanted evidence of active cases of Covid-19 in Luton as at 26 March 2020, then they can rely on the following data:

(i) 26 March: 9 new Reported Cases

(ii) 23, 24 and 25 March (being the three days before 26 March): 33 new Reported Cases in total across the 3 days

(iii) 27, 28 and 29 March (being the 3 days after 26 March): 32 new Reported Cases in total across the 3 days.

Based on the above, the policyholder can rely on there being 74 active cases in Luton on 26 March.

7.9 The policyholder then needs to look at their policy to check the size of the RPA, for example a radius of 25 miles or 1 mile from the insured premises. If any single local authority they are considering is located entirely within the RPA, and has at least 1 Reported Case on a cumulative or specific data basis as relevant to the policy (which, for example, Luton did as calculated above), then they will be able to prove the presence of Covid-19 in their RPA on that date. That is the situation whether the insured premises are located inside the local authority or outside it, as long as the local authority is entirely within the RPA.

7.10 To identify whether the local authority is located within the RPA policyholders may wish to review the local authority map which can be found on the Government 'Local government structure and elections' website under the heading 'Council map'. Policyholders in Aylesbury Vale, South Buckinghamshire, Wycombe and Chiltern

should note that the map has not yet been updated to reflect the merger of these areas into 'Buckinghamshire' in April 2020.

7.11 If there is more than 1 local authority in the RPA, then the policyholder can prove the presence of Covid-19 in the RPA as long as there is at least 1 Reported Case at a particular date (including the 3 days on either side) in at least 1 local authority entirely within that RPA.

7.12 See paragraphs 20 to 31 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings, for further information and examples. This includes a map with Luton as the example at paragraph 24, and at Appendix F an administrative map of the UK from which the location of the LTLAs can be identified.

7.13 If the RPA is entirely within, or straddles, the local authority or region, then the approach for demonstrating the presence of Covid-19 in the RPA is more complex, and is described in Chapter 9.

Reported cases and deaths by Middle Super Output Area

7.14 Middle Super Output Areas (MSOAs) are small areas with an average population of around 7,200. The Government started publishing data for MSOAs relatively recently and the data is not mentioned in the Court declarations. MSOA data is especially useful for policyholders with a 1-mile radius RPA, since it shows Reported Cases within a small geographical area.

7.15 For data on deaths between 1 March and 31 July 2020, the ONS has published data showing the number of deaths involving Covid-19 in MSOAs in England and Wales, by month. The data can be downloaded in an excel spreadsheet or viewed on a map To use the map, a policyholder can enter the postcode of their premises in the search field, and see the number of Covid-19 deaths in the relevant MSOA associated with that postcode, for each of the months from March to July 2020.

7.16 MSOA death data can be used (either cumulatively, or on a case by case basis) to evidence a case of Covid-19 in the RPA during a period before the death was reported. A policyholder could, for example, present evidence that there was a case of Covid-19 in their area for a period of 18 days prior to the death, based on:

- the estimate produced for SAGE by Co-CIN that the average time between symptom onset and death during the first wave was 13 days; and
- the estimate produced by the WHO and supported by analysis from the BMJ that the average incubation time for Covid-19 is 5-6 days from the date of infection to the date a person is symptomatic.

7.17 As such, if the MSOA data shows one or more deaths in March 2020, the FCA considers that the policyholder may rely on that as demonstrating a case of Covid-19 in the MSOA by 13 March 2020, and possibly earlier than that, though the policyholder would need to provide additional evidence in relation to earlier dates.

7.18 Reported cases by MSOA for dates after August 2020 are available on the GOV.UK website. To view the MSOA data, click on the 'Download data' link on the left-hand side near the top of the page, select 'Area type' as MSOA and the relevant Region, Local Authority and MSOA. Given its source, we consider that policyholders can use the data in the same way as the Reported Cases data referred to by the Court. We consider that policyholders may rely on the MSOA data to prove the presence of

Covid-19 in their RPA as at a particular date where, during the week in which that date falls, the data for any MSOA in the RPA shows Reported Cases.

7.19 For the avoidance of doubt, policyholders – including those with a 1-mile radius RPA – will not be limited to the MSOA data and may rely on the other sources and methodologies set out by the High Court and in this guidance. That is especially because the MSOA data are only available for restricted date-ranges, and in smaller areas data may not have been reported to protect the identity of the diseased. Policyholders need only prove the existence of 1 case of Covid-19 in their RPA. Since the MSOA data does not (in some areas) show where there has been either 1 or 2 cases, policyholders are entitled to rely on other data sources as well. If there is more than 1 MSOA within a policyholder's RPA, the policyholder can rely on any or all of the data from the MSOAs in the RPA.

8 Guidance for policyholders - Estimated cases

Policyholders who can use this chapter

8.1 This chapter can be used by policyholders with premises in any nation of the UK where one or more local authorities are located within the RPA. We will shortly publish a Covid-19 Calculator that a policyholder can use to gather this evidence.

Policyholders in the United Kingdom

8.2 Court declaration 8.2(f) states that policyholders can in principle use:

'given the likely true number of cases of Covid-19 in the UK in March 2020 was much higher than that shown in the Reported Cases, an undercounting analysis – albeit absolute precision is not required to discharge the burden of proof – to demonstrate the likely number of actual cases of Covid-19 in the relevant policy area'.

8.3 The Court made a declaration that the true number of cases of Covid-19 in the UK in March 2020 was 'much higher' than the figure in the Reported Cases. This is because the Reported Cases represent individuals with a positive lab test result for Covid-19, and during March 2020, testing was focused on those who had gone to hospital with certain severe symptoms. Testing capacity was low, and missed those who had not been hospitalised but still had some symptoms, as well as those who were asymptomatic. See paragraphs 2.2 and 10-13 of Agreed Facts 3 – Prevalence of Covid-19, one of the documents in the Court proceedings. The insurers in the Court case accepted that the true figure of infected cases was 'much higher'.

How to estimate the likely true number of Covid-19 cases in an RPA

8.4 For policyholders whose business premises are in densely populated areas, such as London, we expect it is likely to be relatively straightforward to demonstrate the presence of at least 1 case of Covid-19 in their RPA, particularly if their RPA has a large radius such as 25 miles. This is because there are likely to be sufficient deaths from Covid-19 or Reported Cases to do so, even if those deaths or Reported Cases are a significant underrepresentation of the likely true number infected.

8.5 However, for policyholders in more rural locations, especially in early March (when testing was particularly low), there may be insufficient deaths or Reported Cases to demonstrate the presence of at least 1 case of Covid-19 in the RPA during the relevant period.

8.6 In either case – whether in a densely-populated or less densely-populated area – the Court declared that policyholders can use 'an undercounting analysis – albeit absolute precision is not required to discharge the burden of proof – to demonstrate the likely number of actual cases of Covid-19 in the relevant policy area'.

8.7 The question is what sort of 'undercounting analysis' may be used to 'demonstrate the likely number of actual cases of Covid-19' in the RPA. The Court declined to provide detailed guidance on that question, because it did not hear expert evidence, but it would involve a methodology for estimating the likely true number of infected individuals, relative to the figure in the Reported Cases – namely, the degree to which infected cases were 'undercounted'.

Epidemiological modelling reports

8.8 In the Court proceedings, we identified 2 scientific reports as examples of estimates of the likely number infected in March, one of which was produced by Imperial College (Imperial Report) and the other by Cambridge University together with Public Health England (Cambridge/PHE Report).

8.9 The Court held that 'the insurers have accepted that insureds can seek to rely on the specific reports identified in this case' (Judgment paragraph 579) – being the Imperial Report and the Cambridge/PHE Report. The insurers in the Court proceedings did not accept the reliability of these reports and sought a ruling that policyholders be required to prove that any undercounting reports or methodologies on which they sought to rely were 'reliable', but the Court specifically declined to make a ruling or declaration to that effect (see paragraph 8.19(1) below).

8.10 The original Cambridge/PHE Report can be found at https://www.mrc-bsu.cam.ac.uk/tackling-covid-%2019/nowcasting-and-forecasting-of-covid-19/ with the latest report available at https://www.mrc-bsu.cam.ac.uk/now-casting/report-on-nowcasting-and-forecasting-26th-november-2020/. The Cambridge/PHE Report also estimated the likely true number of infected peoples in March 2020, for England and for each of England's regions. In the 'Infections and Deaths' part of the report, it is possible to view the graphs based on, for example, Infection Incidence (daily totals) and Cumulative Infections (accumulated daily totals over time). See also paragraphs 41 to 46 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings.

8.11 The Imperial Report estimated the number of infections of Covid-19 during March 2020 in 11 countries, including the UK. Its work on this subject was subsequently published following peer-review in Nature, a well-respected journal. The peer reviewing process means that other experts have scrutinised the methodologies and results of the report before permission has been given to publish the work in the journal. The model behind the report 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)..

8.12 Imperial's work influenced the UK Government in its approach to measures to take to prevent the spread of the virus and protect the NHS. Imperial concluded: 'In all countries, we estimate there are orders of magnitude fewer infections detected than true infections, most likely due to mild and asymptomatic infections as well as limited testing capacity'. See also paragraphs 41 to 46 of 'Agreed Facts 3 – Prevalence of Covid-19', one of the documents in the Court proceedings. This overall conclusion is in line with the undercounting in the UK reported in the Cambridge/PHE Report and a further study by Oxford University.

Imperial College data at local authority level

8.13 We have re-published data previously published by Imperial College (using the model behind the Imperial Report) showing their estimate of infections (in the following sections we refer to these as "cases") at the LTLA level during the early stages of the pandemic ('Imperial Data'). We consider that the Imperial Data is a reliable estimate of the number of cases present in LTLAs during March 2020 and later periods. It is the best available evidence of estimated cases at LTLA level that we are aware of at the date of this guidance.

8.14 The Imperial Data is presented in an excel spreadsheet with the number of new cases on any given day. To find the number of new cases for the relevant date in your area:

(i) Find your LTLA/Area in the spreadsheet (our example below uses Guildford). The Areas are ordered alphabetically.

(ii) Identify the relevant date for your estimate. These are recorded under the heading 'Period start'.

(iii) The Spreadsheet should present you with the relevant data.

The estimate of the number of new cases on any given day is shown in the column 'Value'. 'CIlow' and 'CIup' report the lower and the upper bound of the statistical 90% confidence interval, respectively.

8.15 In the example in the table below, which is for 21 March 2020 in Guildford, the lower bound 'CIlow' estimate is 93.2 and the 'Value' point estimate represents the 'best estimate' of the true number of new cases, 198.1[3].

Area	Type	Value	CIlow	CIup	Period start	Period end	Coverage
Guildford	Infections	198.1	93.2	348.6	21/03/2020	21/03/2020	0.9

Policies which require that Covid-19 was 'manifested'

8.16 If a policy requires that Covid-19 was 'manifested' within the RPA, that means that a person displayed symptoms of, or was diagnosed with, COVID-19 (whether or not they displayed symptoms[4]). The Imperial Data is of all Covid-19 cases, whether symptomatic or asymptomatic. Accordingly, a policyholder with 'manifested' language in their policy will need to apply a reduction to the number of cases. We suggest that a reduction of 28% is appropriate as representing a good estimate of the proportion of asymptomatic cases.[5] For example, if the Imperial Data suggests that the estimated cumulative number of new cases in Guildford on 21 March 2020 was 198.1, then the estimated number of new cases 'manifested' in Guildford on that day would be 198.1 x (100-28)/100 = 142.6.[6]

[3] In formal statistical language, this point is a central tendency estimate. For further details on the used estimator please see https://static-content.springer.com/esm/art%3A10.1038%2Fs41586-020-2405-7/MediaObjects/41586_2020_2405_MOESM1_ESM.pdf, page 5.

[4] This was Declaration 7 given by the High Court. As at the date of this guidance, this Declaration has been agreed between the FCA and insurers in the Court case.

[5] This figure was produced in a paper produced by NERVTAG https://www.gov.uk/government/publications/nervtag-rapid-review-of-the-asymptomatic-proportion-of-pcr-confirmed-sars-cov-2-infections-in-community-settings-9-september-2020 on the proportion of asymptomatic COVID-19 cases and considered at SAGE 56 on 10 September 2020.

[6] If a policy requires that Covid-19 was "sustained" or "occurred" within the RPA, that means so that it could be diagnosed, whether or not it was verified and *whether or not the person was symptomatic* (Declarations 5 and 6). It is therefore not necessary to reduce the number of estimated cases in the same way.

Level of proof provided

8.17 As described above:

- the precise number of cases of Covid-19 in an RPA on any date can never be known
- the Imperial Data is derived from a peer-reviewed model that 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)
- the High Court accepted that a policyholder may use an undercounting analysis and that absolute precision is not required to discharge the burden of proof

8.18 Our rules require insurers to handle claims fairly and not unreasonably reject them. In that context, if the 'value' estimate from the Imperial Data is equal to or greater than 1, we consider this is cogent evidence of the presence of at least 1 case of Covid-19 in the LTLA (and therefore within any RPA where the LTLA falls entirely within the RPA) which will discharge a policyholder's burden of proof for the purposes of our rules.

8.19 The insurer may seek to challenge whether that evidence discharges the policyholder's burden of proof, however:

1. The insurers in the trial sought a Court ruling that policyholders must prove the Imperial Report to be 'reliable', but the Court refused to make that ruling and it is not part of the Declaration. See pages 7 to 26 of the transcript of the hearing of the High Court on 2 October 2020.
2. The Court in its Declaration confirmed that 'absolute precision is not required to discharge the burden of proof', so in the FCA's view an approximation using the Imperial Data should be sufficient.
3. The Court in its Judgment stated, at paragraph 579: 'The concessions which have been made by the insurers are important. It is our hope and expectation that in the light of them insurers will be able to agree on any issues of prevalence which actually arise and are relevant to particular cases.' In addition, our rules require an insurer to act fairly when assessing claims. So we expect insurers to provide fair consideration and assessment of any evidence that policyholders submit.
4. The Court also stated, at paragraph 578, that, although an insurer can challenge a policyholder's evidence, 'if it does not do so, then it is much more likely that the court will find that the burden has been discharged'. Therefore, if the insurer does not put in counter-evidence, the policyholder is more likely to have discharged the burden of showing the distribution of cases in the RPA.
5. If the insurer does put forward counter-evidence, we consider that fair handling of a claim means that:
    - the counter-evidence will need to be more cogent than the evidence put forward by the policyholder to put the burden of proof back onto the policyholder;
    - the counter-evidence will need to be additional to that already presented to the FCA (as set out in the Feedback Statement to this guidance); and
    - the insurer will need to clearly explain to the policyholder why, for the policyholders' particular claim, the policyholder's evidence does not discharge the burden of proof in relation to the minimum requirements of

the policy (normally just one case of Covid-19 in the RPA) and why the insurer's counter-evidence is more cogent.

9 Guidance for policyholders – Geographical distribution methodology

Policyholders who can use this chapter

9.1 This chapter can be used by policyholders with premises in any nation of the UK where the RPA is entirely within a local authority or straddles one or more local authorities. We will shortly publish a Covid-19 Calculator that a policyholder can use to gather the Reported Cases and Estimated Cases evidence below.

Policyholders in all nations of the United Kingdom

9.2 Court declaration 8.2(e) states that policyholders can in principle use:

'a distribution-based analysis – albeit absolute precision is not required to discharge the burden of proof – to demonstrate the geographical distribution of Covid-19 cases (where the policyholder relies on ONS Death Data or Reported Cases in an LTLA or another reporting area, and the relevant policy area is entirely within, or intersects, the LTLA or another reporting area).'

9.3 That declaration relates to the scenario where the RPA is entirely within, or straddles, the LTLA or other region for which data is available. As an example, in the map below, the 25-mile RPA from premises in Newquay (approximated by the circle) is entirely within the LTLA of Cornwall:

Figure 3: Example of the 25-mile RPA from premises in Newquay

9.4 In that situation, some of the ONS Death Data (Chapter 6), Reported Cases (Chapter 7) or Estimated Cases (Chapter 8) for the LTLA (in the above example, Cornwall) may have occurred within the RPA circle, while others may have occurred outside it. A policyholder can only rely on ONS Death Data, Reported Cases or Estimated Cases which have occurred within the RPA.

Identifying ONS Death Data, Reported Cases or Estimated Cases within the RPA

9.5 The question is how to identify which of the LTLA's cases have occurred within the RPA circle. The Court's Declaration states that a policyholder may rely on 'a distribution-based analysis' to show the geographical distribution of Covid-19 cases (inside and outside the RPA), and that 'absolute precision is not required to discharge the burden of proof'.

9.6 The Court did not provide guidance on the particulars of the 'distribution-based analysis'. It is open to an individual policyholder to suggest a method – which may be based, for example, on evidence that a hospital or other location in the RPA had cases of Covid-19. During the trial, we proposed a 'weighted averaging' approach (described below), which the Court did not specifically adopt or reject, but we consider it is a reasonable approach.

9.7 Doing the calculation for the 'weighted averaging' approach can be complex. We will shortly publish a Covid-19 Calculator to carry out the 'weighted averaging' of the Reported Cases and Imperial Data of Estimated Cases (but not ONS Death Data). 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. The following paragraphs explain the steps that our Covid-19 Calculator takes.

9.8 For the 'weighted averaging' methodology, our calculator operates as follows (with the description given in relation to Estimated Cases, but it also could in principle, be used for any type of Covid-19 case data in any area):

1. Find the number of new cases on a given day for the relevant LTLA in the Imperial Data. This is in the 'Value' column in the Imperial Data
2. Identify the postcodes within the RPA (example)
3. Find the population of every postcode identified in (ii) using Census data (example)[7]
4. Identify the LTLA(s) for all postcodes identified in (ii), (example)
5. Calculate: (a) the population of every LTLA identified in (iv) (which can be found on the ONS website), (b) proportion of the LTLA's population located in the RPA
6. apply an equivalent proportion of the middle bound 'Value' Estimated Infections of the LTLA computed in (v)(b) as being in the RPA. For example, if two-thirds of the LTLA's population are located in the RPA, then regard two-thirds of the middle bound 'Value' Estimated cases for the LTLA are treated as being in the RPA. If the RPA straddles more than one LTLA, the calculation above is then repeated for

[7] Please note that population data for postcodes in Northern Ireland which have 1, 2 or 3 households and have less than 10 usual residents have been suppressed [replaced] with '*' for confidentiality reasons. The combined counts for the 4,964 suppressed postcodes are: 23,143 all usual residents, 11,911 males, 11,232 females, 9,308 households. We recommend the following procedure to handle the missing population data. Information on the supressed postcodes is given in the "Person and Household Averages for Suppressed Postcodes in Postcode Districts" table (available in a zipped archive along with the main dataset). The table contains the "Postcode Districts" workbook. For every postcode in the policyholder's RPA with missing population count data, they can look up the relevant postcode district and a corresponding number in the "Average Usual Residents per suppressed Postcode" column of the mentioned workbook. We recommend that this number is then used to replace the missing population data for a particular postcode in order to calculate the appropriate weights for the case averages. This procedure needs to be repeated for every postcode for which the population data is suppressed.

each relevant LTLA and the resulting number is the sum of each calculation for the LTLAs.

See, for further information and useful web links, paragraphs 32 to 34 of Agreed Facts 3 – Prevalence of Covid-19, one of the documents in the Court proceedings.

9.9 We appreciate that the 'weighted averaging' approach only produces an approximation of how many of the Estimated Cases (by LTLA from the Imperial Data) are within the RPA. The spread of Covid-19 does not correlate precisely to population size and cases may be concentrated in particular areas due to factors such as the presence of hospitals or 'super spreader events'. On the other hand, 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 (*Nature* magazine article). Also, there are other factors that 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. As the High Court said, 'absolute precision is not required to discharge the burden of proof'.

Policies which require that Covid-19 was 'manifested'

9.10 For the reasons described in paragraph 8.16, if a policy requires that Covid-19 was 'manifested' within the RPA, we suggest that a reduction of 28% is appropriate to the output from the above methodology or our calculator (if the output is estimated rather than reported cases).

Level of proof provided

9.11 Our rules require insurers to handle claims fairly and not unreasonably reject them. In that context, we consider that a policyholder will have cogent evidence of the presence of at least 1 case of Covid-19 in the RPA that will discharge the policyholder's burden of proof for the purposes of our rules if:

1. the above methodology, and or the output of our calculator, shows a number of estimated or reported cases equal to or greater than 1 (applying a 28% discount if the policy requires that Covid-19 was 'manifested' in the RPA);
2. the policyholder is an SME (meaning, in this context, an eligible complainant for the Financial Ombudsman Scheme (as defined in DISP 2.7.3R); and
3. the relevant LTLA(s) have an area in the region of or smaller than the RPA (LTLA areas can be found on the ONS website. In particular, for a 25-mile RPA (area c.1,960 square miles or c.5,085 square kilometres), this will be the case for all LTLAs (other than in the Highland Council of Scotland).

9.12 We do not consider that it would be reasonable to expect an SME policyholder in such circumstances to obtain their own expert evidence to put forward a claim.

9.13 In other cases, we consider that the above methodology and the output of our calculator, if it shows a number of estimated or reported cases in the RPA equal to or greater than 1, will provide indicative evidence of the presence of Covid-19 in the RPA. Depending on the results of the calculation (a higher number of cases is more indicative of Covid-19 than a lower number) other evidence may be required to satisfy the burden of proof. This could include (where it is fair and reasonable of an

insurer to request it) information about the demographics of the RPA, the movements of people in and around the RPA, and the likelihood that there are cases locally. In particular, for 1-mile RPAs where the relevant LTLA(s) are significantly larger than 3 square miles (8 square kilometres), and for a 25-mile RPA in the Highland Council of Scotland, the 'scaling down' of the estimated case numbers from LTLA level to the RPA makes the evidence indicative only.

9.14 The insurer may seek to challenge whether the methodology or the output of our calculator discharges the policyholder's burden of proof. What we say in paragraph 8.19 applies to such a challenge.