



Covid-19

Central Bank Business Interruption Insurance Supervisory Framework

November 2020

Background

COVID-19 has caused significant hardship to many Irish businesses, especially those within the hospitality sectors. Many small and medium sized businesses (e.g. restaurants, pubs, cafes, entertainment venues) have had to close their doors or cease operations as a result of COVID-19. Not only has this severely impacted their ability to serve their customers, but, for some, it has led to indefinite disruptions that are impacting their bottom line. Many businesses have Business Interruption policies (BI) which provide cover for losses arising from an interruption. Most SME policies are focused on property damage and have only basic cover for BI. Some policies also cover for BI from other causes, in particular “infectious” or “notifiable” disease. Many of these policies often define “infectious disease” by reference to an exhaustive list of such diseases and COVID-19 had not been identified when many of the affected Irish Businesses took out their policies. Other policies describe “infectious disease” as one which is notifiable to health authorities in Ireland, which includes COVID-19 since February 2020. The focus has now turned to determining if these policies provide cover for the losses arising from the measures taken by the Government following the outbreak of COVID-19.

The Central Bank of Ireland (CBI) recently published the ‘[COVID-19 and Business Interruption Insurance Supervisory Framework](#)’. This Framework sets out what it expects from insurers when dealing with claims arising from BI insurance policies as a result of the current pandemic. This Framework also sets out how it will engage with the insurers and its overall approach to supervision including escalation of any issues identified.

March

The CBI set out its expectations of insurers in dealing with COVID-19 claims in the “Dear CEO” [letter](#). Within this letter Deputy Ed Silbley clearly noted that the CBI expects boards and firms to consider the impact when making decisions and to engage with customers in an **open, fair and transparent manner at all times**.

August

Publication of the COVID-19 and Business Interruption Insurance Supervisory Framework which sets out five expectations of insurers (and which aligns to the Dear CEO letter issued):

01

Insurers are expected to comply with all legal and regulatory obligations.

02

Senior Management are expected to be responsible and accountable.

03

Insurers are expected to treat the Government communication to businesses in March 2020 to close their business as a direction / mandate / order.

04

Insurers are expected to interpret unclear policy wording in the way most favourable to the customer.

05

Insurers are expected to handle claims and legal actions effectively and efficiently and pay reasonable costs incurred by the customer where a court rules in favour of the insurer (i.e. refrain from seeking its costs from the policy holder).





Recent UK Adjudication

In the UK, some insurers have accepted liability under BI policies. A significant number of insurers have also disputed liability where policyholders consider liability exists. This has led to widespread concern about the lack of clarity. On the back of this widespread concern, the Financial Conduct Authority (FCA) brought a test case before the courts in order to resolve the lack of certainty for policyholders.

A representative sample of standard-form BI policies issued by eight insurers were brought before the High Court in the UK. The court was asked to consider 21 “lead” policy wordings. The type of policy constructions considered included:

- Policies requiring an occurrence of a notifiable disease within a specified distance of the insured premises
- Policies which respond to restrictions or prohibitions imposed by public authorities
- Policies requiring prevention of access to premises

For more details on the case and the decision made by the court please refer to the FCA's [summary page](#).

While different conclusions were reached in respect of each policy wording, the court found in the favour of the FCA on the majority of the key issues. The FCA argued on behalf of policyholders that the ‘disease’ and/or ‘denial of access’ clauses in the representative sample of policy wordings provide cover in the circumstances of the COVID-19 pandemic, and that the trigger for cover is caused by policyholders’ losses.

The judgement did not conclude that the eight defendant insurers are liable across all of the 21 different types of policy wording in the representative sample considered by the court, but that each policy needs to be considered by the insurers in detail considering the judgement. Whilst it is likely that the judgement will be appealed, this judgement will bring welcome news for many policyholders in the UK.

In Ireland, whilst the judgement is not binding in this jurisdiction, it is indicative of how an Irish court may approach these issues.

Central Bank BI Framework

The CBI expectations are set out on the previous slide, below we have summarised how the Framework is being implemented and how the CBI is engaging with insurers. The foundations of the Framework are ultimately based on **Legal considerations, Customer Expectation & Regulatory considerations.**



Module 1 – Scope, Information Gathering & Certification

- CBI using its statutory enforcement powers to gather information from 26 insurers in relation to:
 - Processing and handling of claims
 - Calculation of losses under BI policies
 - On-going and concluded legal actions (including FSPO complaints)
 - Information regarding settlements and any wider impact for similar customers



Module 2 – Analysis and Categorisation

- CBI will analyse and categorise the information from Module 1 focusing on three main issues:
 - Whether appropriate cover was in place (Cover). Policy wording will be analysed to determine if it provides cover for interference or interruption
 - Whether COVID-19 resulted in loss (Causation)
 - Compensation payment and claims handling



Module 3 – Supervisory Engagement and Escalation

- Assessment of what supervisory engagement and/ or escalation is required in respect of the CBI investigations as outlined in Module 1 and 2 above
- As part of this Module, the CBI will apply its discretion and act with versatility in order to find the best resolution of issues for customers
- Module 3 will include categorising policies into **responsive policies, potentially responsible policies, nonresponsive policies, quantum and claims handling** and it also sets out the CBI expectations for each category



Module 4 – Legal Action Outcomes – Wider Beneficial Impact Assessment

Where relevant legal action has taken place, the CBI as part of Module 4 expects the insurers to carry out an impact assessment to assess whether similar customers are impacted following the decision (i.e. determine the systemic nature of the decision).

Comparisons with the Tracker Mortgage Examination (TME) Framework

The Framework has a number of parallels with the TME Framework that the Central Bank published in December 2015. Those include:

- **Scope, Information Gathering & Certification**

- Documentation assessment (policy wording and associated artefacts): The TME Framework required a comprehensive collation and assessment of a range of documentation across the end to end customer journeys, including the Broker sales process, to ensure that the documentation is clear and transparent to a customer and that no conflicting information was provided to the customer. This is similar to the expectations of the CBI under the BI Framework.
- Complaint / claims process and assessment: Like the TME Framework a comprehensive analysis of complaints is required to identify any themes arising from complaints when considering customer journeys. The CBI expects that insurers are handling complaints consistently and customers are treated fairly. Similarly the review of complaints can indicate the manner in which the policyholder interpreted the product, the sales journey and other key aspects that warrant consideration. Similarly for claims, as part of the BI Framework, the CBI expects that claims are considered in light of decisions made (i.e. all claims are revisited to determine if denied claims were appropriate).

- **Analysis and Categorisation & Supervisory Engagement**

- Segmentation / Categorisation - Similar to the TME Framework, all BI Policy Holders are required to be segmented into various categories and assessed. Insurers will be required to have robust processes in place to ensure that the population segmented is complete and accurate.
- Alignment to T&Cs – Similar to the TME Framework, policies will need to be aligned to T&Cs and key underlying documentation / potential influencing factors as part of the categorisation / segmentation.
- Causation: The TME required causation to be assessed where a customer was deemed impacted by a tracker related issue. The BI Framework where cover is deemed in place requires a causation assessment to be undertaken. It is not clear if this includes compensation where a claim was originally declined, however it is likely under Module 3 that the CBI may require this as was the case for the TME.

- **Legal Action Outcomes – Wider Beneficiation Impact Assessment**

- Wider impact assessment: Like the TME, the BI Framework requires an impact assessment to ensure that all decisions made align to the expectations of the Framework and if decisions impact other customers (i.e. determine the systemic nature of the decision)
- Customer focus: The TME, like the BI Framework is broader than taking a legalistic view of documentation and policy interpretation. Both Frameworks are clear in that firms require a customer focused approach and like the TME Framework, the BI Framework expects insurers to treat its customers through the lens of its regulatory obligations

- **Spirit of the Framework** – overall the spirit of the BI Framework is very similar to the TME Framework and in particular to find the best solution for customers in a timely manner, taking a broader view than a legalistic view of the customer journey, ensuring the expectation of a customer is considered and that all regulatory requirements have been considered. The requirement for a Senior Manager to certify the completeness and accuracy of the information provided to the CBI and have overall responsibility for the assessment of claims and prompt payment where cover is in place requires firms to ensure that the process undertaken is robust, fulsome and demonstrates a clear audit trail supporting the full Framework requirements.



Our Top Tips

1



Be proactive and not reactive to the CBI Framework (get out in front)

2



Ensure you have sufficient resources for all stages of the Framework implementation

3



Be prepared to work to expedited timeframes to address remediation steps

4



Ensure you have a robust QA process in place so Senior Managers can certify the completeness and accuracy of response to CBI & treating policy holders fairly

How should you approach this?

Whilst the CBI's engagement with Insurers is ongoing through the implementation of the 4 Modules of the Framework, Insurers should be alert to the requirements of this Framework and establish a programme of work to address the CBI requirements and get out in front to identify potential exposure or impacted customers. The establishing of a programme is further heightened considering that the CBI expects insurers to address any remedial action to expedited time frames.

Below we have set out various workstreams to consider when establishing a programme. We would be more than happy to discuss the activity within each workstream in more detail:

01

Project setup

02

Population Identification

03

Documentation Assessment

04

Complaints Assessment

05

Categorisation of policies

06

Claims Assessment

07

Remediation or rectification

08

Product Future Proofing

How can KPMG help?

Our cross functional team made up of **Regulatory, Actuarial and Risk Consulting experts** can help you establish a project in response to the CBI BI Supervisory Framework. We have extensive experience and will support you to get in front of this and to make decisions that are right for you, your customers and aligned to the CBI expectations. We can assist you with the following:

01

Establish a programme to address the CBI BI Framework or assess your current programme in place to ensure it addresses the CBI requirements. We can also support your response to the CBI

02

Support you in ensuring your **approach is clearly documented** and ensure the effective implementation and governance of its compliance with the CBI BI Framework

03

Support you in identifying the **population of BI policyholders**

04

Establish a **policy Framework and assess policy wording** (and supporting documentation) using independent Regulatory, Conduct risk and Actuarial experts. We can provide a challenge on interpretation of policy wording

05

Using this Framework, we can help **segment the policies into risk buckets** aligned to the CBI Framework

06

Assist with the **assessment of complaints and customer communications** to determine if there is reasonable expectation from policyholders of cover

07

We can support you in **establishing a complaints management team** to deal with the likely influx of complaints

08

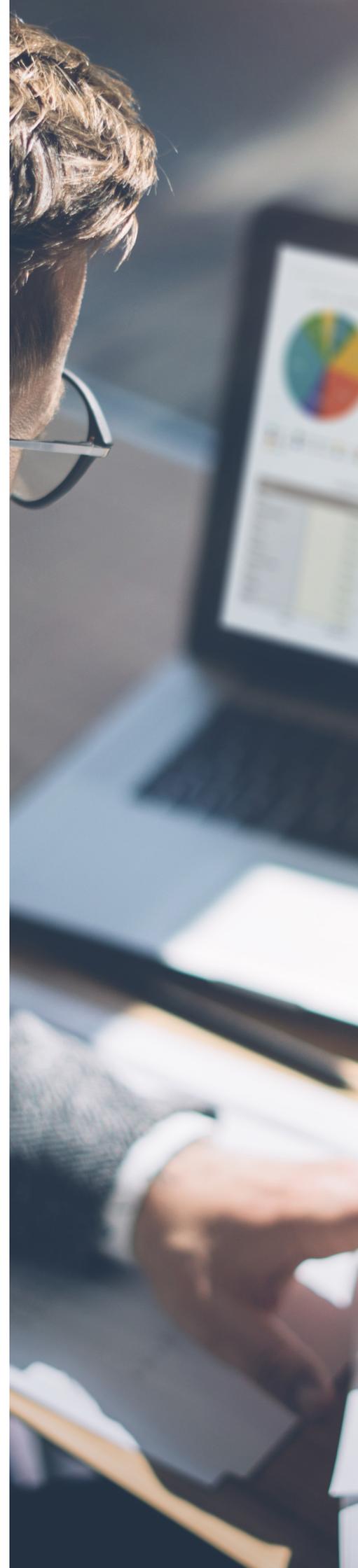
We can help you **design a remediation approach** to deal with the impacted population (and systemic nature of decisions) in a timely manner

09

We can help **future proof your products** and ensure there is a **robust product oversight process** in place

10

Assessment of the work completed in response to the BI Supervisory Framework to ensure it is meeting the CBI's expectations



Our experience



Tracker Mortgage Examinations & PPI

Our conduct risk and remediation team has extensive experience in establishing and executing programmes as a result of a CBI Framework. We worked with four of the top five Banks on their TME programmes. In addition our team assisted a number of Banks in response to the CBI PPI Framework.

Complaints & Claims

We have extensive experience in assessing complaints and providing robust challenge to clients. Our team also has experience in building a complaints management system with sophisticated reporting and theme / trend analysis



Insurance experts

Our BI team is made up of Insurance experts who know the insurance industry. This team is complimented by our conduct risk and remediation experts who have extensive experience in supporting clients implement CBI Frameworks

Conduct risk & Product oversight

Our team has extensive experience in conduct risk projects across all financial services industries. We work closely with the CBI and know its expectations when it comes to the customer. We also have a team of experts who have extensive experience in product oversight, assurance and future proofing



Contact our team



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