



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

COVID-19 and Business Interruption Insurance Supervisory Framework

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Part 1 - Background and Central Bank Expectations

Background

1. The outbreak of the COVID-19 virus in Ireland and the associated public health initiatives that were necessitated to halt its spread through the population have created significant economic disruption and upheaval. The Infectious Diseases (Amendment) Regulations 2020 on 20 February 2020 made COVID-19 a notifiable disease for the purposes of the Infectious Diseases Regulations 1981. The Health Act, 1947 (Affected Areas) Order 2020 declared the State (being every area or region thereof) to be an area where there is known or thought to be sustained human transmission of Covid-19. There was an outbreak of COVID-19 in almost every part of Ireland and these outbreaks led to the closure of businesses and restrictions in activity imposed by the Government in mid-March in an attempt to halt its further spread.
2. Arising from the measures taken by the Government following the outbreak of COVID-19 in Ireland, the issue of whether or not certain Business Interruption (“**BI**”) insurance policies provide cover for the losses arising from these measures has become a central issue both in Ireland and internationally. The Central Bank has been conducting extensive supervisory engagement and legal analysis in relation to these issues since they have arisen in Ireland.
3. The Central Bank serves the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers and the wider economy. One of the Central Bank’s key objectives is to promote early resolution of issues which create uncertainty in the market and which cause or have the potential to cause consumer or customer harm. The Central Bank has no tolerance for systemic consumer or customer harm to go unresolved. Arising from the current crisis, and in line with our mission, the Central Bank has established the COVID-19 and Business Interruption Insurance Supervisory Framework (the “**Framework**”), which is further outlined below.

Central Bank Expectations

4. The Central Bank has a number of expectations of regulated financial service providers (“**RFSPs**”) in the context of the implementation of the Framework, some of which were initially outlined in our letter to industry of 27 March 2020.

Compliance with Legal and Regulatory Obligations

5. The Central Bank expects RFSPs to adopt a customer first approach to the resolution of issues identified in the context of this Framework. First and foremost, RFSPs must assess these issues in line with their obligations to act honestly, fairly and professionally in the best interests of customers and with due skill care and diligence. RFSPs must at all times analyse their actions and decisions in relation to their treatment of customers through the lens of their obligations under the Consumer Protection Code 2012, the Insurance Distribution Regulations 2018 and other regulatory requirements. Where the Central Bank identifies issues of concern in relation to the treatment of customers and/or issues of interpretation of BI insurance policies, we expect RFSPs to take immediate remedial action in line with our communicated expectations.

Senior Management and Board Accountability

6. As outlined in our letter to industry of 27 March 2020, both the Board of Directors and senior management within an RFSP have a responsibility for ensuring that issues related to BI insurance policies and COVID-19 related claims are handled in line with the RFSP's legal and regulatory obligations. The Central Bank expects the full co-operation of the Board of Directors and senior management with the implementation of the Framework. In particular, co-operation is expected by the Central Bank in relation to the certification of required information and in the consideration and implementation of the communicated views and expectations of the Central Bank.

Government Direction and/or Mandate and/or Order

7. Where BI insurance policy wording provides that **cover** is dependent on there being an imposed closure of a business by reason of an order (or other similar language) of a Government or other public authority, it is the Central Bank's firm view that the Government's communication to the country in March to close businesses as a result of the outbreak of COVID-19 in Ireland should be treated as an order and/or direction and/or mandate (or other similar language) for the purposes of determining the issue of **cover**.
8. The Minister for Finance, by letter dated 27 March 2020, clarified that the Government's communication to close businesses was a direction and/or mandate and that no attempt should be made by RFSPs to equivocate on this issue to avoid an obligation under a BI insurance policy. We reiterated this view in our letter to industry of 27 March 2020.

9. Further, Insurance Ireland made written representations to the Minister for Finance on 3 April 2020 confirming that “*the Government advice to close a business in the context of COVID-19 should be treated as a direction.*”
10. Arising from the above, any attempt by an RFSP to deal with the issue of **cover** in a BI insurance policy in a manner that disregards the Minister for Finance’s clarification, our clear expectations in relation to this issue and the representations made by Insurance Ireland will be a matter of serious and immediate concern to the Central Bank.

Unclear Policy Wording – Interpretation Most Favourable to the Customer

11. The Central Bank is aware that in many cases BI insurance policy wording will be clear in relation to customer entitlements concerning COVID-19 related claims. However, where there is a doubt about the meaning of a term, the interpretation most favourable to the customer should prevail.
12. In assessing whether or not policy wording is unclear, RFSPs are expected to undertake the following steps:-
 - (i) Review customer communications including queries, complaints and claims to assist in assessing what customers reasonably understood;
 - (ii) Assess whether there were conflicting communications to customers from its own staff and/or any intermediaries dealing with the policyholder in relation to whether the BI insurance policy was responsive to COVID-19 related claims;
 - (iii) Ascertain what understanding its own staff had of the meaning of the relevant policy wording in respect of COVID-19 related claims and whether this changed over time; and
 - (iv) Consider any internal discussions and/or debate and/or disagreements and/or concerns in relation to the interpretation of the relevant policy wording.

Claims Handling – Legal Actions

13. Firms must ensure that they handle claims effectively and properly and, where appropriate to do so, they must offer assistance to their customers in the process of making a claim, including, where relevant, alerting their customer to policy terms and conditions that may be of benefit to the customer. Any claim settlement offer made to a claimant must be fair, must take into account all relevant factors having regard to the terms of the policy and any representations made to the policyholder and must represent the firm’s best estimate of the claimant’s reasonable entitlement under the policy.

14. Where policyholders have commenced litigation against an RFSP, and it is agreed between the parties that the case has the potential to act as a “test case” for the determination of issues in relation to BI insurance policies for wider groups of customers, the Central Bank has the following expectations:-
- (i) RFSPs should be cognisant of the significant costs burden faced by such plaintiff policyholders and should consider how the issues in dispute can be narrowed to ensure that the litigation can proceed in the least costly and most expeditious manner possible, reflecting the RFSP’s obligation to act fairly, honestly and professionally in the best interests of its customers;
 - (ii) In circumstances where the RFSP obtains the benefit of a court’s interpretation of the relevant policy wording in its determination, and in consideration of the financial burden placed on the customer plaintiffs to mount the litigation to have their claims under the policy determined, an RFSP should agree:-
 - (a) to pay the reasonable costs of such customer plaintiffs in agreed test case litigation, to be assessed in default of agreement; and
 - (b) should not seek its costs against these plaintiffs.
15. Finally, as outlined below, it is the Central Bank’s clear expectation that where a legal action has been concluded and the final outcome/s may have a wider beneficial impact for similar groups of customers, then RFSPs should carry out an impact assessment to ascertain whether there is such a wider beneficial impact and take remedial action to ensure that those customers obtain the benefit of the final outcome/s.

Part 2 - Purpose and Objectives

Purpose of the Framework

16. The purpose of the Framework is to outline the overall approach to the identification of potentially systemic issues of customer harm relating to BI insurance, to outline the Central Bank's overall expectations of insurers to address those issues where identified, and to outline briefly the escalation strategy for intervention by the Central Bank to address that harm where necessary.
17. While the Framework is intended to provide clarity around the approach of the Central Bank to these issues, it may be necessary to depart from the matters outlined herein depending on the particular circumstances of the issue arising. The situation in relation to the outbreak of COVID-19 in Ireland and its impact on insurers and customers is constantly evolving and the Central Bank will adapt its strategy as appropriate. The Central Bank may also adapt its approach arising from the information gathered via the implementation of the Framework and the final outcome/s of legal actions. The Central Bank may amend the Framework over time to account for these developments.

The Central Bank's Supervisory Objectives under the Framework

18. It is important to note at the outset that many BI insurance policies are not responsive to the circumstances of business interruption and/or interference related to the outbreak of COVID-19 in Ireland. However, in some cases, BI insurance policies may either be clearly responsive, or a strong or reasonable argument can be made that they are responsive to the current circumstances.
19. In its assessment of whether a BI insurance policy is responsive to the outbreak of COVID-19 and interference and/or interruption to insureds' businesses, the Central Bank will monitor and analyse three broad issues:- (i) Cover and (ii) Causation and (iii) Quantum and Claims Handling. These issues are dealt with in greater detail later in the Framework.
20. The overall objectives of the Central Bank in the implementation of the Framework, and in the analysis of these issues, are as follows:-

Responsive Policies – Issues of Cover and Causation are Clear

In certain BI insurance policies, the policy wording will be clear in favour of the customer, subject to certain factual matters being established, in relation to the issue of **cover** and the satisfaction in principle of **causation**. In these circumstances, the Central Bank shall endeavour to ensure that all customer claims are accepted and processed in accordance with our expectations and in line with the relevant RFSP's legal and regulatory obligations. In pursuing this objective the Central Bank shall:-

- (i) Identify standard and commonly applied contractual provisions relating to BI insurance policies that, in the view of the Central Bank, clearly provide **cover** for COVID-19 related interruption and/or interference to businesses and where **causation** can in principle be established;
- (ii) Monitor the RFSPs' positions on **cover** and **causation** and claims processing in respect of these policies.
- (iii) Where it is accepted that **cover** and **causation** have been established in principle, engagement to ensure that claims are handled in accordance with the RFSP's legal and regulatory obligations;
- (iv) Identify and engage with RFSPs which do not accept that **cover** and **causation** in principle is established – clearly communicate to the RFSP the Central Bank's view and expectations that the RFSP should accept that these issues are established in respect of the relevant policy.
- (v) Challenge RFSPs where necessary and require that RFSPs comply with their obligations to customers under these policies;
- (vi) Once a resolution has been reached, require RFSPs to carry out an impact assessment and apply any beneficial impact of the resolution to all similar groups of customers.

Potentially Responsive Policies - Strong or Reasonable Argument that Issues of Cover and Causation arise under the Policy

In certain BI insurance policies, strong or reasonable arguments may be made on the basis of policy wording in favour of the customer in relation to **cover** and the principles of **causation**, subject in the case of some policies to certain factual matters being established by customers. The Central Bank shall challenge RFSPs where necessary with the aim of ensuring that prompt action is taken by the RFSP or may itself take action where necessary to ensure that there is a final resolution of each of these issues separately or together. The Central Bank shall endeavour to ensure that any resolution in favour of a customer is applied in a consistent and fair manner across all similarly affected customers. In pursuing this objective the Central Bank shall:-

- (i) Identify standard and commonly applied contractual provisions relating to BI insurance policies where in the view of the Central Bank a strong or reasonable argument can be made that there is **cover** for COVID-19 related interruption and/or interference to businesses and that **causation** may in principle be established;
- (ii) Monitor the RFSPs' positions on **cover** and **causation** and claims processing in respect of these policies;
- (iii) Identify and engage with RFSPs that do not accept that **cover** and/or **causation** or both are established - intervene to seek to bring clarity to the position as quickly as possible by communicating the Central Bank's view and ensuring a resolution of the issue/s.
- (iv) Once a resolution has been reached, require RFSPs to carry out an impact assessment and apply any beneficial impact of the resolution to all similar groups of customers.

Quantum and Claims Handling

Once **cover** and **causation** are established under a BI insurance policy, or these issues have been resolved in favour of the customer, the Central Bank shall ensure that any customer claims are processed and handled and that losses are calculated in line with the RFSP's legal and regulatory obligations. In pursuing this objective the Central Bank shall:-

- (i) Identify BI insurance policies where RFSPs have accepted claims for COVID-19 related interruption and/or interference to businesses and/or where the issues of **cover** and **causation** have been resolved in favour of the customer;
- (ii) Monitor the reliance on and application of contractual terms that relate to loss calculation by RFSPs for compliance with their legal and regulatory obligations
- (iii) Identify and engage with RFSPs where systemic issues across a customer group have been identified in relation to the reliance on and application of contractual terms that relate to loss calculation and clearly communicate to the RFSP the Central Bank's view and expectations of the RFSP;
- (iv) Challenge RFSPs where necessary and aim to ensure that identified systemic issues are resolved by RFSPs.

Final Outcomes from Legal Actions

The Central Bank will monitor ongoing litigation, arbitrations, Financial Services and Pensions Ombudsman (the “**FSPO**”) complaints and settlements in relation to BI insurance policies concerning COVID-19 related claims. The Central Bank shall require that, where individual final outcomes arise that have the potential to beneficially impact customers more widely, RFSPs address this broader beneficial impact. In pursuing this objective, the Central Bank shall:-

- (i) Monitor all ongoing legal actions and engage with the FSPO as appropriate;
- (ii) Monitor all final outcomes of legal actions whether by way of settlement or final decision and/or determination;
- (iii) Engage with RFSPs to determine whether a final outcome of a legal action has a wider beneficial impact for other customers – intervene to seek to bring clarity to the position as quickly as possible by communicating the Central Bank’s views on wider beneficial impact;
- (iv) Once clarity is reached, aim to ensure that an RFSP addresses the wider beneficial impact to other customers.

Part 3 – Structure of the Framework

21. The Framework is made up of four modules, all of which feed into each other and which are being run concurrently. The Central Bank cannot publically communicate on specifics of the supervisory work undertaken or proposed to be undertaken in relation to these modules save to say that a substantial amount of work is already underway and/or has been completed. The Central Bank has established a multi-disciplinary team drawing on expertise from across the Central Bank’s functions to implement the Framework and to deal with the multifaceted and complex issues that may arise in the course of this work.
22. The four modules that make up the Framework are:-

Module 1:- Scope, Information Gathering and Certification
Module 2 – Analysis and Categorisation
Module 3 – Supervisory Engagement and Escalation
Module 4 – Legal Action Outcomes – Wider Beneficial Impact Assessment

Module 1 – Scope, Information Gathering and Certification

23. The Central Bank first had to assess the potential scale of the issue. This was achieved through the issue of surveys and questionnaires to relevant RFSPs. The purpose of these surveys and questionnaires was:-
- (i) To determine which RFSPs were selling BI insurance policies in Ireland and how many such policies had been sold and were in place;
 - (ii) To determine how many of these BI insurance policies provided for “*infectious disease*” cover;
 - (iii) To obtain examples of a wide range of BI insurance policies from across the industry that provided “*infectious disease*” cover for the purposes of carrying out a preliminary analysis and scoping exercise of policy wording that was potentially responsive to COVID-19 related interruption and/or interference to businesses.
24. Following this initial investigation, it was determined that the Central Bank would exercise its statutory information gathering powers in respect of the 26 RFSPs initially identified as

part of the preliminary scoping exercise. The purpose of the exercise of these powers was as follows:-

- (i) To use statutory powers to compel the provision of specific information from each RFSP, and also requiring this information to be certified as accurate and complete by senior individuals within the RFSPs who had authority to bind the RFSP and to sign for and on its behalf. The use of the Central Bank's powers in this manner ensures that appropriate action can be taken by the Central Bank at an RFSP and/or individual level in the event of non-compliance with the statutory request or if the information provided is not correct;
- (ii) To obtain the following specific information:-
 - (a) Confirmation whether the RFSP sells BI insurance policies;
 - (b) The number and name of the BI insurance policies that provide cover for consequential loss arising from an impact and/or interruption to a business relating to a notifiable disease and the business sectors that were covered;
 - (c) Specific information in relation to the trigger for cover for the occurrence of a notifiable disease and/or a business interruption as a result of same. If the RFSP had taken the position that cover was not provided under a relevant policy in various outlined scenarios, the RFSP was required to explain the basis for this position. Finally, the RFSP was required to outline any other COVID-19 related claims that the RFSP believed may or may not be covered by the relevant BI insurance policy and their rationale for these determinations.
 - (d) Copies of the relevant responsive BI insurance policy wordings, whether any wording changes had occurred in those policies in the last six months, and the rationale for those changes.

25. Finally, the Central Bank has commenced and will continue to obtain information in relation to the following matters through a combination of supervisory engagement and the further use of its information gathering powers:-

- (i) Information relating to the processing and handling of claims;
- (ii) Information relating to the processing of claims and the calculation of losses under responsive BI insurance policies to ensure that the claims are being handled properly and in accordance with an RFSP's regulatory obligations;
- (iii) Information relating to ongoing legal actions including court litigation, arbitration and FSPO complaints;
- (iv) Information relating to concluded legal actions, including decisions, determinations and settlements and any wider beneficial impact for similar customers;

- (v) Information relating to specific supervisory concerns arising from the overall review, which information can be utilised by the Central Bank for the performance of any of its statutory functions under financial services legislation.

26. The ultimate aims of Module 1 are:-

- (i) To obtain comprehensive and certified information from RFSPs in relation to the total number of BI insurance policies potentially responsive to the impact on insured businesses of COVID-19;
- (ii) To obtain confirmation from RFSPs as to whether or not they are paying out on COVID-19 related claims in respect of each BI insurance policy they offer;
- (iii) Where an RFSP is paying out on COVID-19 related claims in respect of a BI insurance policy, to obtain confirmation as to their rationale for doing so;
- (iv) Where an RFSP is not paying out on COVID-19 related claims in respect of a BI insurance policy, to obtain a full and complete explanation of the rationale for declining such claims, to be certified by senior individuals within the RFSP;
- (v) To obtain all potentially responsive BI insurance policy wording to allow for independent assessment and assurance by the Central Bank;
- (vi) To obtain all relevant information in relation to claims handling and processing; and
- (vii) To obtain information in relation to final outcomes of legal actions that could have a wider beneficial impact for similar customers.

Module 2 – Analysis and Categorisation

27. The Central Bank’s analysis in relation to the issues of **cover, causation and quantum and claims handling** will be confined to the identification of potentially systemic issues of breaches of legal and regulatory obligations and/or customer harm across groups of customers. This analysis will be based on the Central Bank’s assessment of the relevant facts and the application of policy terms and conditions.
28. It is important that where customers believe that they have a valid claim under their business interruption policy that they notify the RFSP as soon as possible in line with the policy terms and conditions. The Central Bank does not have a statutory role in dealing with individual customer complaints. If customers are deemed by the RFSP not to be covered in relation to their business interruption insurance policy for COVID-19 related interruption and/or interference, they should make a complaint to the RFSP in the first instance if they believe that they have a valid claim. If this complaint is not resolved to the customer’s satisfaction, then they have the option of bringing a complaint to the FSPO and/or arbitration and/or litigation. The Central Bank will continue to monitor the overall approach by RFSPs to business interruption insurance for the purposes of identifying systemic issues that may require its direct intervention to resolve.

A. Cover and Causation

29. The Central Bank’s analysis of the information obtained in relation to Module 1 will focus on three main issues:- (i) Cover and (ii) Causation and (iii) Quantum and Claims Handling. Both **cover** and **causation** must be established under a relevant BI insurance policy before the issue of **quantum and claims handling** becomes relevant.

Cover

Whether or not there is **cover** will depend on the policy wording and the particular factual circumstances underpinning the alleged interference and/or interruption with the insured’s business. As part of this analysis, the Central Bank will mainly be considering policy wording that provides **cover** for interference and/or interruption to an insured’s business where there has been no physical damage to property and where the following are insured events/perils under the policy:-

- (a) There is a notifiable and/or infectious and/or contagious disease (or its equivalent) at or within a certain radius of or within the vicinity of the insured’s premises; and/or

- (b) Where some form of public authority (including the Government) acts or directs or orders or takes some other action that prevents and/or restricts and/or interferes with and/or interrupts access to and/or use of the insured's premises.

This relevant policy wording will be analysed to determine whether it is responsive to the outbreak of COVID-19 in Ireland, the response of the Government and public health authorities and the attendant interference and/or interruption to the insured's business.

Causation

Whether or not **causation** is established will again depend on the policy wording and the particular factual circumstances underpinning the alleged interference and/or interruption with the insured's business. In order to proceed to consider the issues of **quantum and claims handling**, the loss arising from the interference and/or interruption to an insured's business must have been caused by an insured event/peril. Policyholders must be able to establish that the COVID-19 related interference and/or interruption that was covered under the policy caused the loss suffered by the insured. The relevant policy wording will be analysed to determine whether it is responsive to the outbreak of COVID-19 in Ireland, the response of the Government and public health authorities and the attendant interference and/or interruption to the insured's business. The assessment of the issue of causation is necessarily fact-based but the Central Bank will consider any issues of principle relevant to the question of causation under the policy wording.

30. Once the analysis in relation to **cover** and **causation** has been completed, the Central Bank will categorise BI insurance policies as follows for the purposes of Module 3:-
- (i) **Responsive Policies – Issues of Cover and Causation are Clear:-** In certain BI insurance policies, the policy wording will be clear in relation to both the issues of **cover and causation** in favour of the customer.
 - (ii) **Potentially Responsive Policies - Strong or Reasonable Argument that Cover and Causation arise under the Policy:-** In certain BI insurance policies, strong or reasonable arguments may be made on the basis of policy wording in favour of the customer in relation to **cover** and/or **causation**.
 - (iii) **Nonresponsive Policies – Clear No Cover and/or Causation under the Policy:-** In most BI insurance policies, the policy wording will be clear that no argument can be made in relation to the issues of **cover** and/or **causation**.

B. Quantum and Claims Handling

31. Once **cover** and **causation** are established under a BI insurance policy, or these issues have been resolved in favour of the customer, the Central Bank will aim to ensure that any customer claims are processed and handled in line with the RFSP's legal and regulatory obligations. This will include monitoring that the determination of eligible losses is in accordance with the policy terms and conditions.

Quantum and Claims Handling

The issue of quantum is a fact-specific determination that will depend on the individual circumstances of the relevant insured's business. Its consideration will also depend on the exact wording of the relevant BI insurance policy and to what extent any losses incurred can be attributed to a COVID-19 related insured event/peril that is covered by the policy or to other concurrent trends and circumstances. Equally, how claims are handled and processed will be a case-specific matter. The Central Bank's expectations in relation to these issues are that they will be dealt with by RFSPs in line with their legal and regulatory obligations.

Module 3 – Supervisory Engagement and Escalation

32. Once the relevant issues have been identified, analysed and categorised as per Module 2, the Central Bank will move to Module 3 in relation to the relevant BI insurance policies, which will determine what supervisory engagement and/or escalation of the issues identified and categorised in Module 2 is warranted, if at all.
33. It is not possible to categorically outline the nature and extent of the supervisory engagement and/or how that supervisory engagement might be escalated by the Central Bank in the abstract. Each situation is unique and must be addressed in a fair and proportionate manner based on the specific circumstances and the outcomes sought to be achieved by the Central Bank. The Central Bank will apply its discretion and act with versatility in order to find the best resolution of issues for customers and no course of action has been ruled out for consideration by the Central Bank.
34. Quite apart from the general authority exercised by the Central Bank in the course of intensive and intrusive supervisory engagement, the Central Bank has a suite of legal powers that are available to assist it in the carrying out of its functions. Any decision as to the exercise of powers or legal options in the event of non-compliance by an RFSP with its legal and/or regulatory obligations will be a circumstance specific determination depending on the relevant issues, the aim sought to be achieved and the speed at which clarity can be provided to policyholders via the exercise of the relevant option. The existence of court proceedings that deal with or touch upon some or all of the issues under consideration in respect of a particular BI insurance policy will also be a factor in this assessment.
35. In terms of Module 3, the following overall approach will be followed by the Central Bank in relation to each of the issues, subject to the caveats outlined above:-
- (i) **Responsive Policies – Issues of Cover and Causation are Clear:-** Where an RFSP does not accept that **cover** and **causation** are established, the Central Bank may set out its view and expectations that the RFSP should accept that these issues are established in respect of the relevant policy. Where the RFSP does not conform to the Central Bank's expectations, the Central Bank may consider taking such further measures as may be appropriate to the circumstances with the aim of ensuring that RFSPs comply with their obligations to customers under these policies.
 - (ii) **Potentially Responsive Policies - Strong or Reasonable Argument that Issues of Cover and Causation arise under the Policy:-** Where an RFSP is denying **cover** and/or **causation** or both, the Central Bank may intervene to seek to bring clarity to the position as quickly as possible by communicating the Central Bank's view with the aim of bringing about a resolution of those issues. Where the RFSP does not conform to the Central Bank's expectations, the Central Bank may consider taking such further measures as may be appropriate to the circumstances with the aim of

bringing about a resolution of the issues. If a resolution can be reached which is beneficial to policyholders, the Central Bank's aim will be to ensure that RFSPs apply the beneficial impact of the resolution to all similarly affected customers.

- (iii) **Nonresponsive Policies – Clear No Cover and/or Causation under the Policy:-** No further action will be taken by the Central Bank.
- (iv) **Quantum and Claims Handling:-** Where systemic issues of customer harm and/or breach of legal and/or regulatory obligations have been identified, the Central Bank may set out its view and expectations to the RFSP on how these issues might be addressed. Where the RFSP does not conform to the Central Bank's expectations, the Central Bank may consider taking such further measures as may be appropriate to the circumstances with the aim of ensuring that RFSPs comply with their obligations to customers.

36. The Central Bank is currently pursuing a multi-faceted approach to supervisory engagement and escalation, which it has determined is the most effective way towards producing clarity for affected businesses in Ireland in circumstances where there are a number of insurers with a number of different policies adopting varying approaches in dealing with their customers. The Central Bank will continue to examine all possible options as part of Module 3 as we take this work forward.

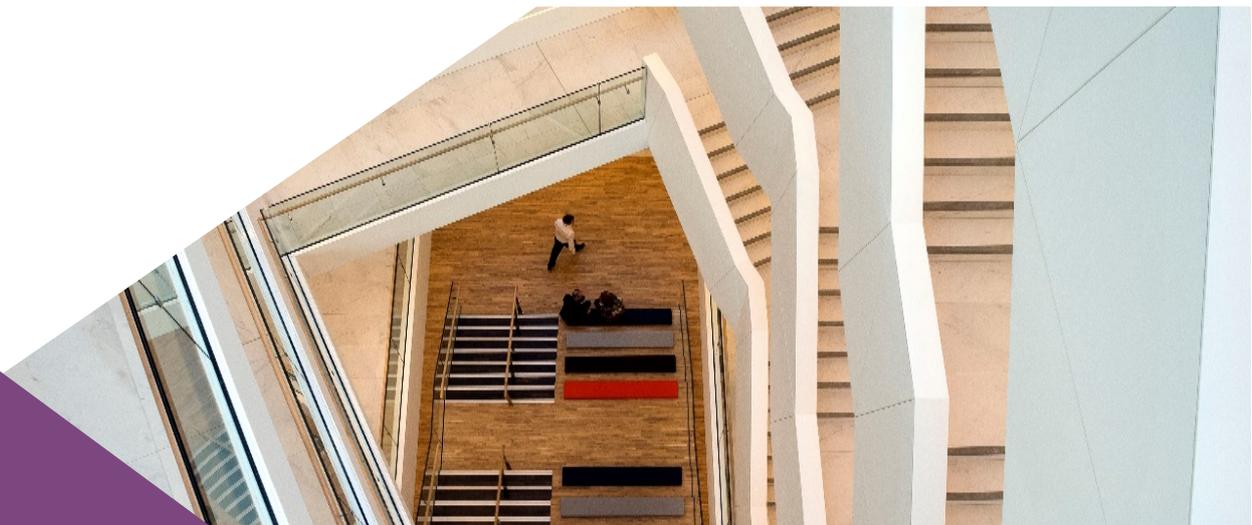
Module 4 – Legal Action Outcomes – Wider Beneficial Impact Assessment

37. For the purposes of Module 4:-
- (i) The term “**legal action**” means arbitrations and proceedings before the Courts, the FSPO, any appeals from these courts/bodies (where applicable) which concern and/or involve disputes relating to COVID-19 related claims under a BI insurance policy and to which the RFSP is a party;
 - (ii) A legal action is “**concluded**” where any one of the following occurs and where it relates to issues of **cover** and/or **causation** and/or **quantum and claims handling**:-
 - (a) There has been a settlement and/or compromise and/or final outcome from mediation and/or any other final outcome from any other form of alternative dispute resolution;
 - (b) Summary judgment or judgment in default has been obtained in a court against the RFSP;
 - (c) There has been a final decision and/or determination in an arbitration or by a court and/or the FSPO - (a), (b) and (c) collectively referred to as the “**final outcome/s**”.
38. Where a **legal action** has been **concluded**, the Central Bank will require the RFSP to provide the following certified information for the purposes of Module 4:-
- (i) Details in relation to the **legal action** and how it was **concluded**;
 - (ii) Details in relation to the **final outcome/s**;
 - (iii) Details in relation to the beneficial impact assessment that the RFSP will be required to carry out to analyse and determine whether the **final outcome/s** has a wider beneficial impact for similar groups of customers.
 - (iv) Where a wider beneficial impact has been determined, details in relation to the RFSP’s proposed remedial action to ensure that the beneficial impact of the **final outcome/s** is applied to similar groups of customers and/or reasons why such remedial action may not be carried out.
 - (v) Where it has been determined that there is no wider beneficial impact, details as to why it was considered that there was no wider beneficial impact to other potentially similarly impacted customers.
39. As outlined above, it is the Central Bank’s clear expectation that where a legal action has been concluded and the **final outcome/s** has a wider beneficial impact for other similarly impacted customers, RFSPs will be required to take remedial action to ensure that those customers obtain the benefit of the **final outcome/s**.

40. As with Module 3, it is not possible to outline the nature and extent of the supervisory engagement that will follow if an RFSP refuses to take the remedial action expected by the Central Bank and/or how that supervisory engagement might be escalated. This will be a circumstance specific determination depending on the relevant issues, the aim sought to be achieved and the speed at which clarity can be provided to policyholders via the exercise of the relevant option. No course of action will be ruled out for consideration by the Central Bank in this regard.

Conclusion

41. The Central Bank is working to ensure that the objectives of this Framework are delivered without delay in order to provide clarity for affected businesses as quickly as possible. The Central Bank will continue to actively engage with and challenge RFSPs to ensure they are meeting the Central Bank's expectations and taking all actions considered appropriate. The Central Bank will continue to examine all possible options within the full suite of our powers and we will intervene where appropriate, as we take this work forward.



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