

Introduction

This guidance note is the seventh update published by the FSA since the first measures introduced by the Government to assist small business to cope with the consequences of the Covid pandemic in March 2020. This new version takes account of measures introduced by the Government in the recent spring budget.

Government guidance has been greatly refined and upgraded and, helpfully, a checklist which allows applicants to identify support measures tailored to their individual requirements has been developed and can be located [at this link](#). This [link](#) sets out more general Government guidance on other aspects of the pandemic not specifically related to business support, for example travel, education, testing and vaccination.

Every effort has been made to ensure this guidance note reflects the key features of current Government support relevant to member clubs. However, information on available measures is changing regularly and more detail is being provided on Government websites. For this reason, clubs should not place complete reliance on this guidance note, which is only intended to provide a high level introduction to the available measures, and should review the detailed Government guidance on measures that may apply directly to their particular circumstances. This disclaimer is especially applicable to the new guidance on business interruption insurance cover dealt with in section 14. This guidance has been extensively modified following a recent High Court judgement. Whether individual clubs can benefit from this judgement will depend entirely on their own circumstances and so they are urged to obtain expert advice rather than relying on this guidance.

The main support initiatives introduced by the Government are addressed in detail in the sections set out below.

1. Coronavirus Job Retention Scheme;
2. Deferral of VAT payments;
3. Statutory Sick Pay relief;
4. Business rates holiday;
5. Small business grant funding of £10,000 - £25,000 (now closed);
6. Additional local authority grants;
7. The Business Interruption Loan Scheme;
8. The Bounce Back Loan Scheme;
9. Recovery Loan Scheme;
10. Self Employment Income Support Scheme;
11. HMRC Time To Pay Scheme.

Although this guidance note focuses mainly on men's football it should be noted that, in February 2021, the Government announced limited support for the women's game, details of which can be found [here](#). Clubs in the Women's Super League and FA Women's Championship are eligible for grant support totalling £2.25m as well as access to free testing kits. Regrettably, there was no provision made in the announcement for clubs in the women's game below the FA Women's Championship.

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Section 12 addresses two other Government initiatives announced on budget day, namely investment in grassroots facilities and the establishment of a Community Ownership Fund. The latter is not directly linked to the Covid pandemic but might be of interest to member trusts seeking increased involvement in their clubs.

Finally section 13 contains some initial advice on planning for 2021/22 season and section 14 contains advice on insurance cover.

Summary of new or updated guidance

This seventh version of the guidance note aims to provide detail on all support measures presently available. Users may be especially interested in the following new features.

- Section 1: the Coronavirus Job Retention Scheme has been extended until 30 September 2021, although employers will not be able to recover the full cost of furloughed staff wages in the final three months of the scheme.
- Section 4: the business rates holiday has been extended from 31 March to 30 June 2021. Clubs should apply via their respective local authorities.
- Section 6.4: the restart grant will be available to certain retail, leisure and hospitality business via local authorities. It is not clear whether clubs will be eligible but it is recommended that they should at least enquire with their local authority.
- Section 7 and 8: clubs considering applying for either a Business Interruption Loan or Bounce Back Loan should note that the schemes will be withdrawn on 31 March 2021. There is however greater clarity regarding the Bounce Back Loan repayment terms which can now be extended to ten years. Eligible clubs are encouraged to apply.
- Section 9: clubs eligible for either of the above loans may also qualify for the newly announced Recovery Loan Scheme to be launched in April 2021.
- Section 12: clubs may wish to explore a variety of Government and Football Foundation initiatives targeting grassroots football while member trusts may also wish to investigate the Community Ownership Fund, established to assist bringing community assets into community ownership.

1. Coronavirus Job Retention Scheme (CJRS)

The CJRS was first introduced in March 2020 and was originally only available until end June 2020. It was subsequently extended to end October 2020, then replaced by a new scheme which runs until end April 2021. The Chancellor further extended the scheme to end September 2021 in the budget.

Full details of the scheme can be accessed via [this link](#).

The scheme allows companies to retain staff who might otherwise have been laid off as a consequence of the pandemic by meeting up to 80% of their salary cost. For payrolls up to 30 April 2021, any members of staff employed prior to 30 October 2020, and recorded on a payroll submitted to HMRC by that date, will be eligible. For payrolls covering the period beyond 1 May 2021, employees who were employed on 2 March 2021, and recorded on a payroll submitted to HMRC by that date, will be eligible.

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The percentage recovery available to employers will be scaled back over the remaining months of the scheme as follows.

Payroll month	Percentage recovery
Mar-Jun 2021	80% of wage costs up to £2,500 p.m. (i.e. 80% of £3,125 p.m.)
Jul 2021	70% of wage costs up to £2,187.50 p.m. (i.e. 70% of £3,125 p.m.)
Aug-Sep 2021	60% of wage costs up to £1,875 p.m. (i.e. 60% of £3,125 p.m.)

It is important to note that, whereas the scheme allows employers to ask their employees to accept a 20% reduction in pay, making the scheme broadly cost neutral at least until June 2021, employers will be obliged to meet at least 10-20% of their employees' wages in July to September 2021. They cannot ask employees to accept just 60-70%.

Although there will be a net cost of retaining furloughed staff during the months of July to September, clubs considering the composition of their playing squads and support staff for the 2021/22 season may decide that this is an acceptable cost as an alternative to releasing and then replacing current staff.

Clubs will need to take the following steps.

- Identify employees either undertaking no work or working reduced hours. These employees can be designated as "furloughed workers", and those working reduced hours will be on "flexible furlough". Any change will have to be consistent with existing employment law and employees' contracts of employment. Employees should be notified in writing and their formal consent obtained, although it is hard to imagine any resisting if it ensures they remain employed and paid.
- Determine whether employees will be asked to accept a temporarily reduced salary, equivalent to the 80% recoverable by the club, or whether the club will meet the cost of the 20% balance.
- Submit monthly claim to HMRC, through the portal accessed via the above link, following completion of the monthly payroll.

The following information will also be relevant.

- Monthly claims must be submitted 14-15 days after month end. For example a club's claim in respect of its March payroll must be submitted by 14 April.
- Employers' NIC and pension contributions will not be reimbursed and so this will be a cost to the club, conceivably in addition to the 20-40% of wage cost, depending on whether an employee has been requested to accept a 20% reduction.
- All employees will be eligible, including part time staff and those on fixed term contracts, for example players and coaches whose contracts may otherwise terminate at the end of the season.
- The claim for full time staff will be based on their contractual monthly pay.
- The claim for part time staff, for whom a claim had been made up to 31 October 2020, will be based on the higher of their earnings in the corresponding month in the 2019/20 tax year or their average earnings for that tax year.

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- The claim for part time staff on a club payroll on 30 October 2020, but not previously claimed for, will be based on their average earnings for the 2020/21 tax year.
- Guidance has not yet been published for calculating claims for part time employees joining a club since 1 November 2020.
- The calculation for staff on flexible furlough is potentially complex, especially for those on an annual basic salary rather than an hourly rate. For hourly paid staff it is necessary to start with the employee's usual hours. They should then be paid in full for hours actually worked in the period. Actual hours worked should then be deducted from usual hours to arrive at the furloughed hours. These should be paid (and claimed) at 60-80% of the employee's full hourly rate.
- Clubs participating in leagues which have been suspended or terminated, may presently be asking players and support staff to undertake reduced hours and so may be able to pay those members of staff under flexible furlough arrangements.
- HMRC's detailed guidance on calculating amounts to be paid and claimed, including examples and a "calculator", can be accessed via the link above.
- Within the section of the HMRC guidance on "Employees you can claim for"¹ is a paragraph entitled "If your employee does training" which states the following:

"Furloughed employees can engage in training during hours which you record your employee as being on furlough, as long as in undertaking the training the employee does not provide services to, or generate revenue for, or on behalf of their organisation or a linked or associated organisation. Furloughed employees should be encouraged to undertake training."

This is a grey area for football clubs and other companies in professional sport. If the playing squad is merely undertaking basic training in order to maintain fitness at a time when the playing season has been delayed or suspended, for example during the current national lockdown, there is a persuasive argument for furloughing those players and claiming their wages under the CJRS. On the other hand, it is accepted that it would be inappropriate to claim for mid-season training while regular matches are being played. Clubs should obtain further advice before taking advantage of these provisions.

When claiming under the scheme, clubs should calculate the amount of their claim before accessing the portal. Claimants will be asked to enter the total amount claimed and to list each employee by NI number, but no breakdown of the claim by employee is required. For each employee on flexible furlough, the club will be asked to enter usual and actual hours worked in the period: it is assumed this is only for HMRC research.

Businesses with over 100 staff should upload this information on a spreadsheet (.xls or .csv) file.

HMRC settles claims gross of deductions for PAYE and employees' NIC. Clubs wishing to take advantage of HMRC's Time to Pay Scheme should recognise that HMRC will not allow clubs to defer monthly deductions to the extent that their CJRS claims have been reimbursed gross. This is discussed further in section 11.

¹ <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#employees-you-can-claim-for>

2. Deferral of VAT payments

HMRC allowed companies owing VAT for the quarter ending between 1 April and 30 June 2020 to defer paying any associated liability. Originally, companies taking advantage of this concession were required to pay any balance by 31 March 2021.

Now, HMRC has offered a further concession allowing companies to opt in to a new deferral scheme to pay the balance in 8-11 instalments (depending on when the opt in is made) ending on 31 March 2022. To take advantage of the further deferral, clubs would have to opt into it the scheme by 21 June 2021 at the latest.

3. Statutory Sick Pay Relief

Companies with fewer than 250 employees, likely to include most member clubs, may reclaim Statutory Sick Pay (SSP), presently £95.85 per week, paid to staff for absence due to Covid-19. The criteria are as follows:

- This refund will cover up to 2 weeks' SSP per eligible employee who has been off work because of Covid-19 on or after 13 March 2020;
- Absence may be due to the employee having Covid symptoms, living with someone with symptoms, shielding or being advised by the NHS to self isolate;
- Employers should maintain records of staff absences and payments of SSP, but employees will not need to provide a GP "fit note";
- Unlike SSP for other conditions, the period of claim commences on the first day of absence;
- Recovery of SSP will be by offset against liability for PAYE & NIC and may require modification of employers' payroll accounting, or manual amendment to returns to HMRC;
- Clubs taking advantage of the Time to Pay Scheme (see section 11) will obviously not immediately recover the SSP while they defer payment of PAYE and NI.

Further information can be obtained via [this link](#).

4. Business Rates Holiday

A business rates holiday was offered to retail, hospitality and leisure businesses in England for the 2020/21 tax year. Member clubs will meet the definition for such businesses and should by now have benefitted from this relief.

In the recent budget the Chancellor announced that this relief would be extended to 30 June 2021 but no formal guidance has yet been published.

For clubs with a rateable value below £12,000, they are already likely to be benefiting from small business rate relief (SBRR) and so will already be paying no business rates. The relief is tapered for clubs with rateable values of £12-15,000.

It is understood that the relief for 2020/21 should have been granted automatically by clubs' respective local authorities and so any enquiries on eligibility for relief should be directed to the respective local authorities. It is assumed that same will apply for the 2021/22 relief.

Further information on the scheme for 2020/21 can be obtained [here](#).

5. Small Business Grant and Retail, Hospitality & Leisure Grant Funds

Clubs may also have been eligible for grants from either fund depending on the rateable value of property they occupy. Again, these grants would be provided by clubs' local authorities.

The small business grant (SBG) is £10,000 and will be paid to businesses eligible for SBRR, namely those occupying a property with a rateable value of less than £15,000.

Alternatively, the retail, hospitality and leisure grant (RHLG) is £25,000 and will be paid to businesses occupying properties with a rateable value between £15,000 and £51,000.

These funds closed on 30 September 2020 after which no further grants were available.

6. Further Local Authority Grants

A range of further grants were made available in autumn 2020, all distributed by local authorities depending on restrictions on business operations imposed locally.

6.1 Local Restrictions Support Grant (Closed)

Businesses required to be closed by law since 5 November 2020 might be eligible for this grant of £1,334-3,000 per 28 day period, calculated by reference to rateable value. Eligible businesses listed in the guidance include sports and hospitality. Clubs' core operations will not meet the criteria but clubs with stand alone bar or catering facilities might qualify and should look at the guidance [here](#) and on their local authority's website.

No further applications to this fund will be accepted after 31 March 2021.

6.2 Local Restrictions Support Grant (Open)

Businesses which have never closed but were severely impacted by local tier 2 and 3 restrictions might be eligible for this grant of £467-1,505 per 14 day period, calculated by reference to rateable value. Eligible businesses listed in the guidance include hospitality and leisure. As with the previous grant, clubs' core operations will not meet the criteria but clubs with stand alone bar or catering facilities might qualify and should look at the guidance [here](#) and on their local authority's website.

No further applications to this fund will be accepted after 31 March 2021.

6.3 Additional Restrictions Grant

These grants are again provided by local authorities and target businesses which don't pay business rates or ones possibly impacted indirectly by the pandemic although not legally forced to close. Examples quoted include those supplying into the retail, hospitality or leisure sectors or businesses in the events sector.

Unlike the Local Restrictions Support Grants mentioned above, no application deadline appears yet to have been imposed for the Additional Restrictions Grants.

There may only be limited scope for football clubs to claim for such grants but member clubs are encouraged to check via this [link](#) and with their local authorities. Different authorities may have a different approach to such grants and it is understood that some have been quite receptive to claims by football clubs.

6.4 Restart Grant

This new grant fund was announced in the recent budget and will replace the Local Restrictions Grants being withdrawn at the end of March 2021. The grants will be distributed by local authorities.

The grants are to be made available to retail, hospitality and leisure businesses up to a maximum of £18,000 based on rateable values. The exact criteria have not yet been published and so it is not clear whether all football clubs will be eligible. However, clubs are encouraged to contact their local authorities to enquire about eligibility.

7. Coronavirus Business Interruption Loan Scheme

The Coronavirus Business Interruption Loan Scheme (CBILS), delivered by the British Business Bank (BBB), was launched in March 2020 to support businesses to access bank lending. The Government undertakes to guarantee 80% of the debt and to meet the first year's interest and charges. Loans will be repayable over six years, with no repayments in year 1.

Most clubs are likely to be eligible and, in the first instance, should approach their main bankers although they might also approach other potential lenders, with the BBB website making reference to over 100 accredited lenders.

The scheme is open until 31 March 2021 and so clubs considering applying are urged to do so as soon as possible.

The BBB website sets out the [scheme's details](#), including eligibility criteria, while further guidance is provided on the Government's business support website [here](#).

Applicants should have a "sound borrowing proposal", but be unable to provide sufficient alternative security to meet a lender's normal requirements. However, clubs classified as a "business in difficulty" may be unable to apply. Included within this definition are "Limited companies which have accumulated losses greater than half of their share capital in their last annual accounts".

For clubs, a sound borrowing proposal might include demonstration that, in normal circumstances, they are financially sustainable but the consequences of Covid-19 have included a temporary loss of income resulting in cash flow pressures. Clubs should have little difficulty demonstrating this by reference to their experience over the last nine months.

The BBB website explains that applicants should submit the following information.

- Management accounts;
- Cash flow forecast;
- Business plan;
- Prior year accounts;
- Details of major assets.

A club's business plan and cash flow forecast should take account of all of the factors affecting its operations since Covid, including loss of matchday and commercial income and increased operating costs (including testing if applicable), and should ideally contrast the current scenario with the previous sustainable scenario to emphasise the impact of Covid-19.

Lenders will not take personal guarantees as security for loans below £250,000 but may seek alternative security (i.e. over a club's stadium or training ground) if available.

The FSA will be pleased to provide support and guidance in the preparation of any such business plans.

8. Bounce Back Loan Scheme

In recognition of evident difficulty experienced by small businesses in accessing CBILS, the Government announced this scheme (BBLs) in late April 2020 with further details in [this link](#). The scheme is open to applications until 31 March 2021 and so clubs considering this option are urged to move quickly.

The scheme is suitable for smaller businesses with the loans capped at £50,000. The Government will guarantee 100% of the loan and, as with CBILS, will cover all of the first year's interest and fees. Initially the scheme offered repayment terms of up to 6 years with no repayments in year 1 but the Government website now confirms that "before the first repayment is due, your lender will contact you to extend the terms of your loan to ten years and move to interest only repayments for a period of six months". Notwithstanding this commitment, clubs already in receipt of a bounce back loan may wish to contact their lender to renegotiate the repayment terms before the lender contacts them.

The Government states it will work with lenders to agree low costs for the remaining period of the loan.

The criteria for applying, and documentation required, are far less detailed than for CBILS and principally comprise self-declaration by the applicant. Lenders do not have to assess applicants' viability as a business while the exclusion for "businesses in difficulty" is less applicable to these loans and certainly would not be a relevant criterion for any football clubs applying.

There is evidence that banks are approving applications and advancing loans quite promptly.

9. Recovery Loan Scheme

The Chancellor announced the introduction of this scheme in the recent budget, to replace CBILS and BBLs, both of which will be withdrawn on 31 March. Although further details will be published imminently, certain aspects of the scheme have already been announced.

- Facilities of £25k to £10m will be available in the form of loans, overdrafts, invoice finance or asset finance.
- The facilities will be repayable over up to 6 years for loans.
- The facilities will be advanced by accredited lenders yet to be announced.
- The Government will guarantee 80% of the finance.
- No personal guarantees will be taken on facilities of up to £250k.
- Eligible borrowers will need to show that their business “is viable or would be viable were it not for the pandemic [and] has been impacted by the pandemic”. Football clubs should meet these criteria and it is noted that the “business in difficulty” criterion is not mentioned.
- Borrowers already in receipt of support from CBILS or BBLs will still be eligible for this scheme.

Clubs wishing to apply should look out for further details when the scheme formally launches on 6 April. The main points to note among the above are, firstly, the 80% limit of the Government guarantee and, secondly, silence on the issue of whether lenders can demand security from the borrower. This may influence lenders to request security from clubs and it is possible that claims against the Government guarantee may only be met once a lender has exhausted all other means of recovery. This had proved to be a significant obstacle to the take up of the BBLs before the Government modified the terms to provide 100% guarantees.

10. Self Employment Income Support Scheme

This scheme, first announced in March 2020, may not benefit clubs directly. However, many clubs will make use of self-employed contractors or consultants and may be concerned about their welfare at a time when the club lacks the resources to keep paying individuals who are outside the scope of the CJRS.

The scheme offers support to self-employed individuals with average trading profits below £50,000 over the last three tax years.

The first three tranches of support covered the period to January 2021 but have now closed to claimants. A fourth tranche was announced in the budget covering the period to 30 April 2021 and a fifth tranche will be available, on a more limited basis, for the period May to September 2021. Precise details of how to claim have yet to be announced by HMRC but are expected imminently.

Clubs should draw this scheme to the attention of their self-employed contractors.

11. HMRC Time to Pay Scheme

In view of the obvious impact on clubs’ operations, all clubs are likely to be eligible for this scheme. Details are available via [this link](#) and there is both a webchat facility and a dedicated helpline

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number of 0800 024 1222. Clubs might also consider applying in writing, setting out their circumstances, to the following address.

PT Operations North East England
HM Revenue and Customs
BX9 1BX

All clubs will have experienced genuine cash flow pressures as a consequence of the pandemic and so have a powerful argument. HMRC appears to be generally supportive of requests to defer payment, especially where applicants are open and communicative.

In light of the continuing uncertainty caused by the pandemic, clubs are encouraged to defer payment where possible and not to agree payment terms until there is a realistic prospect of returning to pre-Covid income levels. Even then, clubs are encouraged to negotiate payment terms over as long a period as possible. Clubs may consider the repayment terms of 5-10 years offered for the BBLS to be a reasonable opening negotiating position with HMRC.

This facility should be viewed alongside the deferment of VAT discussed in section 2 above. If applicable, clubs should also seek to defer payment of any corporation tax liabilities.

As noted in section 1, HMRC settles CJRS claims gross of any deductions for PAYE and employees' NIC. Clubs wishing to take advantage of the Time to Pay Scheme should recognise that HMRC will not allow clubs to defer monthly deductions to the extent they have been reimbursed under the CJRS. However, clubs are encouraged to defer as much as possible to include both of the following.

- All employer NICs – since November the CJRS does not reimburse employer NICs.
- A percentage of PAYE and employee NICs based on the percentage of the club's total payroll not reimbursed under the CJRS. So, if the club is claiming 60% of its payroll under the CJRS, it would pay 60% of its PAYE and employee NICs and seek to defer 40%.

Moreover, as noted in section 3, SSP relief is likely to be by way of offset against PAYE & NIC liabilities and so, if clubs negotiate deferral of payment of PAYE & NIC under this scheme, they will not immediately enjoy any benefit from SSP relief.

12. Other Government Initiatives

12.1 Grassroots investment

The budget made a very brief mention of a "£25m investment in UK grassroots community sports facilities, supporting the future of grassroots football". No further details were provided but it has been suggested that this could fund the construction of up to 700 pitches across the UK.

The announcement was closely followed by a Football Foundation [announcement](#) on 8 March of three initiatives of its own to coincide with the easing of lockdown restrictions facilitating the return of grassroots football on 29 March 2021.

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- Return to Football Fund (£2.1m), targeting clubs in areas of deprivation, disability football and under-represented groups, including women and girls;
- Grass Pitch Maintenance Fund (£14m), to provide grants to improve the quality of grass pitches;
- Small Grants Fund, up to £25,000 per club, to help clubs resume playing by meeting the cost of essential equipment, refurbishment of changing facilities, grass pitch drainage and portable floodlights.

Clubs interested in these funds should apply directly to the Football Foundation.

12.2 Community Ownership Fund

The government has published a separate [paper](#) on this £150m fund, also announced within the budget. Although not directly linked to the Covid pandemic it is clear that it is motivated by recognition of the risk, no doubt exacerbated by the pandemic, of losing community assets. Eligible assets include “sports clubs [and] sports ground at risk of being lost without community intervention”.

Community groups, defined as “community and voluntary organisations with formal governance in place, such as Community Trusts”, will be eligible to bid for grants of up to £250,000 on a match-funding basis, although the paper notes that “Recognising the range of costs associated with purchasing assets associated with sports, exceptionally bidders will be able to make the case for up to £1 million match-funding for these types of project”.

Member trusts concerned about how their clubs’ finances have been affected by the pandemic may wish to explore whether there might be opportunities to take the club into community ownership with support from this fund. The paper advises that a full prospectus will be published in June 2021 setting out further details on available funding and bidding requirements.

13. Planning for Season 2021/22

Although clubs are likely to be focussing on very immediate challenges at present, they should still be aware of the potential impact of Covid on planning for next season.

- Even with optimism about vaccinations, there can at present be no certainty that the season will indeed start in August 2021, at least without very stringent social distancing measures.
- The CJRS has now been extended until 30 September and it is to be hoped that a full 2021/22 season can take place, commencing some time in autumn 2021.
- However, clubs should be extremely cautious about contracting new players or coaching staff until there is more certainty. The CJRS only covers employees on the payroll at 2 March 2021 and any recruited after that date would be ineligible for the scheme.
- Some clubs may engage part time freelance support staff and will already be aware that such staff are ineligible for furloughing. They should be encouraged to claim under the Self Employed Income Support Scheme where they can.
- Although playing contracts contain standard wording and so limit the scope for exercising break options or laying players off in the event of an escalation in or continuation of the pandemic there may be scope to vary players’ pay in the event of a suspension or cancellation of the

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season not covered by furloughing. Clubs should consider introducing such terms in both player and support staff contracts.

- Club sponsors and commercial partners will be experiencing severe damage to their own businesses and, even if already contracted for 2021/22, may be urgently revisiting their marketing budgets and unable to meet their obligations. Clubs should bear this in mind when planning for next season. Clubs are advised to begin conversations with commercial partners as soon as possible.
- The issue of refunds or discounts for season ticket holders, for either or both of 2019/20 and 2020/21 seasons, will need to be addressed. One solution could be to offer discounts for renewals for 2021/22.
- Alternatively, season ticket holders may be invited to “donate” the unutilised element of their season ticket in which case the club would not have to account for the VAT thereon.
- Pitch refurbishment plans will need to be reviewed: what is possible and what is affordable. A lack of investment now may have a long-term impact. Clubs should discuss possible options with their ground staff and sports ground maintenance contractor.
- Whilst there is no certainty about when the season will start, clubs may nevertheless wish to begin planning the pre-season programme. Think about which clubs you could approach to get an early indication of availability.

14. Insurance

Clubs’ ability to claim for loss of income due to the postponement or cancellation of games will depend entirely on whether their insurance policies include Business Interruption (BI) cover in respect of pandemics and, if so, on what terms. Up until 15 January 2021, guidance to clubs had relied upon advice from the Association of British Insurers, which can be found [here](#), quoting correspondence from the insurance industry’s regulator, the FCA, which had stated that “most policies do not cover pandemics, and insurers have no obligation to pay out in relation to the COVID-19 pandemic”.

However, a landmark ruling in the High Court, announced on 15 January, transforms the situation for insured businesses generally and, depending on their policy wording, could create the opportunity for clubs to recover significant losses under their insurance cover.

The proceedings were brought by the FCA as a test case to determine issues of principle looking at 21 sample wordings from a range of policies. Eight insurance companies agreed to participate as defendants in the test case.

The judgement is based on complex legal issues summarised [here](#) by the lawyers who represented the FCA. All clubs who held BI cover in March 2020 should ask their insurance brokers to explore whether this judgement justifies making a claim for losses incurred during the pandemic. **However, clubs should recognise that brokers may have close relationships with insurance companies and so their advice may not always be entirely impartial. For this reason clubs may also wish to obtain independent advice, either from a lawyer or an insurance expert. Clubs might also consider lobbying their respective leagues to obtain advice on behalf of all clubs in the league.**

The High Court judgement identifies three key elements of policy wordings.

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- Disease wordings. Many policies provide cover for businesses experiencing interruption attributable to “notifiable diseases” within the vicinity (broadly defined) of their operations. Insurers’ justification for rejecting claims seems to hinge on distinguishing a local outbreak from a national pandemic but the Court did not accept this argument.
- Prevention of Access/Public Authority Wordings. Policy wording might refer to losses arising from an insured entity being unable to access their premises due to advice/instruction from the Government, their local authority or another body and the Court construed these clauses more restrictively. For example, the football season was suspended and later cancelled following “advice” from the Government on 16 March 2020 and subsequently. Legal guidance followed on 21 and 26 March enshrined in The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 and The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. These regulations identified the businesses and premises required by law to close ranging from bars and restaurants to cinemas and theatres and swimming pools and indoor gyms. Football grounds were not included in the premises listed. It follows that a club whose BI cover specified closure as a result of Government “advice” might now be eligible to claim whereas a club whose cover required closure imposed by order might not be eligible. However, clubs should in all cases obtain advice regarding their wording.
- Hybrid wording. These policies contain wording which is a blend of the above two elements. The court determined that the “disease” part of these clauses should be interpreted quite broadly but, as in the foregoing example, the prevention of access part should be interpreted quite narrowly.

Clubs should also consider the application of this judgement to all elements of their business operations. Aside from their main activity of staging football matches, many clubs might have separate bar and catering operations, particularly on non-match days, retail outlets and conceivably gym facilities available to the public. It may be that some clubs’ policy wordings, especially any prevention of access clauses, might be unhelpful as regards losses incurred due to the closure of their stadia but might nevertheless warrant a claim where ancillary operations (bar/restaurant/gym) had been obliged to close under formal Government regulations.

The Court also devoted time to considering the basis for calculating losses when the policy wording includes a “trends” clause whereby losses may be adjusted to take account of business trends that might have had a general impact on the insured’s business regardless of whether the specific incident had occurred. Insurers had argued that such clauses would result in most claims being negligible but the Court had little sympathy with this argument.

Again the precise wording of clubs’ policies will be all important and it is recommended that specialist advice be obtained.