ENGLISH COURT APPLIES POLICY TIME LIMIT TO THIRD PARTY CLAIM AGAINST INSURER

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UK Litigation and Dispute Resolution Alert

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INTRODUCTION

In a decision that highlights the importance of prompt notification of insurance claims, the English High Court has considered the limits of third party recovery under the Third Party (Rights Against Insurers) Act 2010 (the Act). The Act is designed to assist third party claimants in the pursuit of direct claims against the liability insurers of an insolvent insured. In *Archer v R 'N' F Catering Ltd (t/a Biplob Restaurant)* [2025] EWHC 1342 (KB), the Court held that, while the Act introduces important protections for third party claimants, it does not override policy notification requirements which are conditions precedent to the insurer's liability. The case will be of particular interest to policyholders, third party claimants and insolvency practitioners in the United Kingdom.

BACKGROUND

The claimant sought to recover damages direct from the liability insurer of a now-insolvent restaurant business, in reliance on the Act, after suffering personal injury allegedly caused by food poisoning contracted when eating at the restaurant. In November 2019, the claimant sent an email to the restaurant detailing the cause of her illness and the severity of her injuries. During 2020, the claimant's solicitor sent three letters to the restaurant, including a claim notification form and a letter of claim asking for details of the restaurant's insurer and requesting that the letter be forwarded to the insurer.

The restaurant's insurance policy (the Policy) included a clause requiring the insured to notify the insurer of events or circumstances which could give rise to a claim “as soon as reasonably possible”. The restaurant did not take any steps to notify its insurer until November 2020.

The insured entered voluntary liquidation in February 2023, at which point the rights under the Policy were transferred from the insured to the third party claimant under the Act. Later that month the insurer notified the restaurant that cover had been declined.

COURT'S DECISION

The claimant did not challenge the insurer's assertion that the four material pieces of correspondence each amounted to a notifiable circumstance nor that the requirement to give notice “as soon as reasonably possible” was a condition precedent to the insurer's liability under the Policy. The onus was then on the insurer to establish, on the balance of probabilities, that the insured had failed to satisfy that requirement. The judge found that: the

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period of delay between the restaurant's receipt of the correspondence and notification being given to the insurer was around 12 months, 10 months, 6 months and 18 days respectively and, in an era of telephone and email communication, none of those time periods equated to action taken as soon as reasonably possible. The condition precedent was not satisfied, so the right to indemnity under the Policy was extinguished before the restaurant went into liquidation.

Section 9 of the Act operates as a legislative safeguard for third party claimants. It applies where transferred rights are subject to a condition that the insured has to fulfil, and introduces exceptions that limit when insurers can rely on defences to defeat transferred rights. Section 9(2) allows acts by a third party claimant to be treated as if carried out by the insured, for the purpose of satisfying a policy requirement.

The Court held that section 9(2) did not assist the claimant. Steps taken by her after the restaurant went into liquidation were not within the timeframe stipulated by the Policy which operated as a condition precedent to the insurer's liability. The judge ruled that section 9(2) cannot come to the claimant's aid to resurrect the right of indemnity that the insured had lost through breach of condition precedent. It allows the third party to take steps which could have been taken by the insured, including giving notice of a claim; but this must still be done within the timeframe prescribed by the policy. It followed that the insurer was entitled to rely on the insured's late notification as a defence, even where rights transferred to the third party claimant under the Act.

PRACTICAL IMPLICATIONS

Unless the decision is overturned on appeal, or the Act is subject to amendment, the decision has significant potential ramifications in practice.

For Third Party Claimants

Where third party claimants have insurer's details they should act promptly to protect their position and cannot assume that the Act will cure the insured's failures. Once an insured has lost its entitlement to an indemnity due to breach of a condition precedent, third party claimants cannot “resurrect” that right. Third party claimants may face difficulties obtaining information about insurance arrangements but such difficulties should fall away once rights under a policy are transferred. At that point, the Act gives third party claimants the right to such information and they should act promptly to exercise such rights and, if still in time, to notify insurers.

For Policyholders

The case highlights the risks posed by procedural failures in claims notification, particularly for distressed businesses where insolvency may disrupt ordinary operations.

For Directors

Where an entitlement to insurance proceeds has been lost due to directors' failures to preserve insurance cover, this could potentially give rise to insolvency officeholders bringing claims against directors for breach of duty.

For Insolvency Practitioners

Archer highlights the risk that potentially valuable insurance cover may have been lost before an appointment occurs, due to failure by management to comply with conditions precedent. Equally, such cover can be lost if

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notifications are not made promptly following appointment. Insolvency practitioners should prioritise early review of insurance arrangements upon appointment.

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