



# Care and insurance

**Covid-19 lessons will redefine care sector's insurance and risk needs as uncertainty continues**



# Executive summary

For the care industry, the Covid-19 pandemic created a perfect storm of uncertainty. As the vaccine roll out continues and the UK Government looks to ease restrictions, the insurance industry will play an important part of the care sector's efforts to navigate the new normal.

Care organisations have been on the front line of Britain's fight against the pandemic and in supporting society's most vulnerable. Staff and businesses have been placed under unprecedented strain, caught in the middle of the Government's strategy to restrict the spread of the virus and ease the pressure on the NHS.

While its response has been one of the true shining lights in what has been a dark year, as the spread of the virus recedes, the sector now faces a reaction from regulators who are not only redrawing the regulatory landscape but adopting a stringent approach to any perceived failings as inspections resume.

The response from the insurance industry has been mixed. Covid-19 triggered a withdrawal of capacity and there is little sign of any return, putting further pressure on brokers when seeking markets with which to place their clients' risks.

Some lessons have been learned the hard way. If clients and their brokers had not fully understood the specialist nature of the cover required by care organisations, it was starkly illustrated by the events of the past year.

The last 12 months has seen organisations look to their insurers for far more support than simply at the point of a claim. It is likely that the future relationships between care providers and their insurers will change significantly as the sector evolves into a new way of operating once the world has learned to manage the threat of Covid-19.

The effects on the care industry will be long lasting and the same can be said for the insurers which cover the sector.

The pandemic has created a greater need for appropriate insurance cover, risk management and legal support than ever before, but questions remain for the future. Brokers will need to fully understand their clients' changing risk profiles while insurers will need to wrestle with the ability to shape their cover to meet the care sector's needs.

# 1

## The care sector

The UK care sector remains one of the country's biggest employers and is predicted to undergo a rapid rise as the country's population continues to age over the next 15 years.

The latest statistics from [Skills for Care](#), which gathers data on behalf of the UK Government, reported as of July 2020:



The number of people working in adult social care was estimated at **1.52** million.



The number of adult social care jobs in England as of 2019/20 was estimated to be **1.65** million – this has increased by around **1%** (**17,000** jobs) between 2018/19 and 2019/20.



The number of full-time equivalent (FTE) jobs was estimated at **1.16** million.



An estimated **18,200** organisations were involved in providing or organising adult social care in England as at 2019/20. Those services were delivered in an estimated **38,000** establishments.



Since 2012/13, the workforce has continued to shift away from local authority jobs (a decrease of **25%**, or **37,000** jobs) and towards independent sector jobs (an increase of **11%**, or **130,000** jobs).



The number of jobs in domiciliary services increased at a faster rate between 2012/13 and 2019/20 (an increase of **95,000** jobs and **15%**) than jobs in residential services (an increase of **25,000** jobs and **4%**).



Registered nurses were one of the only jobs in adult social care to see a significant decrease over the period (down **15,500** or **30%** since 2012/13).

Looking to the future, if the adult social care workforce grows proportionally to the projected number of people aged 65 and over in the population, then the number of adult social care jobs will increase by 32% (520,000 jobs) to around 2.17 million jobs by 2035.

When Covid-19 hit the UK, it did so as the care sector continued in a period of transition as the independent, not-for-profit and charity organisations continued the ongoing process of assuming many roles and responsibilities that had, in the past, been the remit of local authorities.

To protect residents, care homes went into their own version of lockdown. Families and friends were not allowed to visit people and there were questions about the impact on people's human rights and the legality of this.

The toll of the lack of human contact on residents was national news. Some people deteriorated rapidly and in some cases, there were extreme examples where some families attempted to remove relatives who may have been subject to deprivation of liberty safeguards.

Providers therefore needed to be agile, using technology where appropriate and thinking outside the box.

 **2.17m**  
jobs expected  
in the care  
sector by 2035





## The impact of lockdown

At the outset of the pandemic the Government's priorities were hospital and primary healthcare services. However, with the movement of the elderly from hospital to care facilities, the spread of Covid-19 was swift within the section of the population that was most at risk of serious and fatal effects of the virus.

It left the sector not only challenged to implement rigorous new procedures to protect residents, clients and staff, but also facing a shortage of PPE and a significant price increase for those items that were available.

As the UK moved into the first of the three major lockdowns in the space of a year, the biggest issue for providers was the lack of guidance from the authorities. Guidance often came too late and only after the spread of the virus in a wide range of care settings became apparent.

It was the lack of guidance that many believe left the sector behind the curve in its ability to tackle the impact of the virus. People issues were also significant with companies and organisations having to deal with staff and families who were seeking reassurance and guidance that was not available.

Regulators were themselves forced to scale back their operations while the threat of the virus was understood.

**"In March 2020, we paused routine inspections and focused our activity where there was a risk to people's safety," said the Care Quality Commission in its review of the past 12 months. "This was the right thing to do and we have kept that decision under review. This year we have continued to only undertake inspection activity where there were serious risks to people's safety or where it supported the health and care system's response to the pandemic."**

The first lockdown period saw a lack of testing capabilities within the care sector which increased not only the spread but also the insecurity amongst clients and staff.

By the second lockdown, the view in the sector was that the Government had caught up with the need to focus on the care sector. Public Health England were issuing regular and relevant guidance to care providers who enhanced risk management practices to tackle the ever-changing nature of the threat.

The testing which was in place by the time lockdown was reintroduced was described as a game changer, with many operators praising the resilience of their staff as they adapted to a new way of operation forced by the lockdowns and need for increased caution.

The National Care Forum (NCF) said the feedback from its members was that costs and funding were the number one priority, alongside issues relating to the care workforce, infection control and PPE, managing occupancy and operational issues in running the service.



When it came to the response of the insurance sector, the NFC said there were notable differences between the home care and care homes market.

“Key issues for home care providers that were noted were an increase to premiums and the removal of a couple of insurance providers available in the market,” it said. “The care homes market, however, raised a number of significant issues.”

These were declining in supply. “The insurance market for care homes, though relatively small, has tightened and continues to tighten.”

Providers reported that some insurers said they would not take on new care home business and they were not being specific about what needed to change in order for them to start doing so.

There were reports of some insurers offering an extremely low level of public liability, described as “unrealistic” by the NCF, which added such terms would mean “that care homes will essentially have no meaningful public liability cover for any claims associated with Covid-19.”

Brokers faced similar challenges. Carolyn Baker-Mellor, Head of Care and Charity Care Professions Division, Towergate Insurance Brokers said with some insurers deciding to pause any new business and some withdrawing from the market completely, brokers were faced with limited markets.

It was then that the long-standing relationships between broker and insurer came to the fore.

“Relationships were and are so important,” she said. “We would speak to Markel on a weekly basis to share our thoughts and look for answers to the questions we had been asked.”

As the biggest broker in the care sector, Towergate was approached by large numbers of the brokers for which they operated schemes on a wholesale basis. They found themselves with clients who were suddenly struggling for cover at renewal.

For many clients, it was a case of negotiating an extension of cover for a period with their existing insurer while new cover could be sourced from those underwriters which remained supportive of the sector.

Nadra Ahmed, Chair of the National Care Association, said the virus has posed a huge challenge and, while Covid-19 was still in the community, it would continue to do so.

“The care sector looks after the most vulnerable in our society and it has been operating under a huge level of pressure for the past 12 months.”

The ongoing vaccination of those within the care sector has been successful with over 75% of staff having now been vaccinated, which has eased some concerns for operators.

“We are all keen to see those we care for and the staff receive their second dose of the vaccine which will ease some of the anxiety,” she added.



Insurers...would not take on new care home business and they were not being specific about what needed to change in order for them to start doing so.



## Changing risks and needs define Markel's response

As a leader in the care insurance sector, Markel has been at the centre of the industry's efforts to support its clients throughout the crisis. It has seen first-hand the impact of the virus and the stresses it has placed on providers.

Markel's Care Practitioner service and legal helpline became an even more important source of information and reassurance for all of Markel's clients.

Unsurprisingly the number of calls year on year to Markel's legal helpline grew significantly. Calls to the helpline saw a 33% increase in clients seeking to access stress counselling, employment support calls increased by 30%, and health and safety support calls increased by 39%.

The top topics were around the wider issues with Coronavirus, capability, discrimination, disciplinary action and dismissal.

As the vaccine was rolled out, calls shifted around the question of: "can we make it mandatory that staff have the vaccine and/or undertake weekly Covid testing?"

Many sought advice on disciplinary action against staff for failure to wear full PPE (in cases where there are no medical grounds preventing them from doing so). Staff shielding, in particular pregnant employees, was a major concern for many.

As the lockdown continued, clients sought advice on disciplinary action against staff known to have broken Government guidance on lockdown rules by mixing households/ attending social gatherings and then coming into work.

Markel Law's Head of Regulatory, Deborah Nicholson, explained those operators with between one to ten properties were hardest hit by the compliance issues around Covid-19. Their lack of size and infrastructure to access the teams of specialists that were required meant they turned to Markel for support.

In terms of underwriting, Wendy Cotton Technical Line Manager – Social Welfare, at Markel UK, said the key was to deliver certainty to clients at a time when uncertainty was at its peak.

"When the pandemic began, we worked hard to ensure that, when it came to underwriting, we continued to keep the wheels turning. We, like many other insurers did review our position but remained steadfast in our support of the sector. Understanding that long-term commitment to sustainable pricing was more essential than ever, especially while the pandemic and its effects were fully understood.

We established a Covid-19 hub in order to enable brokers and clients to access advice in areas such as risk management, legal issues and underwriting."

### Markel Legal Advice Line figures 2020

 **29.6%**  
increased  
number of calls  
from previous  
year

 **Increases by  
category**

 **30%**  
employment

 **28%**  
commercial

 **39%**  
health and  
safety

 **33%**  
stress  
counselling



Lockdown also saw many properties suddenly become unoccupied overnight and Markel moved swiftly to reassure its policyholders that cover would remain in place despite the change in occupancy.

Understanding that its long-term commitment to sustainable pricing was more essential than ever, especially while the pandemic and its effects were fully understood.

Markel Care Practitioners saw a huge uptick in requests for support from the very early stages of the virus. Many clients were simply seeking urgent advice on how they should be responding to the new threats and the risks that they needed to address absence of guidance from the Government.

Staffing issues were at the forefront for many practitioners. Fears around how staff should be operating in the early stages of lockdown changed to questions and advice around access to services that could support staff wellbeing as work levels increased and stress became a real concern.

Charlotte Rowe, Markel Care Practitioners' Care Practice Manager, said the speed of the virus' spread and the lack of guidance from the Government and national medical agencies left many in the care sector struggling to create a cohesive response.

As the lockdown continued, staffing became an increasingly taxing issue for operators.

"The enquiries around the management of staff increased as the lockdowns continued," explained Rowe.

**"There were concerns around self-isolation, and shielding, and the significant differences between firms and organisations operating across the care sector, and their individual requirements, became apparent."**

There were little, if any, issues that were uniform due to a system of regional lockdown tiers that were introduced which created a further degree of uncertainty, with calls for advice increasing.

"There was a growing recognition of the skills gap the sector found itself facing," she explained. "Our clients were faced with situations and challenges they simply had not faced before."

Rowe added: "Throughout the past year it has been a case of asking our clients 'How are you? How can we help?' The support we have been asked to provide has been so varied."



## CASE STUDY 1: COMPLIANCE



### Markel Care Practitioners (MCP) response

The provider, who runs a care service for the elderly, asked for our urgent assistance through their broker.

The majority of the staff became infected and/or subject to quarantine. As more staff became unavailable, agency staff were called upon. Matters worsened until only one of the staff out of 30 direct employed care staff were left and the proprietor themselves in quarantine unable to attend the home. It looked likely that the home would be unable to survive. The provider sought help from the Local Authority and a contract staffing agency was deployed. Not knowing the service users, agency staff raised safeguarding concerns leading to alerts and investigations adding to the precarious survival of the home.

MCP remotely supported the provider with the safeguarding investigations resulting in all allegations being unsubstantiated. The return of critical staff was facilitated and interface with the regulator Care Quality Commission (CQC) also normalised. The home now has all its staff back at work and service users were not moved to other services which could have been a real possibility.

## CASE STUDY 2: FIRST-TIER TRIBUNAL RULING



### Markel Law response

Markel Law represented a care home provider in relation to a decision by the CQC to remove a location from a registration certificate. The home, that was previously rated as good, received a targeted inspection following intelligence received by the CQC from the police. The CQC determined it was appropriate to proceed with the removal. Markel Law supported the provider by bringing in an interim management team and helping create a rapid response action plan addressing the concerns. At the Tribunal hearing, the progress the provider had made was noted. The Tribunal also recognised that some of the observations in the CQC's inspection report were not fully evidenced. The provider was permitted to retain the location on their registration certificate.



## MARKEL LAW HUB 2020

### Top subject categories consumed



Employment	49%
Care sector	16%
Coronavirus – Covid-19	12%
Health and safety	6%
Starting my business	4%
Other	13%

### Top five guides downloaded



#### Guide name

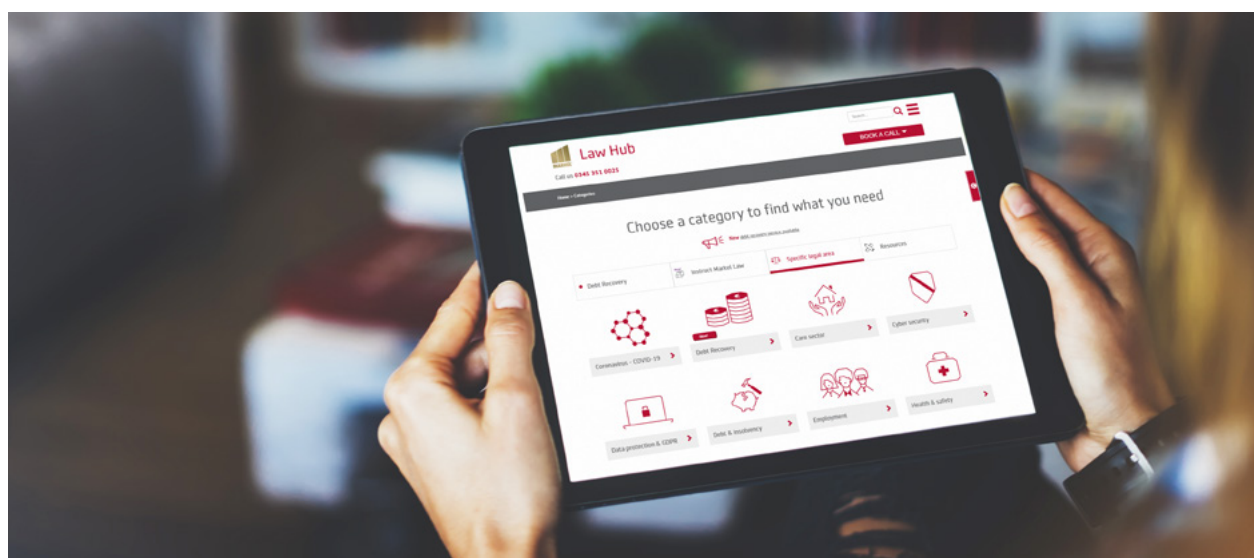
- 1 Coronavirus guidance for employers
- 2 Furlough leave
- 3 Investigation disciplinary procedure flowchart
- 4 Employment law changes 2020
- 5 Care review meeting

### Top five documents downloaded



#### Guide name

- 1 Contract of employment with privacy notice
- 2 Notification of disciplinary hearing
- 3 Request to attend investigatory meeting
- 4 Disciplinary procedure
- 5 Covid-19 risk assessment form





## A future defined by uncertainty

As the vaccination rollout enables the UK Government to create a roadmap for the ongoing relaxation of social distancing rules, the care sector faces ongoing uncertainty. That uncertainty is evident in the sector's future risk landscape, however, some lessons have been learned.

Regulation is a genuine concern for many. Having effectively withdrawn at the start of the lockdown period, inspections have resumed as the regulator looks to adapt its approach, with infection control measures at the very forefront of their minds. The Care Quality Commission has announced it is to revise its scheme of regulation, in order to take into account the lessons it believes have been learned from the pandemic.

It said: "We want to have an active role in encouraging system-wide recovery. As we move into the spring, we are looking to the future and how we can support this. We will continue responding to risk to keep people safe from harm and protect their human rights by proactively seeking out and addressing safety and quality concerns."

The CQC added: "We also want to ensure our future approach to regulation is right and meets the challenges of a changing health and social care sector. The recent consultations on our new strategy and on changes for more flexible regulation set out our ambitions to regulate in a more dynamic and flexible way – moving away from using comprehensive on-site inspection as the main way of updating ratings. We will continue to have on-site inspection as a core part of our activity."

"However, as well as this, we will develop tools to inspect quality and risk proportionately. We are delivering change and improvement across CQC, which will make it much easier for the public and service providers to work with us, and to enable us to help you as you work towards recovery and accelerate improvements in care."

The CQC explained: "We will continue to undertake inspection activity that either helps create capacity to respond to Covid-19 or that responds to risk of harm to the public."

That uncertainty has done little to reassure practitioners and operators.

**"Anything the CQC does or says is of concern to our members," said the NCA's Ms Ahmed. "They have been carrying out challenging inspections with little recognition of the impact Covid-19 has had in the sector."**

It is an issue Deborah Nicholson said is already becoming apparent with organisations that had enjoyed outstanding or good ratings for many years suddenly faced with a "requires improvement" inspection result following a targeted inspection. Often CQC liaise with local authorities where there are concerns, with the unfortunate outcome sometimes being that local authorities provide notice under the contract and withdraw their clients from a specific site or organisation and with it creating a sudden and sizable lack of occupancy and revenue.

This has signalled a move to a more risk-profile type of inspection regime with the smaller operators facing greater scrutiny. With this, the need for clients to contact the legal helpline earlier in the process is increased so the Market legal team can provide greater support at a point where it can make a difference.

"It is key that we are able to become involved early," explained Nicholson. "Ideally we need to be involved before a notice is served in order to support the provider and have the ability to work on a remediation plan."

## Specialist solutions are the way forward

The future insurance response must recognise that the stresses placed on the sector will require a specialist solution.

There is also an understanding that outside of the care home operation sector the move to remote working has seen businesses implement operational changes that may well remain once the social distancing restrictions are fully lifted.

For many, day-to-day operations have moved from face-to-face support at a group level, to one-to-one care online or within a household setting. Both create different liability risks. Like businesses across the country, care organisations are looking to develop their future operational strategies which will take into account the wishes of employees on how and where they would prefer to work.

The National Care Forum explained its members have become acutely aware of the need for insurance cover which is fit for purpose in an environment where risks continue to change.

“It was clear from our consultation with providers that the issue of indemnity and insurance is a complex one,” the NCF said. “The variety of insurance policies and type of provider adds to the technicality and complexity of the issue of insurance and indemnity cover. As a result of these complexities, further analysis and a more detailed assessment is required to determine the potential impact on providers.

**“This issue is a moving and changing situation and as such the full impact on home care and care homes is yet to be fully understood. However, the issue remains front and centre of the key concerns of care providers and must therefore remain a live issue until more is understood.”**

It is a situation that will continue to evolve according to Wendy Cotton.

Legal precedents will continue to evolve and this often has an impact in relation to liability covers,” she explained. “The issue around the legal duty of the 30% of care workers that had not been vaccinated was a case in point. We were asked for advice but with a clear legal position absent, the response was far from straightforward.”

Cotton added that the pandemic has highlighted that care risks cannot be adequately covered by a commercial combined product, they require specialist cover.

“It is not simply a case of slips and trips,” she added. “The risks are hugely different, as is the underwriting approach. Capacity is quite tight, and we are seeing a changing approach from those who are writing business.”

### CASE STUDY 3: CRIMINAL PROSECUTION



#### Insurance policy response

A staff member was assaulted by a service user. Following the assault, the member of staff alleged that her manager had requested she falsify records in relation to the assault. The manager was charged with perverting the course of justice and a criminal prosecution followed. The policy responded to the defence costs that the manager incurred when successfully defending the prosecution.



## Possible new risks may need to be overcome

Brokers fear a changing risk landscape at a time when capacity is far from plentiful. There are concerns that their clients may face a new wave of litigation from staff which contracted Covid-19 whilst at work or from the families of those residents or clients that contracted Covid-19 whilst in their care. Some have voiced concerns that the issue may develop into a new area of no win no fee litigation similar to personal injury claims.

Charlotte Rowe said she believes the future will see insurers and clients working ever closer as the relationships continue to develop above and beyond the insurance policy itself.

“Covid-19 has demonstrated if you have been solely focused on Covid-19, you run the risk of losing focus elsewhere,” she explained. “When complaints arise, we need to be involved before they reach the point of claim, particularly if we see new risks emerging from the pandemic.”

Rowe added: “There is likely to be greater demand from regulators and they will be looking for a greater degree of documentation to evidence what the operators have been doing to ensure compliance.

**“We understand that every area of the care sector is different and, as such, their risks, their support needs and their insurance cover need to be understood and differentiated.”**

Uncertainty remains and Rowe believes the insurer, broker and the client will need to continue to work together as the sector emerges from the pandemic.

“We need to recognise that we do not have all the answers yet as the situation is yet to play out.”



## The future is a solution-driven approach

For its part, Markel is continuing to adopt a positive solution-driven approach, and the structure of its offering can provide the more all-encompassing support that the future risks will demand.

It will be supported through sustainable pricing and long-term product stability. The future is likely to be defined by the way in which the insurer and its broker partners can work with their clients to adapt the products and services they provide to meet the changes to the sector's risk profile and insurance requirements.

Covid-19, and the lessons learned, will undoubtedly change the way in which the sector operates. It will redefine the regulatory approach and see the emergence of new risks.

It will require a new relationship between insurer, broker and the client. A different tactic is now needed – driven by the demands of operators across the care industry – for the relationship with the insurer to go beyond the risks they need to mitigate. The future will be defined by a partnership approach that will enable those in the care sector to access support and expertise that will enable them to act before the risk becomes a claim.

### CASE STUDY 4: REGULATORY COMPLIANCE



#### Markel Care Practitioners response

A provider had a Covid-19 outbreak which impacted service-user wellbeing and staffing in Learning Disability Residential Provision. They needed MCP's help with issues around responding and alerting appropriately to Public Health and subsequent involvement with the London Covid Response Cell.

Support was provided to the client to improve infection control processes and policies, to consider the unique challenges of the client group and environment being an inner-city residence. Concerns escalated to CQC involvement and in respect of implementing the changing guidance at the time. Multiple Local Authorities raised concerns as to the client's communication and actions at the time. We supported the client through the process, by reviewing all documentation, promoting learning and understanding during a difficult time, difficulties in respect of staffing, staff training and leadership and putting client Covid-19 processes for alerting internally and externally.

The outcome of which was a positive sign off from all professionals within eight weeks of the outbreak, no actions from the CQC who were heavily involved and clients feeling supported through a difficult process, where they were facing heavy criticism and steep learning needing to be implemented. They have suffered no loss of life, no significant staff shortages since this time and have gained clear processes around alerting, risk management and also the confidence of professions. So much so they are looking to open two further homes with the support of multiple Local Authorities.

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At Markel, we believe you should Expect **More** from your insurance partner, meaning we are committed to supporting brokers and their customers through COVID-19 so they can drive growth in the 'new normal'.

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## Markel (UK) Limited

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