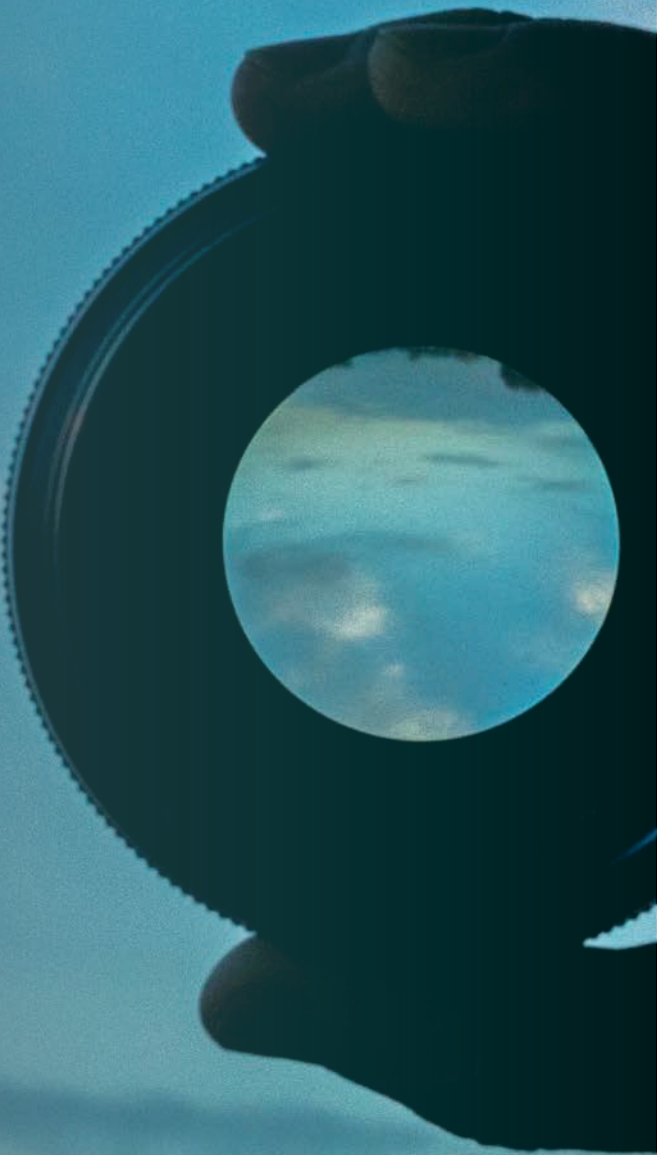
INSIDE VIEW

IN THIS ISSUE:

- Protect your decision-makers with D&O Insurance
- All you need to know about Whiplash Reforms
- Comparing a cyber loss and a fire loss
- Health and Safety Covid spot checks – is your business prepared?
- Modern methods of construction add to arson and hot works fire risks
- Rising credit risks warning



SPRING 2021

Hine®
CHARTERED INSURANCE BROKERS

PROTECT YOUR DECISION-MAKERS WITH D&O INSURANCE

We live in a world that is increasingly becoming more and more litigious. According to the Ministry of Justice (MOJ), employment tribunals surged in 2020; in their latest report which looked at quarter four of last year, Single Employment Tribunal receipts – where an individual makes a claim – increased by 25%.

As this litigation culture continues to grow, if you don't have Directors and Officers Insurance, also known as D&O Insurance, it may be something worth investing in to protect your senior management in the event that a claim is made against them.

WHAT IS D&O INSURANCE?

Your directors, partners, officers, and key managers are likely to have more responsibilities due to the nature of their role. While their work can be exciting and fulfilling, it does put them at a higher risk.

D&O Insurance covers the cost of any compensation claims made against your directors, officers, or high-ranking management for alleged wrongful acts. Claims could be made by disgruntled employees, clients, investors, stakeholders, and even regulators and could involve civil, criminal, or regulatory proceedings. A D&O policy can also cover any legal costs that arise for directors in defending their case.

WHAT IS A WRONGFUL ACT?

According to the Association of British Insurers (ABI), wrongful acts include:

- Breach of trust
- Breach of duty
- Neglect
- Error
- Misleading statements
- Wrongful trading

Mistakes sometimes happen. However even if a director, officer, or key manager acted in good faith and didn't intend on committing a wrongful act, this could still trigger a claim.

WHY IS D&O INSURANCE IMPORTANT?

If your senior leaders don't have D&O Insurance and a claim is brought against them, they could lose their position as director. Civil proceedings against them can bring about costly legal expenses and awards for any damages, and in extreme cases, there might be criminal prosecution which could lead to fines and even imprisonment.

ARE THERE ANY COVID IMPLICATIONS?

Covid-19 has presented a unique and complex set of challenges for businesses and their directors and officers. Due to the ever-changing rules and regulations over the last year, it will be hard for decision-makers within firms to know that they responded to everything efficiently and effectively. Unfortunately, decisions they made during the pandemic while well-intended could lead to litigation.

One thing on many businesses' minds will be protecting the health and safety of employees and providing a secure working environment under health and safety legislation.

Can an employer require an employee to be vaccinated? This is an untested area and has been discussed widely in the media. Article 8 of the European Convention of Human Rights protects the right to private and family life. The right for an individual

to choose whether or not to be vaccinated is likely to fall within this right. It is possible to interfere with this right "in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

Therefore, if there is a real need to protect health or economic wellbeing, it may be possible to override Article 8. It requires a careful balance between the rights of the individual and employer which could also include those of service users. However, there is the possibility that decisions directors and officers make around whether employees should be vaccinated before being allowed to work or return to the office could result in litigation.

ARE YOUR DECISION-MAKERS PROTECTED WITH D&O INSURANCE? PLEASE CALL OR EMAIL A MEMBER OF OUR FRIENDLY TEAM TODAY TO DISCUSS YOUR INDIVIDUAL POLICY NEEDS.

ALL YOU NEED TO KNOW ABOUT WHIPLASH REFORMS

One of the biggest challenges that the insurance industry will face in 2021 is the change to the Civil Procedure Rules concerning whiplash injuries, as legal proceedings and rules changes associated with Whiplash Reforms have been announced. Whilst the reforms will now come into effect on 31st May, it will take a bit of time for the insurance industry to fully understand the implications of these reforms.

THE BACKGROUND

It has been deemed that over the last few years, motor premium costs have become far too high and whiplash claims have increased. According to the Association of British Insurers (ABI), more than 1,500 whiplash claims are made in the UK every day, costing the insurance industry in excess of £2 billion a year. As a result, the cost of whiplash claims to policyholders amounts to an average of £90 per policy.

CHANGES UNDER THE WHIPLASH REFORMS

The Civil Liability Act 2018, which contained the reforms, set out new measures to significantly reduce whiplash claims to save motorists money on their insurance costs, as well as reduce fraud.

As part of the Whiplash Reforms:

- A new fixed tariff of damages for pain, suffering and loss of amenity will be introduced

- The settlement of claims without a medical assessment will be banned

- The small claims limit, known as Small Claims Track (SCT), will increase from £1k to £5k. This, therefore, means legal advice will only be paid for road traffic personal injuries above £5k, as it is believed small claims below this are simple and straightforward to settle and don't require solicitors involvement

- The Official injury Claim portal is being introduced to fall in line with the new SCT limit. From 31st May 2021, individuals injured in a road traffic accident looking to make a claim of up to £5k (to a maximum total of £10k for all losses) will be able to use this free service to claim compensation without legal support

These changes will no doubt impact the way in which road traffic collision claims are dealt with by insurers.

THE IMPACT OF COVID

Over the last year, we have all adapted to the new way of remote working. This has also resulted in changes to our litigation system. For example, court hearings are being held remotely and this is likely to continue to be the case in the future.

The speed at which cases will be brought to court and the fact that hearings will be carried out remotely will pose many challenges in assessing the credibility of a witness. Likewise, remote medical examinations may pose a threat to being able to successfully identify fraudulent claims.

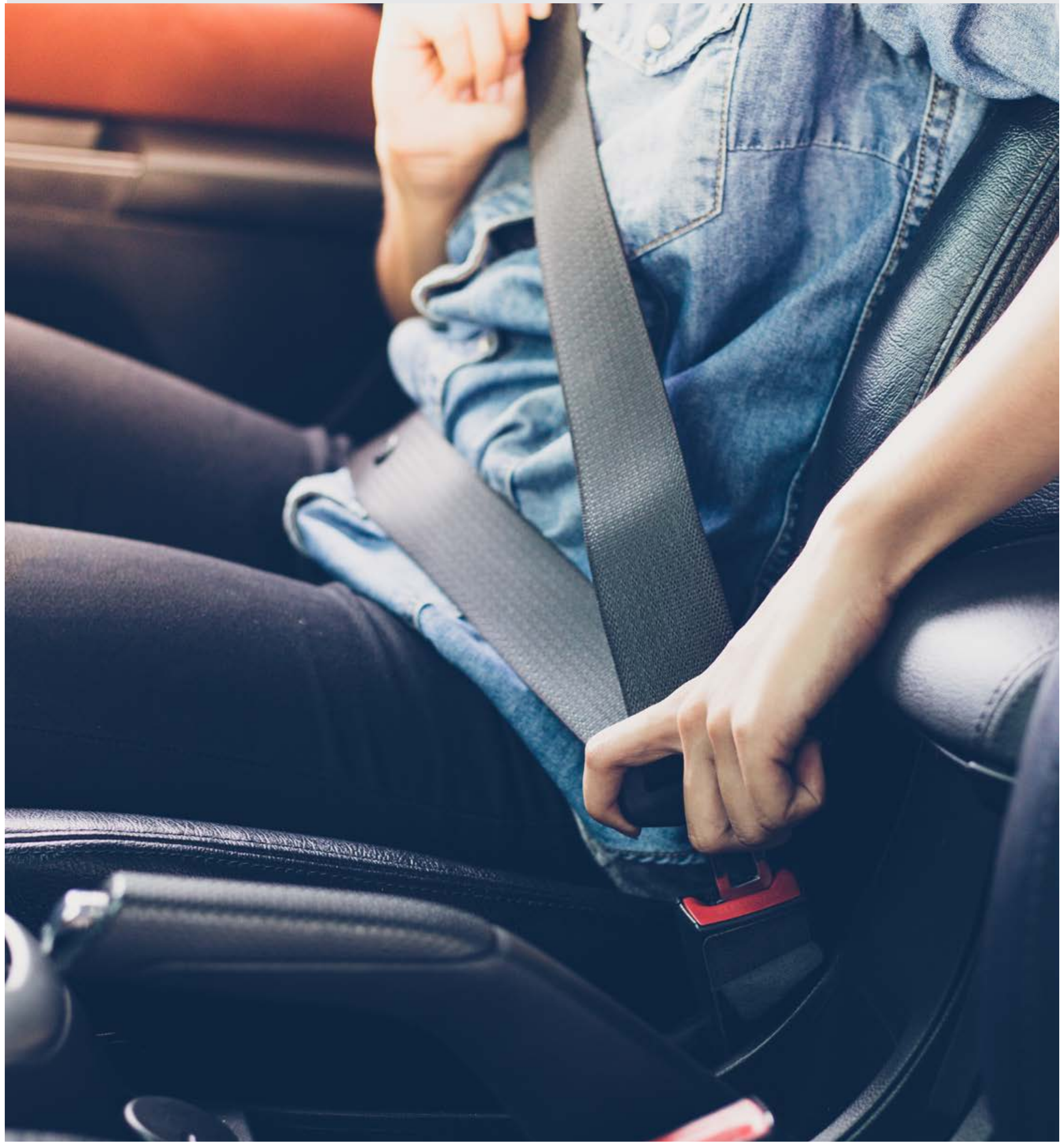
THE EFFECT ON THE INSURANCE INDUSTRY

The reforms involve dealing with simple road traffic collisions through different Ministry of Justice Portals, with each having differing protocols, impacting how insurers will need to respond. Only now that the new reforms are being introduced can insurers finalise their approach. The priority will be for them to scrutinise the new rules and related protocols, and be sure that systems, policies, and procedures are thoroughly prepared and tested.

The insurance industry will need broker's and motorist's support to ensure only valid injury claims are paid and fraud is kept to a minimum. One crucial aspect of this will be for brokers to obtain policyholders' version of events and a signed statement of truth to dispute a claim within 30 working days (40 days for the Motor Insurance Bureau).

If this information is not received by insurers within the timescales, the new portal will 'automatically accept' the third-party claim.

As a result, we cannot stress enough the importance of you reporting any motor incidents immediately on day one, regardless of how minor you deem the incident to be. If you have any questions, please don't hesitate to get in touch with a member of our team.



COMPARING A CYBER LOSS AND A FIRE LOSS

No one wants to have to claim on their insurance. All losses have a detrimental effect on individuals and businesses alike. They can affect business continuity, lead to loss of reputation and, at worst, imperil the very existence of companies.

With the rise in cyber-crime, there has been a rise in insurance claims. Cyber-crime is insidious, unseen and potentially multi layered and intricate. With other physical losses, such as fire, it is likely that you will have a good idea as to what to do in the event of a claim.

Cyber can feel more complex due to it being a newer risk and its intangible nature. We have put together the instructive table below which outlines how a cyber loss can be more similar to a traditional fire loss than you might first think.

FIRE LOSS		CYBER LOSS	
Electrical fault causes massive fire at head office premises		Employee clicks on malicious link and systems are encrypted	
IMMEDIATE REACTION	**IMMEDIATE CONSEQUENCE**	**IMMEDIATE REACTION**	**IMMEDIATE CONSEQUENCE**
Fire needs to be extinguished	Building cannot be accessed	Virus needs to be removed from the system	IT systems cannot be accessed
SECONDARY REACTIONS	**SECONDARY CONSEQUENCES**	**SECONDARY REACTIONS**	**SECONDARY CONSEQUENCES**
Alternative office space is required	Alternative accommodation requires paying extra rent	Alternative means of communication and working required in the short term	Labour intensive, create large amounts of offline information
Cause of fire needs investigating	Loss adjusters' costs	Cause of computer failure needs investigating to prevent reoccurrence	Specialist IT forensic teams are highly expensive
	Investigations take up management time		Investigations take time, systems are still not accessible
New equipment needs to be purchased	Funds required for new equipment	New 'clean' equipment is required that is virus free	Some equipment might be irrevocably damaged in the attack and needs replacing
Offices need to be rebuilt	Funds needed to rebuild/repair damage, depending on the severity of the fire	Systems need rebuilding, data needs to be reconstructed	Takes time. Data which cannot be restored from backups needs to be manually restored. Labour intensive extra staff required
Office fit out	Funds required for replacing lost contents	System needs testing to see if they work before roll out	Creates time delays and prevents use of systems, compounding extras costs once systems are restored
Loss of time having no offices	Overtime required to catch up with the down time to minimise impact on business	Lost time in having no systems	Overtime to catch up, all the information created offline now needs to be entered back on to the system
Lost sales	Having no office, can result in a direct loss of custom, new orders cannot be taken, existing orders delayed direct impact to cash flow	Lost sales	No IT systems means new orders cannot be processed, existing orders are lost, invoices cannot be generated and sent out, direct impact on cash flow
	Business moves to competition		Business moves to competition
Crisis containment/PR	In the event of a fire loss, a company would want to reassure its customers that it's still able to trade and ful-fil requirements to help minimise the damage to a company's reputation and any loss of trading. This could extend to any environmental im-pact and responses may include a formal communication strategy to running a 24/7 crisis press office, depending on the severity	Crisis containment/PR	In the event of a data breach, a prompt, confident notification and communication is critical to help minimise the damage to a company's reputation. Responses may include a formal communication strategy to running a 24/7 crisis press office, depending on the severity.
Fines and penalties	H&S investigations, possibility of fines/ prosecution	Fines and penalties	GDPR/ICO investigations and penalties PCI Investigations and fines

While Cyber Insurance can't stop hackers and cybercriminals, it can help you get back on your feet if you are a victim of cyber-crime, including recovering data, restoring systems and loss of income. With more businesses relying on digital channels and operating remotely during the pandemic, having Cyber Insurance has never been so important.

HEALTH AND SAFETY COVID SPOT CHECKS – IS YOUR BUSINESS PREPARED?

April 12th saw non-essential retail outlets, pubs and bars, hairdressers, beauticians, and public buildings, such as libraries, opening their doors once more. And, as of 17th May most businesses, except those in the highest risk sectors, will have been able to reopen. There is undoubtedly a high focus on ensuring businesses are Covid safe for both customers and employees. We therefore wanted to remind you of the possibility that you may receive a Health and Safety Executive spot check.

Since last year, the Health and Safety Executive (HSE) have been carrying out spot checks and inspections on all types of businesses, in all areas, to ensure they are Covid-secure. They are making calls so that they can give expert advice on how to manage the risks and protect workers, customers, and suppliers.

By calling and visiting the premises of businesses that have reopened or remained re-opened during lockdown, they will speak to employers to check the measures they have put in place are in line with Government guidance.

HSE Inspectors make Covid-secure checks as part of their normal role in visiting workplaces during the pandemic. To ensure they reach as many workplaces as possible nationally and help support their core role, they are working with trained and approved partners to deliver spot checks.

Inspectors from approved partners that visit premises will be carrying identification from their business and a letter of authorisation from the HSE. If you want to verify the authenticity of an inspector that calls or visits your business, you can call 0300 790 6896.

If you receive a call or spot check you should participate fully. Failure to do so could lead to enforcement action.

As well as participating in the visits, it is important you should take steps to help keep your workplace Covid-secure. This includes:

- Carrying out a Covid-19 risk assessment
- Maintaining social distancing
- Keeping your workplace clean with handwashing and hygiene procedures

There has been a rise in local papers reporting spot checks in their areas. We'd therefore advise you ensure that you're following Covid guidelines, so you're prepared on the off chance that the HSE drop by your business.

MODERN METHODS OF CONSTRUCTION ADD TO ARSON AND HOT WORKS FIRE RISKS

Arson and hot works are among the most common causes of fire in the UK, whilst modern methods of construction are also a leading factor in many fires. With this as a backdrop, businesses and organisations need to manage and mitigate the risks.

According to the National Fire chief's council, arson and wilful fire raising remain the most common and damaging causes of fire. Over 50% of all fires attended by fire and rescue services in 2017/18 were due to arson and the estimated financial loss over this period was between £5.7 bn and £11.5 bn.

Malicious or deliberate fires are not uncommon in empty premises. While such fires will remain a significant issue, regardless of the economic downturn, it is likely there will be more deliberate fires, particularly if the volume of vacant properties increases.

SCHOOLS ALSO AT RISK

Schools can also be at greater risk of malicious fire setting, particularly during long periods where they are of unoccupied. They can take a number of measures to reduce risk, from reviewing and upgrading building security, to relocating combustible external structures, such as sheds, waste and litter bins or temporary buildings, away from main buildings. Organisations should also conduct routine inspections ensuring procedures and maintenance schedules are up-to-date, and implementing effective incident reporting processes.

HOT WORKS

Hot works are defined as any building, maintenance or refurbishment work that requires the application of heat, such as grinding, welding or torch applied roofing and as such represents another major fire risk. CE Safety, a health and safety training company, submitted Freedom of Information requests to UK fire and rescue departments to determine how many fires in the construction industry were caused by hot works. The data they received revealed there were 204 buildings under construction that caught fire because of hot works in 2018/2019 in the UK.

Poor practices and processes can lead to explosions as a result of sparks coming into contact with flammable gases or combustible dusts and injuries including burns and inhalation of fumes.

To mitigate the risks posed by hot works, organisations need to:

- Fully understand the nature of the works taking place and the specific risks they pose
- Select experienced contractors who will select the lowest risk methods
- Remove all combustible materials from the site vicinity and apply the right controls
- Maintain fire watches during breaks in the day and after hot works have finished
- Establish proper procedures for dealing with an emergency

This is not an extensive list of the measures that can be taken, and new technology may help reduce the risks of hot works in the future.

CHANGES TO THE BUILT ENVIRONMENT

More and more organisations, including local authorities and housing associations, are embracing modern methods of construction (MMC). New technologies are used in the construction of a variety of buildings, from small blocks of flats to education, health, and leisure centres. As construction practices and technology continue to develop rapidly, taller, and more complex buildings are being erected using MMC.

The use of MMC can be particularly attractive to local authorities and housing developers looking to construct public buildings and social housing developments in the most effective manner, whilst meeting the latest standards of sustainability and environmental performance. Although there are many benefits of MMC, including reduced costs, minimising waste, ensuring greater consistency in quality standards, and satisfying green energy requirements, they can introduce added risks. There is potentially a reduction in resilience when compared with more traditional builds, both during construction and throughout a building's lifetime.

PRE-FABRICATED DESIGNS

Advances in pre-fabrication are enabling larger and more complex building components to be manufactured off-site and assembled on-site. Ranging from wall panels to whole sections of buildings, including plumbing and electric fittings, this can make construction quicker, cheaper, and more accurate. However, there are additional risks associated with these aspects of MMC. For example, voids between modules can allow fire, water, and smoke to spread through a building.

CHANGES OF USE

In the modern built environment, many buildings are changing use which can present new fire risks. As an example, a few years ago there were a number of former refrigerated warehouse units being converted into offices and other uses, but with the original combustible insulation in place. That situation has changed, but there remains the possibility that a similar scenario could emerge as other buildings are re-purposed.

RISING CREDIT RISKS WARNING

Ratings agency Moody's has given a stark warning that the UK should anticipate a rise in credit risks given the prospect of an unwinding of the level of Government fiscal support measures.

It adds that weak earnings and solvency concerns will weigh hard on hard-hit companies, while higher debt levels will erode the positive effects of low interest rates on debt-servicing capacity.

The latest report from R3, the insolvency and restructuring trade body, shows that corporate insolvencies are on the rise again, increasing by 37.8% to 1,228 in December 2020 compared to November's figure of 1,125.

LATE PAYMENTS AND HOW TO PROTECT YOUR BUSINESS

Late payments are a sign that a customer may have a problem and for many they become accepted as another operating cost. Big businesses incorporate automation, prediction, advanced analytics, and artificial intelligence into their management tools to identify the risk.

However, we appreciate many SMEs will be relying on looking at the debtor ledger to identify late payers, and may not be looking at their industry, trends and other signals that indicate business creditworthiness.

So, what are the tools at your disposal?

- **Get to know the customer.**
  Understand the business sector, risk level and what credit terms have been offered.

- **Manage cash flow.**
  Review payment schedules with key customers. Potentially agree price discounts with large firms in an effort to reduce their 60/90-day credit terms to achieve better cashflow despite discounting.

- **Invoice correctly and promptly.**
  Dating invoices on the first day of the month can often turn a 30-day invoice into 60 days. Understanding how a customer pays and bill them accordingly. Maintain customer documentation and ensure the details are correct. If a customer has a vendor portal, login, and check invoice status frequently.

- **Chase payment regularly.**
  Chasing payment helps keep your business front of mind and build relationships with accounts payable teams. When they get to know a vendor, accounts payable staff can be empathetic, helpful, and loyal when they know how a business operates.

- **Outsource debt collection.**
  Invoice financing or factoring is an option if a business doesn't have internal resource, but it can be costly.

- **Get Trade Credit Insurance.**
  This type of policy provides cover for businesses if customers who owe money for products or services do not pay their debt or pay them later than payment terms. This could be caused by customer bankruptcy, political risk, or other reasons. It gives businesses the confidence to extend credit to new customers and improves access to funding. There will be a number of trade credit options to suit businesses and customers. Trade credit insurers review and report on risk by business sector right down to individual customer level.