

# Application Notice

CPR Part 23

- You must complete Parts A and B, and Part C if applicable
- Send any relevant fee and the completed application notice to the court with any draft order, witness statement or other evidence
- It is for you (and not the court) to serve this application notice

**You should provide this information for listing the application**

Time estimate                      5 (hours)                      (mins)

Is this agreed by all parties?     Yes     No

Please refer to the Financial List Guide and the Commercial Court Guide for details of how applications should be prepared and will be heard, or in a small number of exceptional cases can be dealt with on paper.

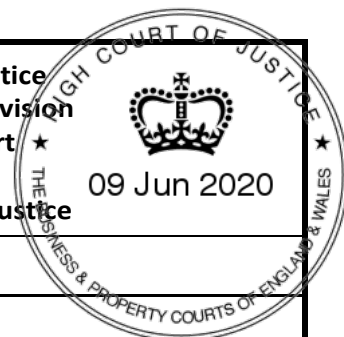
## Part A

1. Where there is more than one claimant or defendant, specify which claimant or defendant  
 (The claimant)(The defendant)<sup>(1)</sup>  
 The Financial Conduct Authority

2. State clearly what order you are seeking (if there is room) or otherwise refer to a draft order (which must be attached)  
 intend(s) to apply for an order (a draft of which is attached) that<sup>(2)</sup>  
 (1) the Financial Markets Test Case Scheme (Practice Direction 51M) shall apply to the claim;  
 (2) the trial of the claim shall be expedited;  
 (3) the claim shall be managed and tried in accordance with the directions in the draft order.

3. Briefly set out why you are seeking the order. Identify any rule or statutory provision  
 because<sup>(3)</sup>  
 Please refer to attached continuation sheet

<b>In the</b>	High Court of Justice Queen's Bench Division Commercial Court Financial List Royal Courts of Justice
<b>Claim No.</b>	FL-2020-000018
<b>Warrant no.</b> (if applicable)	
<b>Claimant(s)</b> (including ref.)	The Financial Conduct Authority Aut 2020-000018
<b>Defendant(s)</b> (including ref.)	(1) Arch Insurance (UK) Limited (2) Argenta Syndicate Management Limited (3) Ecclesiastical Insurance Office Plc (4) Hiscox Insurance Company Limited (5) MS Amlin Underwriting Limited (6) QBE UK Limited (7) Royal & Sun Alliance Insurance Plc (8) Zurich Insurance Plc
<b>Date</b>	9 June 2020



The court office at the Admiralty and Commercial Registry, The Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL is open from 10am to 4.30pm Monday to Friday. When corresponding with the court please address forms or letters to the Clerk to the Commercial Court and quote the claim number.


**Part B**

\*(The claimant)(~~The defendant~~)<sup>(1)</sup> wishes to rely on: *tick one*

the attached (witness statement)(~~affidavit~~)  (the claimant)(the defendant)'s<sup>(1)</sup> statement of case

evidence in Part C overleaf in support of this application

**Signed**



(Applicant) ('s legal representative)

**Position or office held**

(if signing on behalf of firm, company or corporation)

Partner, Herbert Smith Freehills LLP

4. If you are not already a party to the proceedings, you must provide an address for service of documents

Address to which documents about this claim should be sent (including reference if appropriate)<sup>(4)</sup>

FAO Greig Anderson Herbert Smith Freehills LLP Exchange House Primrose Street London	If applicable	
	Tel. no.	+44 (0) 20 7466 2229
	Fax no.	+44 (0) 20 7374 0888
	DX no.	DX28 London Chancery Lane
	Postcode	EC2A 2EG
	e-mail	greig.anderson@hsf.com

**Part C**

Claim No. FL-2020-000018

**(Note: Part C should only be used where it is convenient to enter here the evidence in support of the application, rather than to use witness statements or affidavits)**

\*(The claimant)(The defendant)<sup>(1)</sup> wishes to rely on the following evidence in support of this application:

**Statement of Truth**


\*(~~I believe~~)(The applicant believes) that the facts stated in this application notice are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth

Full name Greig Anderson

Name of \*(Applicant)(~~litigation friend~~)'s legal representative

Herbert Smith Freehills LLP

**Signed**



\*(Applicant)'s legal representative)

**Position or office held**

(if signing on behalf of firm, company or corporation)

Partner, Herbert Smith Freehills LLP

*\*delete as appropriate*

**Date**

9 June 2020

**BETWEEN:**

**(1) THE FINANCIAL CONDUCT AUTHORITY**

**Claimant**

**- and -**

**(1) ARCH INSURANCE (UK) LIMITED**  
**(2) ARGENTA SYNDICATE MANAGEMENT LIMITED**  
**(3) ECCLESIASTICAL INSURANCE OFFICE PLC**  
**(4) HISCOX INSURANCE COMPANY LIMITED**  
**(5) MS AMLIN UNDERWRITING LIMITED**  
**(6) QBE UK LIMITED**  
**(7) ROYAL & SUN ALLIANCE INSURANCE PLC**  
**(8) ZURICH INSURANCE PLC**

**Defendants**

**Attachment to Application Notice N244(CCFL)**

**Continuation of Part A, Section 3 (Briefly set out why you are seeking the order.**

**Identify any rule or statutory provision)**

**The application of the Financial Markets Test Case Scheme to the claim**

The claim concerns whether or not claims for business interruption losses arising from the COVID-19 pandemic are covered by insurance policies issued by the Defendants. The claim is suitable for the Financial Market Test Case Scheme because in summary:

- (1) the claim is a Financial List claim;
- (2) the claim raises issues of general importance in relation to which immediately relevant authoritative English law guidance is needed;
- (3) the criteria of the Financial Markets Test Case Scheme are satisfied;

- (4) further or alternatively, the Financial Markets Test Case Scheme is in any event appropriate for the claim.

### Expedition and urgency

The claim is urgent for the following reasons:

- (1) The COVID-19 pandemic and the controls imposed by the Government as a result are causing substantial losses and financial distress to businesses, in particular small and medium enterprises but other businesses as well. A large number of claims are being made to the Defendants and other insurers under the terms of policies of insurance covering business interruption losses. Depending on the policy wording and the circumstances of the insured's claim, the Defendants and other insurers are paying claims in relation to some policies and rejecting claims in relation to others. Various businesses and groups of businesses have indicated their intention to challenge the rejection of their claims.
- (2) The Claimant considers that there is legal uncertainty as to whether the policies that are the subject of the claim ought to respond to claims for business interruption losses arising from the COVID-19 pandemic. As the regulator responsible for regulating and supervising the conduct of the Defendants and other insurers in the UK, it urgently seeks resolution of this legal uncertainty for the purposes of exercising and performing its statutory powers and duties under the Financial Services and Markets Act 2000 in accordance with its strategic objective of ensuring that the relevant markets function well and its operational objectives of protecting and enhancing the integrity of the UK financial systems and of securing an appropriate degree of protection for consumers. The declaratory relief sought by the Claimant, together with regulatory guidance that the Claimant has issued for consultation in respect of the relevance of the proceedings to the handling of business interruption claims arising from the COVID-19 pandemic (subject to consultation) and any additional regulatory or supervisory action that the Claimant may take in relation to the claim and the judgment, may alleviate financial distress and enable businesses to avoid insolvency. Although it is not possible to give a firm estimate of the number of affected claims and their value, based on information up to early May 2020, the FCA has been informed of approximately 8,500 claims under policy wordings likely to be affected by the test case. The value of those claims was

calculated at approximately £1.2 billion, on the assumption that those claims were fully paid up to any policy limit or sub-limit identifiable from the policy wording. This estimate is derived from preliminary calculations undertaken by the PRA based on information and data provided by the FCA. The figure may be updated in due course as further data is received from insurers. It was not possible, based on information readily available to the FCA, to independently assess the likely quantum of these claims in such a way that would provide an accurate assessment of the actual exposure of the relevant insurers.

(3) The Defendants recognise that achieving legal certainty on an urgent basis on the issues raised by the claim is in the interests of all affected parties.

(4) The judgment on the claim is likely to be of wider benefit to market participants including policyholders.

#### Directions, draft order and the constitution of the court

The directions in the draft order will promote the just and expeditious determination of the claim. In view of the particular importance and urgency of the claim, the Claimant requests that the claim be tried by three judges (alternatively two judges) consisting of two (alternatively one) Financial List judge(s) and a Lord or Lady Justice of Appeal.

#### The Defendants' position

The application is supported by the Defendants, who have agreed the draft order (save as to paragraph 11 in relation to factual evidence, as to which the Claimant's proposed direction is shown in blue and the Defendants' proposed direction is shown in purple). The Defendants do not propose to rely upon any witness statement(s) of their own.