

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 2 (hours) 0 (mins)

Is this agreed by all parties? Yes X 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~~)⁽¹⁾

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⁽²⁾

it is certified that, for the purposes of section 12(1) of the Administration of Justice Act 1969 ('the Act'), the alternative conditions in section 12(3A) of the Act are satisfied in relation to the points of appeal in the Application, and there is a sufficient case for an appeal to the Supreme Court under Part II of the Act to justify an application for leave to bring such an appeal.

because⁽³⁾

See attached continuation sheet.

3. Briefly set out why you are seeking the order. Identify any rule or statutory provision

In the	High Court of Justice Queen's Bench Division Commercial Court Financial List Royal Courts of Justice
Claim No.	FL-2020-000018
Warrant no. (if applicable)	
Claimant(s) (including ref.)	The Financial Conduct Authority
Defendant(s) (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
Date	28 September 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~~)⁽¹⁾ wishes to rely on: **tick one**

the attached (witness statement)(affidavit) (the claimant)(the defendant)'s⁽¹⁾ 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)⁽⁴⁾

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

(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)⁽¹⁾ wishes to rely on the following evidence in support of this application:

Please see attached Grounds of Appeal

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

Full name Greig Anderson

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

Herbert Smith Freehills LLP

Signed

[Handwritten signature]

*(Applicant)'s legal representative)

Position or office held

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

Partner, Herbert Smith Freehills LLP

Date

28 September 2020

*delete as appropriate

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (QBD)
FINANCIAL LIST
FINANCIAL MARKETS TEST CASE SCHEME

BETWEEN:

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

- (1) HOSPITALITY INSURANCE GROUP ACTION
(2) HISCOX ACTION GROUP

Interveners

**CLAIMANT'S APPLICATION FOR A LEAP-FROG CERTIFICATE
PURSUANT TO S.12 ADMINISTRATION OF JUSTICE ACT 1969**

1. The Financial Conduct Authority applies for leap-frog certification under section 12 Administration of Justice Act 1969, although this is a protective application as the parties are in discussions as to whether an appeal can be avoided.
2. The application is sought on the basis that the requirements of section 12 are satisfied: the conditions in subsection 3A are all satisfied (although the Financial Conduct Authority only needs to satisfy one), namely the proceedings entailed a decision raising points of law of general

public importance and relating to a matter of national importance, the result of the proceedings is so significant that a hearing by the Supreme Court is justified, and the benefits of earlier consideration by the Supreme Court outweigh the benefits of consideration by the Court of Appeal, given that the judgment appealed against was an expedited test case on a matter affecting over £1bn of claims, heard by a Divisional Court including a Lord Justice of Appeal and Financial List judge, under the Financial Markets Test Case Scheme (which itself only applies to issues of general importance in relation to which English law guidance is needed).

3. The points of appeal on which a certificate is sought are:
 - a. Whether and the extent to which pre-trigger COVID-19 related negative effects on revenue should be taken into account to reduce the indemnity.
 - b. That prevention of access and hybrid wordings are triggered by actions without force of law (i.e. Government actions beyond the 21 and 26 March 2020 Regulations).
 - c. The prevention of access and hybrid wordings do not require total closure of the business, and a fundamental change by closure of a part of the business for which the premises is used (such as eat-in or shop-in services) or prohibition on a substantial part of the customer base (such as all children other vulnerable children or than those of key workers) can be sufficient.
 - d. References to ‘incidents’ or ‘events’ in ancillary wording to the triggers (exemplified by QBE2-3) does not mean that the cover is intended only to cover disease within the 25/1 mile limit.
4. A skeleton in support of this application will be filed by noon on Wednesday 30 September 2020, subject to any contrary order of the Court.