



**BUSINESS INTERRUPTION INSURANCE TEST CASE**

**ISSUES MATRIX**

**9 JUNE 2020**

This matrix summarises the effect of a few of the key terms that are likely to be argued. In including exclusions or trends clauses, the FCA does not thereby accept that they are in fact applicable to any or all claims being considered here. While a useful summary document, the Issues Matrix is likely to decrease in value as the litigation progresses, and the reader’s attention is drawn to the pleadings and other documents which will set out in fuller detail the issues between the FCA and insurers.

Where comments are footnoted, they represent the comments of a particular party and have not been endorsed or agreed by any other party.

Policy type	PoA			Disease	All	
	Just denial or prevention of access	Authority includes ‘government’	Vicinity	Vicinity	Trends clause or similar?	Exclusions, Conditions or similar?
Arch <sup>1</sup>	Yes	Yes	No vicinity limit	-	Two variants: (i) Commercial Combined, (ii) Retailers, Powerplace Both are expressed to apply to ‘Damage’	<u>No indemnity for:</u> ‘Notifiable Human Infectious or Contagious Disease’ as defined in the current relevant legislation occurring at the Premises
Argenta <sup>1</sup>	-	-	-	25 miles	Two variants: (i) Guest House and B&B; (ii) Holiday Home and Self Catering Both are expressed to apply to ‘Damage’	<u>Exclusion:</u> no liability for loss arising from those premises that are not directly affected by the occurrence  <u>Exclusion:</u> micro-organism exclusion

<sup>1</sup> Arch wishes to record that (i) it has accepted the existence of the policy coverage in a substantial proportion of claims made under this perils clause, (ii) Arch has not, in response to any claim, sought to rely upon the exclusion for ‘Notifiable Human Infectious or Contagious Disease as defined in the current relevant legislation occurring at The Premises’, and (iii) the relevance of the trends clause will need to be considered.

Ecclesiastical1.1 and 1.2	No (also hinder and use)	Yes	No vicinity limit	-	<p>Three variants: (i) ME886 Nurseries; (ii) ME857 Parish Plus and ME858 Parishguard; (iii) all other policies</p> <p>All are expressed as being applicable to 'damage'</p>	<p><u>Exclusion</u>: any period when access to the premises was not prevented or hindered</p> <p><u>Exclusion</u>: closure or restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease)</p>
Hiscox1	No (also hinder)	Yes	1 mile	No express vicinity limit	<p>Two variants:</p> <p>(i) Expressly refers to insured damage: all policies except BI - OM (Jelf) - 8671 WD-HSP-UK- JMBI(3) and Recruitment BI - 8671 WD-HSP-UK-JMBI)</p> <p>(ii) Expressly refers to damage, restriction, failure or cyber attack: (BI - OM (Jelf) - 8671 WD-HSP-UK-JMBI(3) and Recruitment BI - 8671 WD-HSP-UK-JMBI only)</p>	-

Hiscox2	No (also hinder)	Yes	Two variants:  (i) 11431, 16258: 'vicinity'  (ii) 16725, 7103 (both types): 1 mile	No express vicinity limit	Five variants: (i) 15779, 9102 – expressly refer to damage (ii) 7103 (ending PVB(2)) – expressly refers to insured damage (iii) 10117 – expressly refers to damage or restriction (iv) 18680, 16258, 7620, 9280, 10199, 11335, 11905, 10883, 12578, 11431 – expressly refer to insured damage or restriction (v) remainder: expressly refer to insured damage, insured failure or restriction	-
Hiscox3	-	-	-	No express vicinity limit	Two variants: (i) 8006 and 10272 – expressly refer to damage (ii) 8358, 14174, 9519 – expressly refer to insured damage or restriction	-
Hiscox4	No (also hinder)	Yes	1 mile	1 mile	Three variants: (i) 15299, 15447 – expressly refer to insured damage, insured failure, cyber-attack or restriction (ii) 15480 – expressly refers to insured damage, insured failure, loss of licence or restriction (iii) 20155 – expressly	-

					refers to insured damage or insured failure	
MSAmlin1	Yes	No	'vicinity'	25 miles	Expressed as being applicable to 'damage'	<u>Condition</u> (in Disease clause): Only premises directly affected <u>Exclusion</u> : Pollution and contamination
MSAmlin2	No (also hinder)	Yes	1 mile	25 miles	Variants: (i) Leisure and Retail (ii) Office and Surgery Both are expressed as being applicable to 'damage'	<u>Condition</u> (in Disease clause): Only premises directly affected <u>Exclusion</u> : Pollution and contamination
MSAmlin3	No (also hinder and use)	No	'vicinity'	-	Expressed as being applicable to 'damage'	-
QBE1 <sup>2</sup>	-	-	-	25 miles	PBCC and POFF: expressed as being applicable to 'damage' POFP: uses the term 'trend adjusted' in the definitions of standard gross fees and standard gross revenue, but does not have a definition of that phrase	<u>Exclusion</u> : Pollution or contamination (PBCC only)

<sup>2</sup> QBE has not provided comments on the drafting or content of this document.

QBE2	-	-	-	25 miles	Expressed as being applicable to 'damage'	<u>Exclusion:</u> Pollution or contamination
QBE3	-	-	-	1 mile	Expressed as being applicable to 'damage'	<u>Exclusion:</u> Micro-organism <u>Exclusion:</u> Pollution or contamination
RSA1	-	-	-	25 miles	No trends clause, but the basis of settlement provision requires that any reduction in Gross Revenue be solely a result of ' <i>Damage to Buildings</i> '	<u>Exclusion:</u> Pollution or contamination <sup>3</sup> <u>Other:</u> the cover requires closure or restrictions placed on the Premises as a result of a disease 'manifesting itself'
RSA2.1 and 2.2	No (also hinder and use)	No	'vicinity'	-	Expressed as applicable to 'damage'	<u>Exclusion in RSA2.1 and 2.2:</u> any loss during any period other than the actual period when access to the Premises was prevented <u>Exclusion in RSA2.2:</u> Pollution or contamination; <sup>4</sup> <u>Exclusion in RSA2.2:</u> 'Any loss... As a result of infectious or contagious diseases any amount in excess of £10,000' <sup>5</sup>

<sup>3</sup> RSA: the need for consideration to be given to the 'pollution and contamination' exclusion is under review.

<sup>4</sup> RSA: the need for consideration to be given to the 'pollution and contamination' exclusion in the Retail policy is under review.

<sup>5</sup> RSA: the proper construction of this will need to be resolved: in particular whether it imposes a complete exclusion in respect of 'notifiable or contagious diseases' (with the inner limit of £10,000 being applicable generally to the Public Emergency Extension rather than only to 'notifiable or contagious diseases').

RSA3	-	-	-	25 miles	Expressed as applicable to 'incident' <sup>6</sup>	<p><u>Exclusion:</u> Pollution and contamination clause, which includes within it a reference to 'epidemic and disease'</p> <p><u>Qualification on perils clause:</u> only loss arising at Premises directly affected by the occurrence discovery or accident</p>
RSA4	<p>First DoA clause<sup>7</sup> requires: 'enforced closure', rather than denial or prevention of access</p> <p>Second DoA clause:<sup>8</sup> No (also hindrance and use)</p>	Both DoA clauses: any governmental authority or agency	<p>'Vicinity' is defined in the policy as being 'an area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured's Business'<sup>9</sup></p>	Vicinity is defined the policy as being 'An area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured's Business' <sup>10</sup>	Applies to 'Covered Event' as defined (and which includes the events as described in relevant insuring clauses)	No

<sup>6</sup> RSA: the relevant of the trends provisions (introduced via the definitions applicable to basis of settlement clause) to a non-damage extension will need to be considered.

<sup>7</sup> 'Notifiable Diseases & Other Incidents', sub-meaning (v).

<sup>8</sup> 'Prevention of Access – Non Damage', sub-meaning (ii).

<sup>9</sup> The application of the Vicinity requirement to the DoA clauses is a matter for consideration.

<sup>10</sup> RSA note that RSA4 also includes cover for 'Notifiable Diseases & Other Incidents' 'discovered at an Insured Location'.

Zurich1	Yes	No	'vicinity'	-	Trends clause is included if the policy is written on a Loss of Gross Profit basis but not if written on an Increased Cost of Working basis <sup>11</sup>	<u>Exclusion</u> : Pollution or contamination
Zurich2	Yes	No	'vicinity'	-	Trends clause applies to an 'incident'	<u>Exclusion</u> : Pollution or contamination

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<sup>11</sup> Zurich has informed the FCA that if the cover is written on a Loss of Revenue basis, a trends clause on the same terms would be applied. Zurich has not provided the FCA with any examples to this effect and the FCA cannot confirm whether this is accurate.