

BI INSURANCE TEST CASE

TABLE OF APPEAL STATUS AND HIGH COURT DECLARATIONS ARRANGED BY POLICY TYPE – 4 NOVEMBER 2020

This table is intended to help policyholders navigate the [High Court declarations](#) in the BI insurance test case. It is intended to provide a starting point to highlight the most relevant declarations and paragraphs of the [High Court judgment](#) per policy type. It is not definitive or legally binding. The declarations declare how and to what extent the policies in the [representative sample](#) may respond to business interruption losses arising from UK Government action taken primarily in March 2020 in response to the national Covid-19 pandemic. The High Court judgment does not substantively deal with any other facts, such as the more recent ‘local’ lockdowns. The application of the declarations to any particular policy will depend on the wording of the policy and the full judgment. Policyholders are encouraged to speak to their insurance intermediaries and/or their advisers in the first instance for questions arising.

Policy type ¹	Did the High Court find that the policy would potentially provide cover? ²	Is the cover being appealed such that the overall outcome may change? ³	Type of clause ⁴	Key paragraphs on cover in judgment ⁵	Disease declarations	Prevalence declaration	Public authority action declaration	Causation and trends clauses declaration ⁶	Specific policy type declaration
Arch 1	Yes, for certain types of business	Yes – by Arch and FCA	POA	306-351		8	9	11, 13	14
Argenta 1	Yes	Yes – by Argenta	Disease	80-81, 149-174	1, 5	8		10, 11, 13	15
Ecclesiastical 1.1 and 1.2	No – see especially declaration 16.1	No	POA	306, 352-389		8	9	13	16

¹ To view the names of the policies under each policy type, click on the policy type to be taken to the relevant part of the [Representative Sample of Policy Wordings document](#).

² For the UK Government action taken primarily in March 2020 in response to the national COVID-19 pandemic. See the relevant declarations to understand the extent of the potential cover or reason for there generally being no cover (in particular, the “Specific policy type declaration”). Where there is potential cover, this is subject to the facts in each case, including issues of prevalence (declaration 8) and the application of trends clauses (declarations 11-13). Each policy will need to be reviewed in light of the judgment and declarations applicable, and the particular facts.

³ The written cases and applications for permission to appeal to the Supreme Court cover many issues. Where the FCA is appealing a policy where the High Court found that there would generally potentially be cover, that is because the FCA is seeking to expand the circumstances in which there would be cover. The same is true for Hiscox Action Group’s appeal. Apart from coverage, the FCA, certain Defendants and Hiscox Action Group are appealing various matters (e.g. causation, trends clauses) which are relevant across many policy types. The FCA’s appeals on Hiscox 1, 2 and 4 (NDDA), MSAmIn 1-2 (AOCA), and Zurich 1-2 will not overturn the High Court’s findings as to the overall outcome on those policies, hence the “no” entries for these policies. See the written cases and applications to appeal to the Supreme Court on the [FCA’s webpage](#), which contain each appellant’s grounds of appeal. The full names of the Defendants who are seeking to appeal are Arch Insurance (UK) Limited, Argenta Syndicate Management Limited, Hiscox Insurance Company Limited, MS Amlin Underwriting Limited, QBE UK Limited, Royal & Sun Alliance Insurance Plc, as well as Hiscox Action Group.

⁴ For the meaning of “disease clause”, “hybrid clause”, and “prevention of access (POA) clause” see para 8 of the [judgment](#) generally, paragraphs 80-81 for “disease clause”, paragraph 242 for “hybrid clause”, paragraph 306 for “POA clause”.

⁵ The judgment is complex and runs to 162 pages. The paragraphs referred to in this column offer a starting point only and relate to policy coverage as opposed to wider issues such as causation and prevalence of Covid-19. It is not suggested that only these paragraphs are relevant for a particular policy type. See also the [summary of the judgment](#) provided by Herbert Smith Freehills on their website.

⁶ For the meaning of “trends clause” see paragraph 7 of the [FCA’s skeleton argument for trial](#). For an example, see paragraph 90 of the [judgment](#).

Policy type ¹	Did the High Court find that the policy would potentially provide cover? ²	Is the cover being appealed such that the overall outcome may change? ³	Type of clause ⁴	Key paragraphs on cover in judgment ⁵	Disease declarations	Prevalence declaration	Public authority action declaration	Causation and trends clauses declaration ⁶	Specific policy type declaration
Hiscox 1	Yes for hybrid clause , for certain types of business No for NDDA clause	Yes for hybrid clause – by Hiscox, FCA and HAG No for NDDA clause	Hybrid and POA (called NDDA ⁷)	Hybrid: 242-283 NDDA: 306, 390-418	1, 3	8	9	11 (hybrid), 13	17 (hybrid), 18 (NDDA), 19 (hybrid)
Hiscox 2	Yes for hybrid clauses , for certain types of business No for NDDA clauses	Yes for hybrid clause – by Hiscox, FCA and HAG No for NDDA clause	Hybrid and POA (called NDDA)	Hybrid: 242-283 NDDA: 306, 390-418	1, 3	8	9	11 (hybrid), 13	17 (hybrid), 18 (NDDA), 19 (hybrid)
Hiscox 3	Yes , for certain types of business	Yes for hybrid clause – by Hiscox, FCA and HAG	Hybrid	Hybrid: 242-283	1, 3	8	9	11 (hybrid), 13	17 (hybrid), 19 (hybrid)
Hiscox 4	Yes for hybrid clauses , for certain types of business No for NDDA clauses	Yes for hybrid clause – by Hiscox, FCA and HAG No for NDDA clause	Hybrid and POA (called NDDA)	Hybrid: 242-283 NDDA: 306, 390-418	1, 5	8	9	11 (hybrid), 13	17 (hybrid), 18 (NDDA), 19 (hybrid)

⁷ “NDDA” means non-damage denial of access (see paragraph 390 of the [judgment](#)).

Policy type ¹	Did the High Court find that the policy would potentially provide cover? ²	Is the cover being appealed such that the overall outcome may change? ³	Type of clause ⁴	Key paragraphs on cover in judgment ⁵	Disease declarations	Prevalence declaration	Public authority action declaration	Causation and trends clauses declaration ⁶	Specific policy type declaration
MS Amlin 1	Yes for disease clauses No for AOCA clauses	Yes for disease clause – by MS Amlin No for AOCA clause	Disease and POA (called AOCA ⁸)	Disease: 80-81, 175-199 AOCA: 306, 419-437	1, 6	8	9	10 (disease), 11 (disease), 13	20 (disease clauses) 21 (AOCA clauses)
MS Amlin 2	Yes for disease clauses No for AOCA clauses	Yes for disease clause – by MS Amlin No for AOCA clause	Disease and POA (called AOCA)	Disease: 80-81, 175-199 AOCA: 306, 419-421, 438-439	1, 6	8	9	10 (disease), 11 (disease), 13	20 (disease clauses) 22 (AOCA clauses)
MS Amlin 3	No	No	POA (called AOCA)	306, 419-421, 440-444		8	9	13	23
QBE 1	Yes	Yes – by QBE	Disease	80-81, 200-229, 239-241	1, 7	8		10, 11, 13	24
QBE 2	No – see especially declaration 12	Yes – by FCA	Disease	80-81, 200-223, 230-235, 239-241	1, 5	8		12, 13	25

⁸ “AOCA” means action of competent authorities (see paragraphs 419 and 478 of the [judgment](#)).

Policy type ¹	Did the High Court find that the policy would potentially provide cover? ²	Is the cover being appealed such that the overall outcome may change? ³	Type of clause ⁴	Key paragraphs on cover in judgment ⁵	Disease declarations	Prevalence declaration	Public authority action declaration	Causation and trends clauses declaration ⁶	Specific policy type declaration
QBE 3	No – see especially declaration 12	Yes – by FCA	Disease	80-81, 200-223, 236-241	1, 5	8		12, 13	26
RSA 1	Yes , for certain types of business	Yes – by RSA and FCA	Hybrid	242, 284-298	1, 7	8		10, 11, 13	27
RSA 2.1 and 2.2	No	No	POA	306, 445-467		8	9	13	28
RSA 3	Yes	Yes – by RSA	Disease	80-122	1, 5	8		10, 11, 13	29
RSA 4	<p>Yes for disease clause</p> <p>Yes for ‘enforced closure’ clause, for certain types of business</p> <p>Yes for POA Non Damage</p>	<p>No for disease clause</p> <p>Yes for ‘enforced closure clause’ – by FCA</p> <p>No for POA Non Damage clause</p>	<p>Disease</p> <p>and</p> <p>Hybrid (called ‘enforced closure’ clause⁹)</p> <p>and</p> <p>POA (called POA Non Damage clause¹⁰)</p>	<p>Disease: 80-81, 123-148</p> <p>‘Enforced closure’: 242, 299-305</p> <p>For POA Non Damage clause:</p>	1, 2, 4	8	9	10 (disease clause), 11 (disease clause, ‘enforced closure’ clause, POA Non Damage clause), 13	30 (disease clause) 31 (‘enforced closure’ clause) 32 (POA Non Damage clause)

⁹ For the meaning of ‘enforced closure’ clause see from paragraph 299 and from paragraph 123 of the [judgment](#).

¹⁰ For the meaning of Prevention of Access Non Damage clause see from paragraph 451 and 468 of the [judgment](#).

Policy type ¹	Did the High Court find that the policy would potentially provide cover? ²	Is the cover being appealed such that the overall outcome may change? ³	Type of clause ⁴	Key paragraphs on cover in judgment ⁵	Disease declarations	Prevalence declaration	Public authority action declaration	Causation and trends clauses declaration ⁶	Specific policy type declaration
				306, 451-455, 468-476					
Zurich 1 and 2	No	No	POA	306, 477-502		8	9	13	33